

1974 WL 27638 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 20, 1974

*1 An exchange by life tenant and remainderman of ?? property for other property with similar interest retained by life tenant and remainderman in acquired property precludes the homestead exemption to the life tenant in the acquired property because the same was not created by will of the decedent.

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Dear Mr. Moore:

Mr. McLedd has handed me your letter of February 13, 1974, for attention and reply. You request the opinion of this office concerning a homestead exemption that has been denied. A life estate was devised to the applicant in property that constituted her 'dwelling place' and an application for the exemption was applied for and received for the 1973 tax year. The life tenant and remainderman however conveyed this 'dwelling place' to another, the consideration therefor primarily being other property, and it is assumed that by agreement the life tenant acquired a life estate in the property received in the transaction.

An application has been made for the exemption for the current tax year, however, the same has been denied because the life estate in the property received, which now constitutes the applicant's 'dwelling place', was not created by will. It is contended by the applicant, however, that the life estate in the present 'dwelling place' was created by the devise of the first life estate.

Life estates to qualify for the exemption must after December 31, 1971, be created by will.

'The provisions of this section shall apply to life estates created by will and also to life estate otherwise created which were in effect on or before December 31, 1971.' Act 335, Acts of 1973.

Here, the life estate created in the present 'dwelling place' was by action of the life tenant and the remainderman. The devise of the first life estate created the consideration for the present homestead, however, it was not the direction of the testate that provided for the present life estate, therefore the exemption could not be granted.

The applicant had an interest in the first property that was capable of conveyance. [Blue V. Fetner, 251 S. C. 600, 164 S. E. 2d 753, 13 S.C.D., Life Estates](#), Key 23. Here, the life tenant elected to convey that interest and the life estate first created by will, therefore, ceased to be the property of the applicant, a necessary condition precedent for the exemption.

The opinion above expressed is fortified by the accepted rule that statutes granting tax exemptions are to be strictly construed and that the person claiming the same must bring himself squarely within the terms of the statutes. [York County Fair Association v. South Carolina Tax Commission, 249 S. C. 337, 154 S. F. 236](#).

Yours very truly,

Joe L. Allen, Jr.

Assistant Attorney General

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