

1976 WL 30695 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 2, 1976

***1 RE: Authority of party acting under power of attorney to endorse retirement check**

Mr. E. D. Goodwin, Jr.
Comptroller
South Carolina Retirement System,
Bankers Trust Towers
P. O. Box 11960
Columbia, South Carolina 29211

Dear Mr. Goodwin:

As I stated on the phone to you yesterday, there is very little authority dealing with the requisites of acting under a power of attorney. Endorsement on behalf of another is mentioned in Section 10.3-403(1), 1962 Code of Laws, as amended. There it is said in reference to signatures that work as endorsements:

‘A signature may be made by an agent or other representative, and his authority to make it may be established as in other cases of representation. No particular form of appointment is necessary to establish such authority.’

The ambiguous character of such an authorization is mentioned in the note to the above-quoted Section:

‘The power to sign for another may be an expressed authority, or it may be implied in law or in fact, or it may best merely upon apparent authority. It may be established as in other cases of representation, and when relevant parole evidence is admissible to prove or to deny it.’

The main consideration is to determine if the document so granting the power does grant expressly or by necessary implication the authority to endorse the check on behalf of the payee. Also it should be determined that the giver of the power of attorney is in fact the payee.

You might bear in mind that under the provisions of 10.3-404(1) an unauthorized signature is wholly inoperative as that of the person whose name is signed unless the person whose name is signed later ratifies the endorsement or is precluded from denying it. Therefore, the Retirement System would have a cause of action against one who acted under an invalid power of attorney. In any event, the drawee bank would most likely be liable for a check cashed if the signature was that of an unauthorized agent.

Attached is a proposed form which would convey a power of attorney for the purposes of endorsement, negotiation and deposit of checks. You may wish to use this if contacted by a payee of the Retirement System or for your information.

If you have problems with a particular power of attorney, please let me know and we will see what we can do about its legality or illegality whichever the case may be.

With kind regards, I am

Yours truly,

Cameron B. Littlejohn, Jr.
Staff Attorney

1976 WL 30695 (S.C.A.G.)

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.