

1977 WL 37270 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 16, 1977

*1 Mr. Norman Olson
State Geologist
Harbison Forest Road
Columbia, SC

Dear Mr. Olson:

You have requested an opinion as to whether or not the South Carolina Geological Survey, which is a division of the State Development Board, may enter into a cooperative agreement with Duke Power Company for the purpose of research of the metallic and non-metallic minerals of this State. Under this proposed agreement, Duke Power Company would transmit to the State via a telephone hook-up information and data received from their seismograph station located at Jocassee.

South Carolina Code of Laws, 1962, as amended, Section 9-317(7) allows you to enter into such agreements; and, therefore, there does not appear to be a prohibition to this procedure.

Very truly yours,

Treva G. Ashworth
Assistant Attorney General

ATTACHMENT

March 17, 1977
Honorable Daniel R. McLeod

Attorney General of South Carolina

Post Office Box 11549

Columbia, S.C. 29211

Re: Requirement of witnesses on the recordation of documents

Dear Mr. McLeod:

I am writing to ask your opinion with respect to the requirement of witnesses on instruments in order to make them capable of recordation under the statutes of this State. I am writing after conferring with the Honorable Arthur H. Burton, Register of Mesne Conveyances for Charleston County. I enclose a copy of a letter from your office dated March 10, 1975, to Mr. Burton and I also enclose copy of an instrument designated Amendment of Assignment of Leases and Rents, which I wish to record.

As I understand Section 60-51, as amended, and particularly paragraph (2) thereof, an instrument can be recorded if it complies with the requirements of the Uniform Recognition of Acknowledgments Act. The Uniform Recognition of Acknowledgments Act, Sections 49-61 through 49-69, makes no requirement for witnesses to an instrument. Accordingly, it seems to me that under Section 60-51(2) and under Section 49-61, et seq., no witnesses are required on any instrument for it to be recorded.

I am aware that Code Section 57-251 calls for two witnesses on a deed for the transfer of the fee simple title of any land or real estate, and I am aware that the cases seem to hold that the same requirement exists for mortgages, which may under foreclosure

be considered tantamount to the transfer of the fee. I am, however, not aware of a requirement that there be witnesses to other types of instruments in order to establish their validity. Your letter of March 10, 1975, addressed to Mr. Burton, copy enclosed, of course deals expressly only with deeds and mortgages. However, Mr. Burton interprets it as applying to all instruments.

My question, therefore, is whether or not on instruments other than deeds and mortgages two witnesses are necessary before the document can be recorded, making specific reference to a document such as the enclosed Amendment of Assignment of Leases and Rents.

*2 While the next following question is not necessary for my immediate purposes, I wonder if you would review your opinion that two witnesses are necessary for the recordation of deeds and mortgages. Is there a requirement that an instrument that is defectively executed in some respects, but that meets the requirements of the Recordation Act, Section 60-51, as amended, cannot be recorded? There is authority that a mortgage that is not properly witnessed nevertheless is not entirely invalid. See [Farmers Bank & Trust Co. vs. Fudge, 113 S.C. 25 100 S.E. 628 \(1919\)](#). If the instrument is acknowledged as required by the Uniform Recognition of Acknowledgments Act, should it not be capable of recordation, even though under some circumstances it might be invalid because of a failure to comply with some other statutory requirement?

I am making this request for your opinion with the knowledge and approval of Mr. Burton, and would appreciate it if you would send a copy of your response to him.

Yours very truly,

BUIST, MOORE, SMYTHE & McGEE

BY Augustine T. Smythe

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