

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. _____

June 5, 1989

SUBJECT: Taxation and Revenue - Homestead Exemption -
Life Estate.

SYLLABUS: A life estate created by corrective deed
executed in 1987 fails to satisfy the
conditions of Section 12-37-250. The section
requires that a life estate created by deed
be in existence on or before December 31,
1979.

TO: Honorable Kenneth S. Holt
Auditor, Horry County

FROM: Joe L. Allen, Jr. *JLA*
Chief Deputy Attorney General

QUESTION: A life estate in a parcel of land was conveyed
to a person in 1974. In 1985, that interest was conveyed to
another. Later in 1986, that person conveyed a one-half
interest in the property to her husband. In 1987, the
husband and wife by an instrument designated as a
"corrective deed" reconveyed a life estate in the parcel to
the 1974 grantee. The question is whether the life estate
satisfies the conditions for the homestead exemption.

APPLICABLE LAW: Section 12-37-250, Code of Laws of South
Carolina, 1976.

DISCUSSION:

Section 12-37-250 provides a homestead exemption to persons
over sixty-five years of age or who are blind or totally and
permanently disabled. Among the conditions for the
exemption, is that the homestead be owned in complete fee
simple or for life. We are here concerned only with the
estate and whether it meets the conditions for the
exemption.

It is clear that the person had a life estate in 1974. That
estate, however, was terminated by deed in 1985. The life
estate again was vested in the person in 1987.

Section 12-37-250 further provides however:

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"The provisions of this section shall apply to life estates created by will and also to life estates otherwise created which were in effect on or before December 31, 1979."

The deed of 1987 creates the life estate here considered. The language of the statute is clear and must be applied.

"In construing a statute, words must be given their plain and ordinary meaning." Smith v. Eagle Construction Co. Inc., 282 S.C. 140, 318 S.E.2d 8. For other cases see 17 S.C.D., Statutes, Key 188.

Another settled rule of statutory construction is here applicable.

"Constitutional and statutory language creating exemptions from taxation will not be strained or liberally construed in favor of taxpayer claiming exemption, but he must clearly bring himself within constitutional or statutory language upon which he relies." York County Fair Ass'n. v. South Carolina Tax Commission, 249 S.C. 337, 154 S.E.2d 361.

The parties, by agreement, executed the corrective deed upon the grounds that there was a mistake. The corrective deed, however, does not void the deed executed in 1985.

"A mistake, even though a material one, does not render a deed void, but at the most, voidable in equity. . ." 23 Am.Jur.2d., Deeds, Section 213, p. 222.

Unless a successful action is instituted to void the 1985 deed, effect must be given the same.

CONCLUSION:

A life estate created by corrective deed executed in 1987 fails to satisfy the conditions of Section 12-37-250. The section requires that a life estate created by deed be in existence on or before December 31, 1979.

JLAJr:wcg