

1973 S.C. Op. Atty. Gen. 54 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3475, 1973 WL 20939

Office of the Attorney General

State of South Carolina

Opinion No. 3475

February 16, 1973

***1 (1) Mobile or other constructed homes situate on land, the title to which is in another person, would not qualify for the homestead exemption.**

(2) Possession of land under a lease is not the equivalent to the ownership of a life estate and the same would not qualify for the homestead exemption.

Senator

District 3, Greenville County

Reference is made to the question presented to the Committee on Aging of whether the homestead exemption is applicable to mobile homes or to homes constructed otherwise that are located on land belonging to another.

Section 65–1613 of the Code provides:

‘When the fee of the soil in any tract or lot of land is in one person and the right to any minerals therein or structures thereon in another, the proceeds of the minerals or such structures shall be valued and taxed as personal property to the owners thereof, respectively.’

Such homes under the above statute are taxed as personal property, hence the homestead exemption would not apply. It should be noted that in the event the homes are annexed to the land so as to constitute real property, title to the same is vested in the owner of the land.

Additionally, the question of whether a long-term lease could be considered the same as a life estate was presented, and in this connection it should be noted that there is an essential difference between the life estate and the lease. In the former there is an ownership in the land, while the latter creates no such interest.

‘The possession of the tenant for life is his own possession. He holds for himself. Nothing can terminate his right to possession, except death, unless he is guilty of waste or forfeits his right in some way. But the possession of the tenant for years, under a lease, perpetual or otherwise, is always the possession of his lessor. * * *’ 33 Am. Jur., *Life Estates, Remainders, Etc.*, Section 2, page 461, Note 16. See also 49 Am. Jur. 2d, *Landlord and Tenant*, Section 7.

It is therefore the opinion of this office that the possession of the land under a lease would not qualify the home for the homestead exemption.

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