



ALAN WILSON
ATTORNEY GENERAL

July 29, 2019

Dale Butts
Secretary/Treasurer
South Carolina Association of Clerks and Registers
P.O. Drawer 1197
Beaufort, South Carolina 29901

Dear Mr. Butts:

We understand from your letter dated July 11, 2019, you seek our opinion regarding 2019 Act 58 recently passed by the South Carolina General Assembly and signed into law by the Governor. According to your letter, you seek clarification on the portion of Act 58 pertaining to the filing of South Carolina tax liens, satisfactions, and expungements. Specifically, you ask "whether or not the intent of the statute is for Satisfactions and Expungements to have a \$10 filing fee assessed per document, in addition to the initial \$10 filing fee for the lien?" If we determine a fee per document is required in addition to the filing fee for the lien, you ask "whether or not SC Registers of Deeds (Elected or Appointed) have the right to waive the fee, as it pertains to the SC Department of Revenue, for up to a 6 month period?"

Law/Analysis

Act 58 will be codified at section 8-21-310 of the South Carolina Code effective August 1, 2019. Before we consider the interpretation of Act 58, it is important to consider the version of section 8-21-310 of the South Carolina Code (2019) currently in effect until July 31, 2019. Section 8-21-310 generally pertains to the schedule of fees and costs to be collected in each county by clerks of court and registers of deeds or county treasurers as determined by the county's governing body. Currently, section 8-21-310(20) pertains to the fees associated with filing South Carolina tax liens.

(20) for filing and enrolling and satisfaction of South Carolina and United States Government tax liens:

(a) for filing and enrolling and satisfying executions or warrants for distraint for the South Carolina Department of Employment and Workforce, the South Carolina Department of Revenue, or any other

state agency, where costs of the executions or warrants for distraint are chargeable to the persons against whom such executions or warrants for distraint are issued, ten dollars;

(b) for filing and enrolling and satisfying any tax lien of any agency of the United States Government, where the costs of the executions are chargeable to the persons against whom such executions are issued, ten dollars;

The clerk shall mark "satisfied" upon receipt of the fees provided in this item for any tax lien or warrant for distraint issued by any agency of this State or of the United States upon receipt of a certificate duly signed by an authorized officer of any agency of this State or the United States to the effect that the execution or warrant for distraint has been paid and satisfied.

S.C. Code Ann. § 8-21-310(20).

In a 2002 opinion, this Office considered whether this provision required a ten dollar fee to file a tax lien and an additional ten dollar fee to satisfy a tax lien or whether one \$10 fee covered the filing and satisfaction of the tax lien. Op. S.C. Att'y Gen., 2002 WL 1925758 (S.C.A.G. July 16, 2002). We determined:

The South Carolina Supreme Court has consistently recognized that costs and fees ". . . are in the nature of penalties and the statutes granting them have always been strictly construed." State, et al. v. Wilder, 198 S.C. 390, 18 S.E.2d 324 (1941). Further, other authorities have stated that "statutes providing for fees are to be strictly construed against allowing a fee by implication, with respect to both the fixing of the fee and the officer entitled thereto . . ." 67 C.J.S., Officers, § 224, See also, Op. Atty. Gen. Dated September 25, 1985, August 7, 2000, & October 11, 2000. Accordingly, applying this strict statutory construction principle to the fee provisions of Sections 8-21-310(a)&(b), it is evident that, in order for a separate fee to be charged for filing a tax lien and satisfying a tax lien, such must be clearly stated in the statute. Reviewing the language of the sections, it is further evident that there is not expressed a clear intention that separate fees be charged for the filing and satisfying of tax liens.

Based on the forgoing, it is my opinion that one fee of ten dollars (\$10.00) should be charged for the ". . . filing and enrolling and satisfying . . ." of executions or warrants of distraint or tax liens as provided for in S.C. Code Ann. § 8-21-310(20)(a) & (b).

Id.

As you mentioned in your letter, the General Assembly recently amended section 8-21-310. 2019 S.C. Acts 58. The portion of the revised statute pertaining to South Carolina tax liens provides:

(B) Except as otherwise expressly provided, the clerks of court, registers of deeds, or county treasurers, as may be determined by the governing body of a county, shall collect a uniform filing fee of ten dollars, unless otherwise stated, for the following documents or actions:

...

(9) the filing, enrolling, satisfaction, or expungement of state or federal liens. The clerk shall mark "satisfied" upon receipt of the fees provided in this item for any lien or warrant for distraint issued by any agency of this State or of the United States upon receipt of a certificate duly signed by an authorized officer of any agency of this State or of the United States to the effect that the lien or warrant of distraint has been paid;

Id.

Similar to our 2002 opinion, you request we determine whether under the newly enacted version of section 8-21-310, the General Assembly intended to require the assessment of a ten dollar fee for each document in addition to the initial ten dollar filing fee for the lien. "The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature." Bryant v. State, 384 S.C. 525, 529, 683 S.E.2d 280, 282 (2009) (citations omitted) (internal quotations omitted). As our Supreme Court explained in Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000):

Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning. What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.

(citations omitted) (internal quotations omitted).

The current version of section 8-21-310 states the ten dollar fee shall be collected "for filing and enrolling and satisfaction of South Carolina and United States Government tax liens . . ." S.C. Code Ann. § 8-21-310(20) (emphasis added). The amended version of section 8-21-310 states a uniform filing fee of ten dollars shall be collected "for the following documents or actions . . . (9)

the filing, enrolling, satisfaction, or expungement of state or federal liens” (emphasis added).

In Brewer v. Brewer, 242 S.C. 9, 14, 129 S.E.2d 736, 738 (1963), the South Carolina Supreme Court considered the General Assembly’s use of the word “or” in a statute pertaining to alimony. The Court explained “[t]he word ‘or’ used in a statute, is a disjunctive particle that marks an alternative. The word ‘or’ used in a statute imports choice between two alternatives and as ordinarily used, means one or the other of two, but not both.” Id. at 14, 129 S.E.2d at 738 (citations omitted). The Court acknowledged the word “or” can sometimes be construed to mean “and.” However, the Court stated it is constrained in doing so if the statute is clear. Id.

Courts recognize a presumption that the legislature has knowledge of previous legislation. See Shirley’s Iron Works, Inc. v. City of Union, 403 S.C. 560, 572, 743 S.E.2d 778, 784 (2013). Accordingly, we must presume the General Assembly knew and intentionally changed the wording of this provision in section 8-21-310. Furthermore, reading the amended version of section 8-21-810 pertaining to South Carolina tax liens with a disjunctive “or” as opposed to a conjunctive “and,” we believe the General Assembly intended for a fee to be collected when the notice of the lien is filed in addition to when the lien is satisfied or expunged. Although we must construe section 8-21-310 against allowing fees by implication, the language chosen by the General Assembly indicates a filing fee would be assessed for both the initial filing of a lien and for the satisfaction and/or expungement of the lien.

Having answered your first question in the affirmative, you ask whether registers of deeds in South Carolina have the authority to waive the fee for a period of up to six months. In Sullivan v. South Carolina Department of Corrections, 355 S.C. 437, 445, 586 S.E.2d 124, 128 (2003), the Supreme Court considered whether indigent inmates could proceed *in forma pauperis* in an appeal from a decision of the Administrative Law Judge Division under the Administrative Procedures Act. The Court considered the filing fee required for any compliant as provided in section 8-21-310(11)(a) under the current statute. The Court stated, “[i]n the absence of a statutory provision allowing the general waiver of filing fees, we conclude motions to proceed *in forma pauperis* may only be granted where specifically authorized by statute or required by constitutional provisions.” Id. (quoting Martin v. State, 321 S.C. 533, 535, 471 S.E.2d 134, 134-35 (1995)). The amended version of section 8-21-310 provides for a waiver of filing fees for powers of attorney filed or revoked by members of the armed forces who are deployed, but does not offer a waiver of the fee for filings associated with state and federal tax liens. Additionally, we are not aware of any other statutory or constitutional provision providing for a waiver of the filing fees associated with state tax liens. As such, we believe South Carolina registers of deeds would not have the ability to waive such fees.

Conclusion

Based on our review of Act 58, we are of the opinion that the General Assembly intended for this provision to require a ten dollar filing fee for satisfactions and expungements in addition to the

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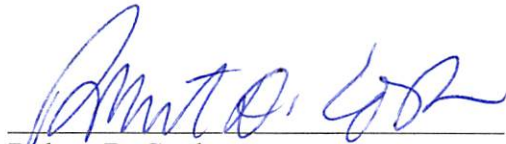
ten dollar filing fee for notice of the lien. In addition, absent a statutory or constitutional provision providing otherwise, registers of deeds would not have the authority to waive such fees.

Sincerely,



Cydney Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General