

1977 WL 36993 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 16, 1977

*1 G. Larry Inabinet, Esquire

Messrs. Brown, Jefferies & Boulware
Bankers Trust Building
Post Office Box 248
Barnwell, South Carolina 29812

Dear Mr. Inabinet:

Your letter to the Attorney General regarding the requirements of Section 27–39–260 of the 1976 Code of Laws of South Carolina, as amended, has been referred to me for reply. Thank you for your patience in awaiting our response.

As we recently discussed by telephone, the question appears to be whether a perfected security interest as the term is used in Section 27–39–260 of the 1976 Code, as recently amended by Act No. 106 of 1977, must be recorded in order to take priority in distraint situations. An examination of the applicable sections of the USS (Section 36–1–101, et seq., of the 1976 Code of Laws) discloses that a security interest in property need not, in certain instances, be recorded or filed to be perfected. The recent legislative amendment presumably was intended to permit such a result. Accordingly, the priority provisions of Section 27–39–260 would be applicable to unrecorded interests which are otherwise perfected under the laws of the State. A previous opinion of this Office reaches a similar conclusion and may be considered controlling. See 1969–1970 Ops.Atty.Gen. No. 2887, p. 126, a copy of which I am enclosing for your convenience.

I trust the preceding discussion adequately answers your question. However, if you have any further questions or suggestions regarding this matter, please feel free to contact me.

With best personal regards, I am

Very truly yours,

Richard P. Wilson
Assistant Attorney General

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