

1978 S.C. Op. Atty. Gen. 33 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-20, 1978 WL 22506

Office of the Attorney General

State of South Carolina

Opinion No. 78-20

February 3, 1978

\*1 Documentary stamps cannot be required upon the bond and the mortgage indenture given by Newberry College to the Farmers Home Administration pursuant to a loan under the Consolidated Farm and Rural Development Act.

The Honorable James Neely Ashe, Sr.,  
Representative  
District No. 43  
Route 5,  
Union, SC 29379

Dear Representative Ashe:

Recently you requested an opinion from this Office concerning whether or not an individual serving as Director of Civil Defense for Union County could also hold another office in harmony with constitutional restrictions on dual office holding.

The position of Director of Civil Defense for Union County is created by Act No. 395 of the Acts and Joint Resolutions for South Carolina, 1965. After reviewing this Act, it is clear that the Director of Civil Defense holds a position which meets the definition of an office as that term is defined for purposes of constitutional restrictions on dual office holding. This individual exercises a continuing portion of the State's sovereignty, pursuant to statutory authorization, in an area in which the public is concerned.

Therefore, the Civil Defense Director for Union County could not simultaneously serve in a second office without violating constitutional restrictions on dual office holding.

I hope this information will be helpful to you, and with best regards, I am  
Sincerely,

George C. Beighley  
Assistant Attorney General

**ATTACHMENT**

**February 3, 1978**

To: Mr. J. W. Lawson, Director

License Tax Division

By: C. Lewis Argoe, Jr.

Senior Assistant Attorney General

### QUESTION

Is a bond secured by a trust indenture given by Newberry College to the Farmers Home Administration required to have documentary stamps?

### STATUTES INVOLVED

Sections 12-21-330 and 12-21-360 of the 1976 Code of Laws of South Carolina.

### DISCUSSION

The bond in question is to be given by Newberry College to the Farmers Home Administration and is to be secured by a trust indenture. The loan is to be used to renovate property of the college.

The Farmers Home Administration is the agency of the United States that is charged with the administration of the assets of the United States Department of Agriculture. This includes the administration of the Consolidated Farm and Rural Development Act. See [7 U.S.C.A., Section 1981](#). The Consolidated Farm Act was enacted in 1961 as Public Law 87-128 and is the authority under which the loan in question is proposed. Contained in the Act was a provision relating to taxation. Section [7 U.S.C.A., Section 1984](#) provides:

'All property subject to a lien held by the United States or the title to which is acquired or held by the Secretary under this chapter other than property used for administrative purposes shall be subject to taxation by State, territory, district, and local political subdivisions in the same manner and to the same extent as other property is taxed: Provided, however, That no tax shall be imposed or collected on or with respect to any instrument if the tax is based on—

- \*2 (1) the value of any notes or mortgages or other lien instruments held by or transferred to the Secretary;
- (2) any notes or lien instruments administered under this chapter which are made, assigned, or held by a person otherwise liable for such tax; or
- (3) the value of any property conveyed or transferred to the Secretary.

whether as a tax on the instrument, the privilege of conveying or transferring or the recordation thereof; nor shall the failure to pay or collect any such tax be a ground for refusal to record or file such instruments, or for failure to impart notice, or prevent the enforcement of its provisions in any State or Federal court.'

This section applies to all loans made under the Act and would in our opinion preclude the taxation of the bond in question.

The principle of federal immunity may be argued in further support of this conclusion. In the case of [Federal Land Bank v. Crosland](#), 261 U.S. 374, 43 S. Ct. 385, 67 L. Ed. 703, 29 A.L.R. 1; [Pittman v. Home Owners' Loan Corp.](#), 308 U. S. 21, 60 S. Ct. 15, 84 L. Ed. 11, and [United States v. Knapp](#), 168 F. Supp. 386, similar questions were argued and the court in each of the cases concluded that documentary stamp taxes could not be imposed upon an instrument to which a federal agency was a party.

Also Section 12-21-410 may be argued against the tax as the Farmers Home Administration operates in conjunction with the United States Department of Agriculture. The distinction between a bond and a promissory note under the documentary stamp tax law, however, may be argued to negate its application.

**CONCLUSION**

Documentary stamps cannot be required upon the bond and the mortgage indenture given by Newberry College to the Farmers Home Administration pursuant to a loan under the Consolidated Farm and Rural Development Act.

G. Lewis Argoe, Jr.  
License Tax Division

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