

The State of South Carolina



Office of the Attorney General

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ATTORNEY GENERAL

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April 26, 1991

The Honorable Irene K. Rudnick
Member, S.C. State House of Representatives
District No. 81 - Aiken County
310-D Blatt Building
Columbia, SC 29211

Dear Representative Rudnick:

You have requested the advice of this Office as to whether an extra fee may be charged for the recording of deeds. The fee in question is the Town of Hilton Head's "real estate transfer fee" that must be paid upon the recording of the related instrument at the Office of the Register of Mesne Conveyances. S.C. Code Ann. § 8-21-310 (1986) sets forth fees for recording a number of different instruments including a deed to real estate. Section 8-21-310(1); See also sections 8-21-310(3) and (4). Previous Opinions have concluded that, except as otherwise expressly provided, fees additional to those permitted by section 8-21-310 are improper and may not be collected except for fees for such services as copying. Ops. Atty. Gen. June 11, 1985 and June 19, 1980. Therefore, because neither section 8-21-310 nor any other statute provide authorization for it, the transfer fee is not permissible as a condition for recording under this authority. 1/

1/ The transfer fee in question is not designated as a tax; however, for your information, I note that I have located no statutory authority for municipalities to impose taxes upon the conveyance or transfer of property. See section 12-21-380 (State Documentary Stamp Tax); section 12-25-10, et seq. (county tax on conveyances and Dunbar v. City of Spartanburg, 266 S.C. 113, 221 S.E.2d 848,850 (1976); ("A municipality being a creature of the legislature, may exercise only such authority as is granted to it."). See also S.C. Const. art. VIII § 9.

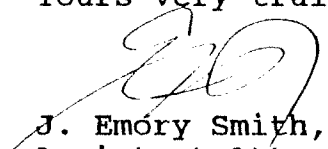
THE HONORABLE IRENE K. RUDNICK

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If you have any questions or need additional information,
please let me know.

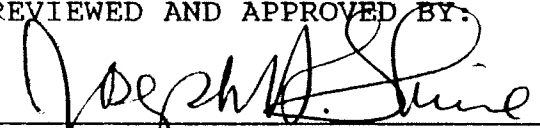
Yours very truly,



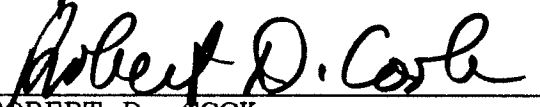
J. Emory Smith, Jr.
Assistant Attorney General

JESjr/jps

REVIEWED AND APPROVED BY:



JOSEPH D. SHINE
Chief Deputy Attorney General



ROBERT D. COOK
Executive Assistant for Opinions