

1979 S.C. Op. Atty. Gen. 208 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-130, 1979 WL 29132

Office of the Attorney General

State of South Carolina

Opinion No. 79-130

November 20, 1979

***1 SUBJECT: Property Tax—Homestead Exemption**

A deed in which ‘A’ grants to ‘A’ and ‘B’ as tenants in common for life with the remainder in fee simple to the survivor will not convey an estate during the tenancy in common that meets the ownership requirements for the homestead exemption.

TO: Honorable Gerald W. Burnett
Deputy Comptroller General

QUESTION:

‘A’ conveys to ‘A’ and ‘B’, their heirs and assigns, for their lives as tenants in common and upon the death of either of them, then to the survivor of them, his or her heirs and assigns forever in fee simple. Does such conveyance to ‘A’ and ‘B’ satisfy the ownership requirements for the homestead exemption?

APPLICABLE LAW:

[§ 12-37-250, 1976 Code](#) of Laws.

DISCUSSION:

It is assumed for purposes of this opinion that ‘A’ and ‘B’ are in fact husband and wife and that at the time of the conveyance ‘A’ owned the ‘complete fee simple’ title to the homestead. The provisions of [§ 12-37-250](#) grant the exemption, inter alia, to those persons that ‘hold complete fee simple title or a life estate to the dwelling place.’

The section further provides:

‘The exemption shall include the dwelling place when jointly owned in complete fee simple or life estate by husband and wife * * *. 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, 1971.’

It must thus be determined whether the deed here considered creates a life estate and, if so, the exemption is to be denied in that the estate did not exist on December 31, 1971.

‘The term ‘fee simple’ defines the largest estate in land known to the law and necessarily implies dominion over the land.’ 28 Am.Jr.2d, Estates, § 10, p. 81.

‘A life estate created by deed or will is an estate to be held by the grantee or devisee for the term of his own life, or for that of another person, or for more lives than one.’ 28 Am. Jur. 2d, Estates, § 56, p. 145.

Clearly from the language expressed in the deed, the property is granted to 'A' and 'B' for their lives, an estate that is less than the complete fee simple ownership.

While the deed here involved may not be the most appropriate method to create the tenancy in common for life, it is nonetheless an acceptable method.

'While several persons may convey to one of themselves and a corporation may convey to one of its stockholders, ordinarily one person cannot occupy, at law, at the same time, the position of both grantor and grantee in regard to the same property. Just as it is impossible for a person to deliver possession to himself, it is impossible for a person to convey by deed to himself what he already possesses. If he holds the fee and desires to reduce the quantum of his estate, the proper mode of doing this is to convey to another reserving to himself the estate that he desires to hold. However, in conformity with the modern trend to permit the intention of the parties to override formalistic objections, it has been held that grantors who are tenants in common may effectively create a joint tenancy with survivorship by means of a deed running to themselves as grantees. Similarly, according to some authorities, a joint tenancy may be created by conveyance from the owner of property to himself and another, if that is the clear intention.' 23 Am.Jur.2d, Deeds, § 42, p. 104.

*2 'An owner's conveyance to himself and another expressly as tenants in common results in such a tenancy.' 20 Am.Jur.2d, Co-tenancy and Joint Ownership, § 28, p. 120, citing Re Michalak's Estate, 377 Pa. 532, 105 A. 2d 370.

The intent to create the life estate with the remainder in fee is here clearly expressed by use of the term 'for their lives' and 'in fee simple'.

CONCLUSION:

A deed in which 'A' grants to 'A' and 'B' as tenants in common for life with the remainder in fee simple to the survivor will not convey an estate during the tenancy in common that meets the ownership requirements for the homestead exemption.

Added Comment:

The conclusion above stated is fortified by the general rule that statutes granting exemption from taxation are to be strictly construed with doubt resolved against the exemption and in favor of the tax. For cases see 17 S.C.D., Taxation, Key 204, et seq.

Joe L. Allen, Jr.
Deputy Attorney General

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