ALAN WILSON
ATTORNEY GENERAL

March 25, 2014

The Honorable Daniel M. Gregory
Charleston County Delinquent Tax Collector
4045 Bridge View Drive
North Charleston, South Carolina 29405-6080

Dear Tax Collector Gregory:

Attorney General Alan Wilson has referred your letter dated November 20, 2013 to the Opinions section for a response. The following is this Office's understanding of your question and our opinion based on that understanding.

Issue: May Delinquent Tax Collectors rely on electronic records of signatures and electronic signatures for restricted mail, return-receipt certified mail, delinquent tax sale notices and still be in compliance with S.C. Code Title 12, Chapter 51?

Short Answer: Yes, this Office believes a court will likely find a Delinquent Tax Collector may rely on electronic records of signatures and electronic signatures retained by the United States Postal Service as long as the other requirements under the law are met for such notices.[1]

Law/Analysis:
South Carolina Code Section 12-51-40 provides that:

> After the county treasurer issues his execution against a defaulting taxpayer in his jurisdiction, as provided in Section 12-45-180, signed by him or his agent in his official capacity, directed to the officer authorized to collect delinquent taxes, assessments, penalties, and costs, requiring him to levy the execution by distress and sale of the defaulting taxpayer's estate, real or personal, or both, or property transferred by the defaulting taxpayer, the value of which generated all or part of the tax, to satisfy the taxes, assessments, penalties, and costs, the officer to which the execution is directed shall:
>
> (a) On April first or as soon after that as practicable, mail a notice of delinquent property taxes, penalties, assessments, and costs to the defaulting taxpayer and to a grantee of record of the property, whose value generated all or part of the tax. The notice must be mailed to the best address available, which is either the address shown on the deed conveying the property to him, the property address, or other corrected or forwarding address of which the officer authorized to collect delinquent taxes, penalties, and costs has actual knowledge. The notice

[1] Nothing herein addresses service of process on a government agency.

must specify that if the taxes, penalties, assessments, and costs are not paid, the property must be advertised and sold to satisfy the delinquency.

(b) If the taxes remain unpaid after thirty days from the date of mailing of the delinquent notice, or as soon thereafter as practicable, take exclusive possession of the property necessary to satisfy the payment of the taxes, assessments, penalties, and costs. In the case of real property, exclusive possession is taken **by mailing a notice of delinquent property taxes, assessments, penalties, and costs to the defaulting taxpayer and any grantee of record of the property at the address shown on the tax receipt or to an address of which the officer has actual knowledge, by "certified mail, return receipt requested-restricted delivery" pursuant to the United States Postal Service "Domestic Mail Manual Section S912".** If the addressee is an entity instead of an individual, the notice must be mailed to its last known post office address by certified mail, return receipt requested, as described in Section S912. In the case of personal property, exclusive possession is taken by mailing the notice of delinquent property taxes, assessments, penalties, and costs to the person at the address shown on the tax receipt or to an address of which the officer has actual knowledge. All delinquent notices shall specify that if the taxes, assessments, penalties, and costs are not paid before a subsequent sales date, the property must be duly advertised and sold for delinquent property taxes, assessments, penalties, and costs. **The return receipt of the "certified mail" notice is equivalent to "levying by distress".**

(c) If the "certified mail" notice has been returned, take exclusive physical possession of the property against which the taxes, assessments, penalties, and costs were assessed by posting a notice at one or more conspicuous places on the premises, in the case of real estate, reading: "Seized by person officially charged with the collection of delinquent taxes of (name of political subdivision) to be sold for delinquent taxes", the posting of the notice is equivalent to levying by distress, seizing, and taking exclusive possession of it, or by taking exclusive possession of personalty. In the case of personal property, the person officially charged with the collection of delinquent taxes is not required to move the personal property from where situated at the time of seizure and further, the personal property may not be moved after seized by anyone under penalty of conversion unless delinquent taxes, assessments, penalties, and costs have been paid. Mobile homes are considered to be personal property for the purposes of this section unless the owner gives written notice to the auditor of the mobile home's annexation to the land on which it is situated.

....

S.C. Code 12-51-40 (1976 Code, as amended) (emphasis added). Let us examine United States Postal Service "Domestic Mail Manual Section S912" ("S912"). **S912 authorizes electronic verification "that an article was delivered or that a delivery attempt was made."** Additionally S912 allows customers to retrieve the status of their delivery by Internet, by telephone, or by bulk electronic file transfer for users with an electronic manifest. S912 permits a record of delivery of certified mail with the purchase or return receipt service pursuant to S915. http://pe.usps.gov/text/dmm/S912.htm (or go to http://pe.usps.gov/text/dmm/I022.htm, click on certified mail, S912) (March 5, 2014). S915 details return receipts and refers to Form 3811 for a delivery record. http://pe.usps.com/archive/html/dmmarchive0810/S915.htm (or go to http://pe.usps.gov/text/dmm/I022.htm, click on return receipt, S915) (March 5, 2014). **U.S. Postal Form 3811 (also referred to as 2-6 Return Receipt) allows electronic return receipts via a PDF file.** The PDF file consists of a proof of delivery letter along with an electronic copy of the recipient's signature. http://about.usps.com/publications/pub109/ch2_012.htm (or http://about.usps.com/publications, click on Pub. 109, scroll down to 2-6) (March 5, 2014).

As a background regarding statutory interpretation, the cardinal rule of statutory construction is to ascertain the intent of the legislature and to accomplish that intent. Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 39, 577 S.E.2d 202, 207 (2003). The true aim and intention of the legislature controls the literal meaning of a statute. Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942). The historical background and circumstances at the time a statute was passed can be used to assist in interpreting a statute. Id. An entire statute's interpretation must be "practical, reasonable, and fair" and consistent with the purpose, plan and reasoning behind its making. Id. at 816. Statutes are to be interpreted with a "sensible construction," and a "literal application of language which leads to absurd consequences should be avoided whenever a reasonable application can be given consistent with the legislative purpose." U.S. v. Rippetoe, 178 F.2d 735, 737 (4th Cir. 1950). Like a court, this Office looks at the plain meaning of the words, rather than analyzing statutes within the same subject matter when the meaning of the statute appears to be clear and unambiguous. Sloan v. SC Board of Physical Therapy Exam., 370 S.C. 452, 636 S.E.2d 598 (2006). The dominant factor concerning statutory construction is the intent of the legislature, not the language used. Spartanburg Sanitary Sewer Dist. v. City of Spartanburg, 283 S.C. 67, 321 S.E.2d 258 (1984) (citing Abell v. Bell, 229 S.C. 1, 91 S.E.2d 548 (1956)). **Therefore, based on the plain language of S.C. Code Section 12-51-40, it would appear since the United States Post Office authorizes return receipts electronically that such electronic records of delivery signatures would be sufficient pursuant to the statute.**

However, a plain reading of the statute and Postal Manual does not answer the question of an electronically-generated signature by restricted delivery for certified mail, just electronically-stored signatures. As far as whether an electronically-generated signature by the United States Postal Service or other carrier would comply with the notice requirements, let us examine the Uniform Electronic Transactions Act. As you reference in your letter, this Office answered a similar question for the South Carolina Department of Motor Vehicles concerning electronic signatures on notices. In that opinion, this Office stated:

> *.... The UETA [Uniform Electronic Transactions Act] is codified in S.C. Code Ann. §§ 26-6-10 et seq. In § 26-6-10, the Legislature explained the purposes of the UETA as follows:*
>
> > *[c]onsistent with the provisions of the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7002(a) [the "E-Sign Act"], this chapter provides alternative procedures or requirements for the use of electronic records to establish the legal effect or validity of records in electronic transactions.*
>
> *The UETA provides that electronic records and electronic signatures meet "writing," "signing," or "original" requirements in other South Carolina laws without having to amend existing laws or regulations.*
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> ....
>
> *The clear intent of the Legislature in enacting the UETA is to support and encourage electronic commerce and electronic government, by allowing people and commercial and government entities to use electronic signatures and electronic records in lieu of handwritten signatures and paper documents. Pursuant to § 26-6-60, the UETA "must be construed and applied" to:*
>
> > *(1) facilitate electronic transactions consistent with other applicable law;*
> >
> > *(2) be consistent with reasonable practice concerning electronic transactions and with continued expansion of those practices ...*
>
> *The Draft Comments to the identical Model Act further elaborate on the intent of the provisions. They state:*
>
> > *[t]his Act has been drafted to permit flexible application consistent with its purpose to validate electronic transactions. The provisions of this Act validating and effectuating*

> *the employ of electronic media allow the courts to apply them to new and unforeseen technologies and practices. As time progresses, it is anticipated that what is new and unforeseen today will be commonplace tomorrow. Accordingly, this legislation is intended to set a framework for the validation of media which may be developed in the future and which demonstrate the same qualities as the electronic media contemplated and validated under this Act.*

Among the substantive provisions of the UETA, § 26-6-70 provides:

> ***(A) A record or signature must not be denied legal effect or enforceability solely because it is in electronic form.***
> ***(B) A contract must not be denied legal effect or enforceability solely because an electronic record is used in its formation.***
> ***(C) An electronic record satisfies a law requiring a record to be in writing.***
> ***(D) An electronic signature satisfies a law requiring a signature.***

The above provision sets forth the fundamental premise of the UETA; namely, that the medium in which a record, signature or contract is created, presented or retained does not affect its legal significance. The UETA is thus designed to eliminate the single element of medium as a reason to deny effect or enforceability to an electronic record, signature or contract. In our view, this language could not be more straightforward; an electronic signature will satisfy any law that demands a signature.

The UETA defines an "electronic signature" in § 26-6-20(8) as "an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record." This definition of "electronic signature" is derived verbatim from the Model Act. The definition is broad and technologically neutral, thereby permitting any number of actions or processes to create a signature: a typed name, a click-through procedure on a computer, a recorded voice, use of a PIN or password or, as we believe, a digital capture of a hand-written signature. In the Draft Comments elucidating the UETA, the drafters wrote in Section 2:

> *"[t]he idea of a signature is broad... [The Model] Act establishes, to the greatest extent possible, the equivalency of electronic signatures and manual signatures. The purpose is to overcome unwarranted biases against electronic methods of signing and authenticating records. Therefore the term "signature" has been used to connote and convey that equivalency. The term " "authentication," used in other laws, often has a narrower meaning and purpose than an electronic signature as used in this Act. However, an authentication under any of those other laws constitutes an electronic signature under this Act.*

See also Anderson v. Bell, 234 P.3d 1147, 1152 (Utah 2010) [holding that while a person's signature is usually made by writing his name, the same purpose can be accomplished by placing any writing, indicia or symbol which the signer chooses to adopt and use as his signature and by which it may be proved: e.g., by finger or thumb prints, by a cross or other mark, or by any type of mechanically reproduced or stamped facsimile of his signature, as effectively as by his own handwriting]; 17A Am. Jur.2d. Contracts § 176 (2004) ("[A] signature is whatever mark, symbol, or device one may choose to employ to represent oneself, and may include fingerprints.... 'Electronic' signatures are valid, and legislation has been enacted specifically to authorize them"); cf. Smith v. Greenville County, 188 S.C. 349, 199 S.E. 416, 418 (1938) [holding that stamped signature of the County Treasurer was valid and that, generally, a signature "may be written by hand, or printed, or stamped, or typewritten, or engraved, or photographed, or cut from one instrument and attached to another. A signature lithographed on an instrument by a party is sufficient for the purpose of signing it, and it has been held that it is immaterial with what kind of instrument a signature is made"].

The focus of the law is on (1) the intent of the signer rather than the choice of sound, symbol (i.e., a digital signature) or process; and (2) whether the electronic signature can be linked to or logically associated with the record; not whether the signature is in electronic form. Thus, an important element is the intention to execute or adopt the sound, symbol (i.e., a digital signature) or process for the purpose of signing the related record. The Draft Comments note:

> *[t]he essential attribute of a signature involves applying a sound, symbol or process with an intent to do a legally significant act. It is the intention that is understood in the law as a part of the word "sign," without the need for a definition.*

It is relevant that the Draft Comments include the following example:
[t]his definition [of electronic signature] includes as an electronic signature the standard webpage click through process. For example, when a person orders goods or services through a vendor's website, the person will be required to provide information as part of a process which will result in receipt of the goods or services. When the customer ultimately gets to the last step and clicks "I agree," the person has adopted the process and has done so with the intent to associate the person with the record of that process. The actual effect of the electronic signature will be determined from all the surrounding circumstances, however, the person adopted a process which the circumstances indicate s/he intended to have the effect of getting the goods/services and being bound to pay for them. The adoption of the process carried the intent to do a legally significant act, the hallmark of a signature.

... As provided in § 26-6-180 (A):

> ***[e]ach governmental agency of this State shall determine if, and the extent to which, it will send and accept electronic records and electronic signatures to and from other persons and otherwise create, generate, communicate, store, process, use, and rely upon electronic records and electronic signatures.***

The Draft Comments explain the intent of these provisions in the Model Act is:

> *... [t]o authorize[] state agencies to use electronic records and electronic signatures generally for intra-governmental purposes, and to convert written records and manual signatures to electronic records and electronic signatures. By its terms the section gives enacting legislatures the option to leave the decision to use electronic records or convert written records and signatures to the governmental agency or assign that duty to a designated state officer. It also authorizes the destruction of written records after conversion to electronic form ... [and] ... broadly authorizes state agencies to send and receive electronic records and signatures in dealing with non-governmental persons. Again, the provision is permissive and not obligatory.*

Further, under § 26-6-180(B) it is provided that:

> *[t]o the extent that a governmental agency uses electronic records and electronic signatures pursuant to subsection (A), the governmental agency, in consultation with the South Carolina State Budget and Control Board, giving due consideration to security, may specify:*
> *(1) the manner and format in which the electronic records must be created, generated, sent, communicated, received, and stored and the systems established for those purposes;*
> *(2) if electronic records must be signed by electronic means, the type of electronic signature required, the manner and format in which the electronic signature must be affixed to the electronic record, and the identity of, or criteria that must be met by, a third party used by a person filing a document to facilitate the process;*

> *(3) control processes and procedures appropriate to ensure adequate preservation, disposition, integrity, security, confidentiality, and auditability of electronic records; and*
> *(4) other attributes required for electronic records which are specified for corresponding nonelectronic records or reasonably necessary under the circumstances.*

Subsection (A) of § 26-6-190 further provides that:

> *[t]he South Carolina State Budget and Control Board shall adopt standards to coordinate, create, implement, and facilitate the use of common approaches and technical infrastructure, as appropriate, to enhance the utilization of electronic records, electronic signatures, and security procedures by and for public entities of the State. Local political subdivisions may consent to be governed by these standards.*

We note the South Carolina Budget and Control Board (the "Board") issued "Standards for Electronic Signatures" on the UETA on February 28, 2007. These guidelines provide specific standards for electronic signatures under the UETA. In brief summary, these guidelines provide that an electronic signature must uniquely identify the signer thus making it unlikely that any other unauthorized entity provided the signature. There must be either explicit or implicit agreement that the electronic signature will serve as a signature for the electronic documents or record. The application of the electronic signature must be an intentional act, which may be determined from the contents of the document or record, and the facts and circumstances surrounding the transaction. The electronic signature must be physically or logically associated with the electronic record that is signed, and that association must persist as long as the signature is in effect, which may be the life of the record. These conditions are discussed in context of security concerns regarding electronic signatures: authentication, non-repudiation, and integrity. The scope and limits of the guidelines as applicable to government agencies are essentially policy decisions for the Board and not an opinion of this office. Therefore, we strongly suggest you contact the Board for guidance as to any issues before implementing a policy.

In enacting the UETA, the Legislature specifically provided in § 26-6-30(A) that, except for specified transactions listed in subsection (B), the UETA applies to electronic records and electronic signatures. We note the Legislature specifically excluded prescription drugs, wills, codicils, testamentary trusts, as transactions within the scope of the Uniform Commercial Code, and certain transactions governed by the E-Sign Act from the provisions of the UETA. This list demonstrates to us the Legislature intended that only these particular transactions are not appropriately authenticated through electronic means.

The UETA further provides in § 26-6-50 that: "this chapter applies to electronic records and electronic signatures relating to a transaction." [[Emphasis added]. A "transaction" is defined in § 26-6-20(17) as "an action or set of actions occurring between two or more persons relating to the conduct of business, commercial or governmental affairs." Consequently, transactions with no relation to business, commercial or government transactions would not appear to be subject to the UETA. Although Section 2 of the Draft Comments describes a number of commercial and business transactions involving individuals that would constitute a "transaction," no further examples of transactions are provided by the drafters. You indicated to us that the DMV is directed by law to provide notice of suspension and to act as the agent for service of process for non-resident motor vehicle operators or non-resident motor carriers. The recipient signs an electronic digital facsimile signature to signify receipt. We believe a court would likely find that this relationship between the DMV and the recipient of the notice of suspension or service of process would meet the definition of a "transaction" under the UETA.

You note that Section 2 of the Draft Comments, which attempts to explain "transactions" to which the Model Act applies and those to which it does not, states the following:
[t]he definition [of "transactions"] has been limited to actions between people taken in the context of business, commercial or governmental activities. The term includes all interactions between people for business, commercial, including specifically consumer, or governmental purposes. However, the term does not include unilateral or non-transactional actions. As such, it provides a structural limitation on the Scope of the Act as stated in [§ 26-6-30]. [Emphasis added].
You therefore question whether there is a potential for ambiguity presented by the service of suspension notices or process by the DMV, which are clearly ""government activities" required by law, but also may be considered ""unilateral," since the recipient performs no act of volition other than to electronically sign for receipt of service.

As you point out, however, the UETA also defines "agreement" in § 26-6-20(1) as: "the bargain of the parties in fact, as found in their language or inferred from other circumstances and from rules, regulations, and procedures giving the effect of agreements under law otherwise applicable to a particular transaction." Section 2 of the Draft Comments further quotes with approval the Restatement of Contracts 2d, § 3, which states: "[a]n agreement is a manifestation of mutual assent on the part of two or more persons." We agree with your suggestion that by separately explicating "agreement" in the Model Act and the UETA, this is strong evidence the drafters and the Legislature did not intend the term "transaction" to imply strict mutual assent.

We further note that § 26-6-50(B) sets forth the scope of the UETA in other respects. Specifically, the provision states: "[t]his chapter applies only to transactions between parties who agree to conduct transactions by electronic means. Whether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including the parties' conduct." [Emphasis added]. The Draft Comments explain the identical provision of the Model Act, stating:

> *[t]his Section limits the applicability of this Act to transactions which parties have agreed to conduct electronically. Accordingly, a broad interpretation of the term agreement is necessary to assure that this Act has the widest possible application consistent with its purpose of removing barriers to electronic commerce.*
> *1. This section makes clear that this Act is intended to facilitate the use of electronic means, but does not require the use of electronic records and signatures. This fundamental principle is set forth in subsection (a) and elaborated by subsections (b) and (c), which require an intention to conduct transactions electronically and preserve the right of a party to refuse to use electronics in any subsequent transaction.*
> *2. The paradigm of this Act is two willing parties doing transactions electronically. It is therefore appropriate that the Act is voluntary and preserves the greatest possible party autonomy to refuse electronic transactions. The requirement that party agreement be found from all the surrounding circumstances is a limitation on the scope of this Act.*
> *3. If this Act is to serve to facilitate electronic transactions, it must be applicable under circumstances not rising to a full-fledged contract to use electronics. While absolute certainty can be accomplished by obtaining an explicit contract before relying on electronic transactions, such an explicit contract should not be necessary before one may feel safe in conducting transactions electronically. Indeed, such a requirement would itself be an unreasonable barrier to electronic commerce, at odds with the fundamental purpose of this Act. Accordingly, the requisite agreement,*

> *express or implied, must be determined from all available circumstances and evidence.*
> *4. Subsection (b) provides that the Act applies to transactions in which the parties have agreed to conduct the transaction electronically. In this context it is essential that the parties' actions and words be broadly construed in determining whether the requisite agreement exists. Accordingly, the Act expressly provides that the party's agreement is to be found from all circumstances, including the parties' conduct. The critical element is the intent of a party to conduct a transaction electronically. Once that intent is established, this Act applies.*

We are again mindful that the Legislature intended an electronic signature to fulfill the requirement of a written signature, and that an electronic signature will not be denied legal effect. A court would likely find that conduct by the recipient in providing the electronic signature upon receipt of the notice or process denotes the acceptance of the service. We see no distinction between the digital signature to be provided by the recipient and the current practice by the USPS of presenting the recipient with the "green card" for acknowledgement of receipt. It is important for us to note that this office is not a fact-finding entity. The ultimate legal determination regarding adequate service of a notice or process premised upon any particular circumstances is, therefore, a question of fact beyond the scope of an opinion of this office. See Op. S.C. Atty. Gen., April 6, 2006 ("[T]he investigation and determination of facts are matters beyond the scope of an opinion of this office").

We find the decision of the South Carolina Supreme Court in Patel v. Southern Brokers, Ltd., 277 S.C. 490, 289 S.E.2d 642 (1982), somewhat instructive. In Patel, the plaintiff attempted service of process under the long-arm statute, because the defendant was a North Carolina corporation. The summons and complaint were sent to the defendant by certified mail, return receipt requested. The plaintiff could not enter proof of service, because the postal service returned the unopened envelope as refused. Noting "technical objections to service of process" had been overruled "where the defendant had not been denied due process," the Court determined that a defendant could not avoid process by refusing to accept registered mail known to contain a summons and complaint. Id., 289 S.E.2d at 645. Citing other authority, the Court explained:

> *... one, who is subject to the jurisdiction of the courts of this state under the act, cannot defeat the jurisdiction by the simple expedient of refusing to accept a registered letter. The avoidance of authorized service of proper process by a willful act or refusal to act on the part of the defendant would create an intolerable situation and should not be permitted.*

Id., 289 S.E.2d at 644. The Court indicated that "[o]nce the documents were made available to the defendant, "the mailman was not required to ram them down the Defendant's throat." Id., 289 S.E.2d at 645. The Court concluded the defendant had been served with process and that the trial court had jurisdiction over the defendant. We see no distinction here between the recipient's refusal to sign the "green card," and a refusal to provide the electronic signature. Both would be treated the same.

Although not dispositive, we note the UETA specifically addresses service of process through electronic means by government agencies. It is provided in § 26-6-190(C) that:

> *[i]n accordance with Sections 26-6-20(18) and 26-6-195, and in reference to all South Carolina laws, rules, and regulations pertaining to service of process where service shall be made on entities described in Rule 4(d) (3) of the South Carolina Rules of Civil Procedure, those entities shall be served under Rule 4(d) (8) of the South Carolina Rules of Civil Procedure by:*
> *(1) registered or certified mail-return receipt requested, addressed to the office of the registered agent;*

> *(2) registered or certified mail-return receipt requested, addressed to the office of the secretary of the corporation at its principal office;*
> *(3) e-mailing the service of process that has been postmarked by a United States Postal Service Electronic Postmark in a manner approved by the South Carolina Supreme Court to an e-mail address registered with the Secretary of State for the corporation; or*
> *(4) e-mailing the service of process that has been postmarked by a United States Postal Service Electronic Postmark in a manner approved by the South Carolina Supreme Court to an e-mail address registered with the Secretary of State for the agent for service of process for the corporation.*

Further addressing the service of process to an e-mail address by a government agency, § 26-6-195 provides:

> *[n]otwithstanding any other provisions in this chapter, a governmental agency may use, in accordance with policies and procedures developed by the South Carolina Budget and Control Board and as circumstances allow,* ***in order to perfect service of process of any communication, an e-mail address from any vendor, entity, or individual the governmental agency regulates or does business with, or an e-mail address from the agent for service of process of that vendor, entity, or individual. Such communication postmarked by a United States Postal Service Electronic Postmark shall have the same force of law as the United States Post Office certified mail-return receipt requested. The South Carolina Budget and Control Board shall devise policies and procedures for the use of the United States Postal Service Electronic Postmark in respect to state agencies and operations. These policies and procedures, where necessary, must consider the persons or entities which do not have an e-mail address.***

These provisions demonstrate intent to facilitate the various means of service of process through electronic means by government entities. This process is facilitated by a "United States Postal Service Electronic Postmark," defined in § 26-6-20(18) as "an electronic service provided by the United States Postal Service that provides evidentiary proof that an electronic document existed in a certain form at a certain time and the electronic document was opened or the contents of the electronic document were displayed at a time and date documented by the United States Post Office." The UETA states this service has "the same force of law as the United States Post Office certified mail-return receipt requested," as required by the South Carolina Rules of Civil Procedure. ***The inclusion of electronic service of process in the UETA strongly suggests legislative intent that an Electronic Postmark from the USPS or another "certifying" authority is equivalent to or an adequate substitute for service of process previously facilitated by certified, return-receipt mail.*** *Because government entities are authorized to accept electronic signatures in their ordinary course of business, a court would likely find an electronic signature would be adequate evidence of receipt of notices of suspension or service of process as are the ink-signed copies of the "green card." Additionally, these provisions allowing for electronic service of process would refute an argument that electronically-generated and stored signatures are beyond the scope of the definition of "transaction" under the UETA, as discussed above.*

Lastly, we note the UETA addresses evidentiary issues which may arise regarding electronic signatures. The UETA makes clear in § 26-6-130 that "a ... signature may not be excluded in a proceeding solely because the ... signature is in electronic form." Additionally, the UETA clarifies in. § 26-3-30(D) that transactions subject to the UETA are "also subject to other applicable substantive law." In fact, throughout the UETA, the Legislature carefully notes that the provisions of the UETA are to be consistent with other applicable law. See, e.g., § 26-6-50 (E) ("Whether an electronic record or electronic signature has legal consequences is determined by this chapter and other applicable laws."); § 26-6-60 ("This chapter must be

> *construed and applied to: ... facilitate electronic transactions consistent with other applicable law...."). The Model Act's corresponding Draft Comments in Section 13 explain: "[n]othing in this section relieves a party from establishing the necessary foundation for the admission of an electronic record. See Uniform Rules of Evidence 1001(3), 1002, 1003 and 1004."*
>
> *Accordingly, we advise that evidence of electronic records must otherwise meet the admissibility requirements on a case-by-case basis within the existing framework of the South Carolina Rules of Evidence and case law in South Carolina. One court has even acknowledged that "courts increasingly are demanding that proponents of evidence obtained from electronically stored information pay more attention to the foundational requirements than has been customary for introducing evidence not produced from electronic sources." Lorraine v. Markel American Ins. Co., 241 F.R.D. 534, 543 (D. Md. 2007). For example, a court may consider whether or not there has been a foundational showing of the manner by which a particular electronic record was stored, maintained or retrieved in determining whether the exhibit is a true and accurate representation of such electronic record. See, e.g., §§ 26-6-80, -90, -150, and -160. Additionally, the evidentiary use of electronically stored information may raise issues regarding the rules on original writings. Pursuant to the UETA, an electronic record that bears an electronic or digital signature would be admissible as if the signature were an original. Cf. § 19-5-610 [[recognizing that a facsimile copy of a record of a business or public official may be offered as evidence just as the original record might be offered, assuming the requirements set forth therein are met]. We note that a presiding judge possesses wide discretion in the admission of this evidence, as any other. The admission of the evidence would, therefore, ultimately rest in the sound discretion of the trial judge. See State v. Tyner, 273 S.C. 646, 258 S.E.2d 559 (1979).*
>
> *Conclusion*
> ***The UETA [Uniform Electronic Transactions Act] authorizes the use and acceptance of electronic signatures and electronic records in conducting transactions, including government affairs. Electronic signatures and records have the same legal force and effect as written signatures. The UETA expressly permits an electronic signature to satisfy any law that requires a signature. The UETA allows the use of electronic signatures so long as the parties agree to conduct the transaction by electronic means, which must be determined from all the circumstances, including the conduct of the parties. The transaction must otherwise comply with all statutory requirements. Also, a transaction under the UETA is subject to other applicable substantive law.*** *The DMV has been granted authority to determine how and the extent to which it will create, send, receive, store, recognize, accept, be bound by, or otherwise use electronic records and electronic signatures pursuant to the UETA. We advise that the DMV should contact the South Carolina Budget and Control Board for guidance in this matter.* ***However, it is the opinion of this office that the service under consideration by the DMV, which generates a detailed report of an electronic signature designating acceptant of receipt, would likely be considered by a court as adequate evidence of delivery of statutory notices of suspension or service of process as are the ink-signed copies of the "green card." If a law requires that a record of a signature be retained, we believe the requirement is satisfied by retaining the electronic form of the signature as a record by the government entity. To hold otherwise simply because technological advances have allowed for electronic records and signatures would run afoul of the expressed intent of our Legislature in enacting the UETA.***

Op. S.C. Atty. Gen., 2012 WL 440546 (January 10, 2012) (emphasis added).

This Office recognizes a long-standing rule that it will not overrule a prior opinion unless it is clearly erroneous or a change occurred in the applicable law. Ops. S.C. Atty. Gen., 2009 WL 959641 (March 4, 2009); 2006 WL 2849807 (September 29, 2006); 2005 WL 2250210 (September 8, 2005); 1986 WL

289899 (October 3, 1986); 1984 WL 249796 (April 9, 1984). Additionally, "[t]he absence of any legislative amendment following the issuance of an opinion of the Attorney General strongly suggests that the views suppressed therein were consistent with the legislative intent." Op. S.C. Atty. Gen., 2005 WL 2250210 (September 8, 2005) (citing Scheff v. Township of Maple Shade, 149 N.J.Super. 448, 374 A.2d 43 (1977)). Moreover, as this Office stated:

> [The Supreme Court of South Carolina] has recognized that an opinion of the Attorney General, while not binding upon the courts, is 'persuasive.' *Charleston County School Dist. v. Harrell*, 393 S.C. 552, 713 S.E.2d 604 (2011). An Attorney General's opinion "should not be disregarded without cogent reason." *Price v. Watt*, 280 S.C. 510, 513 n. 1, 313 S.E.2d 58, 60 n.1 (Ct.App. 1984).

Op. S.C. Atty. Gen., 2012 WL 2867807 (June 29, 2012). Some other applicable statutes under the Uniform Electronic Transactions Act ("Act") give further insight. One such statute states:

> **(A) A law requiring a record to be retained is satisfied by retaining an electronic record of the information that:**
> **(1) accurately reflects the information in the record after it was first generated in its final form as an electronic record or otherwise; and**
> **(2) remains accessible for later reference.**
> ...
> **(D) A law requiring a record to be presented or retained in its original form, or providing consequences if the record is not presented or retained in its original form, is satisfied by an electronic record retained in accordance with subsection (A).**
> ...
> (F) A record retained as an electronic record in accordance with subsection (A) satisfies a law requiring a person to retain a record for evidentiary, audit, or like purposes, unless a law enacted after the effective date of this chapter specifically prohibits the use of an electronic record for the specified purpose.
> (G) This section does not preclude a governmental agency of this State from specifying additional requirements for the retention of a record subject to the agency's jurisdiction.

S.C. Code § 26-6-120 (1976 Code, as amended). The Act later states:

> (A) **The South Carolina State Budget and Control Board shall adopt standards** to coordinate, create, implement, and facilitate the use of common approaches and technical infrastructure, as appropriate, to enhance **the utilization of electronic records, electronic signatures, and security procedures** by and for public entities of the State. **Local political subdivisions may consent to be governed by these standards.**
> (B) **The Secretary of State may develop, implement, and facilitate the use of model procedures for the use of electronic records, electronic signatures, and security procedures** for all other purposes, including private commercial transactions and contracts. **The Secretary of State also may promulgate regulations** as to methods, means, and standards for secure electronic transactions including administration by the Secretary of State or the licensing of third parties to serve in that capacity, or both.
> [(C) is quoted above....]

S.C. Code § 26-6-190 (1976 Code, as amended). As technology changes, the law is forced to catch up. Just this year, the United States Fourth Circuit Court of Appeals recently affirmed the district court's finding that a town's use of electronically-signed speeding citations did not violate due process. Snider Int'l Corp. v. Town of Forest Heights, 739 F.2d 140 (4th Cir. 2014).

Conclusion: It is for all of the above reasons this Office believes a court will find both an electronically-generated signature and an electronic copy of a signature would suffice pursuant to S.C. Code Section 12-51-40 in accord with the other requirements of the statute.[2] Nevertheless, there are many other sources and authorities you may want to refer to for a further analysis. See, e.g., the entire Public Records Act found in Title 30, Article 1 of the S.C. Code of Laws, the United States Code concerning electronic records and signatures (15 U.S.C.A. § 7001, etc.), et al. Additionally, this Office would caution, as you recognized in your letter, the courts in South Carolina have stated that tax sales must be held in "strict compliance" with the requirements under the law. Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 577 S.E.2d 202 (2003) (citing Ryan Inv. Co. v. Richland County, 335 S.C. 392, 394, 517 S.E.2d 692, 693 (1999) (citing Dibble v. Bryant, 274 S.C. 481, 265 S.E.2d 673 (1980)). And cases have held actual notice of a tax sale does not even suffice if the statute was not strictly complied with. Id. (citing Ryan Inv. Co.). A tax sale will be voided if a court finds notice of a tax sale was not given to the proper party. Id. (citing Rives v. Bulsa, 325 S.C. 287, 478 S.E.2d 878 (Ct. App. 1996)). Therefore, if you want a definite answer, this Office would recommend seeking a declaratory judgment from the court on this matter before you proceed, as only a court of law can interpret statutes. This is only a legal opinion based on the current law at this time. Until a court or the legislature specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. [3] If it is later determined otherwise or if you have any additional questions or issues, please let us know.

Sincerely,

Anita S. Fair

Anita S. Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General

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[2] See footnote 1.

[3] "The South Carolina Supreme Court has recognized that an opinion of the Attorney General, while not binding upon the courts, is 'persuasive.' *Charleston County School Dist. v. Harrell*, 393 S.C. 552, 713 S.E.2d 604 (2011). An Attorney General's opinion 'should not be disregarded without cogent reason.' *Price v. Watt*, 280 S.C. 510, 513 n. 1, 313 S.E.2d 58, 60 n.1 (Ct.App. 1984)." Op. S.C. Atty. Gen., 2012 WL 2867807 (June 29, 2012). This Office only issues legal opinions. Op. S.C. Atty. Gen., 1996 WL 599391 (September 6, 1996) (citing Op. S.C. Atty. Gen., 1983 WL 182076 (December 12, 1983)).