

1973 S.C. Op. Atty. Gen. 88 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3495, 1973 WL 21966

Office of the Attorney General

State of South Carolina

Opinion No. 3495

March 16, 1973

***1** A deed which contains only an “acknowledgement” of the grantor, and does not contain an affidavit of the person executing it subscribed to before a person authorized to perform a notarial act under Subsection (3) of Section 60–51, that the signature on the deed or other instrument is his signature and that the instrument was executed for the uses and purposes stated therein, is not entitled to be recorded for failure of the instrument to comply with Section 60–51(2), Code of Laws, S.C., 1962.

County Attorney

In your letter of March 2, 1973, you requested an opinion on the deed enclosed, dated February 17, 1973, executed by R.D. Giles, subscribed to by two (2) witnesses, with an acknowledgment in the following form, and you have asked if the same is entitled to recording:

“STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Acknowledgment

The foregoing instrument was acknowledged before me this 17th day of February 1973, by R.D. Giles.

/s/ ^{al} _____ (SEAL)

Notary Public for South Carolina

My Commission Expires 7/26/77”

Act. No. 1197 of the 1972 Acts [Uniform Recognition of Acknowledgments Act] is now codified in Section 49–61 et seq., Code of Laws of South Carolina (1962), 1972 Supp. In considering the application of the Uniform Recognition of Acknowledgments Act, the amendment to Section 60–51, Code of Laws of South Carolina (1962), by Act No. 1210 of the 1972 Acts, will have to be considered, these statutes being in pari materia. “In considering meaning of one statute, it is proper to consider other statutory provisions relating to same subject matter.” [Southern Railway Company v. South Carolina Highway Department, 237 S.C. 75, 115 S.E.2d 685.](#)

The question presented is not one of conflicting provisions, but rather one of the application of the Uniform Act and as to whether or not the Uniform Act has any effect whatsoever on notarial acts performed within the State of South Carolina as distinguished from those notarial acts performed without the State of South Carolina. “The court may properly consider the title or caption of an act in aid of construction to show intent of the legislature.” [Lindsay v. Southern Farm Bureau Casualty Insurance Company, 258 S.C. 272, 188 S.E.2d 374.](#) The title to Act No. 1197 is as follows:

“An Act to Provide for Uniform Recognition of Acknowledgments Executed Outside The State.” (Emphasis added)

It is apparent from the title of the act that intent was expressed that recognition of acknowledgments were to be limited to those executed outside the State. “When title of an act specifically limits its object, the Court must limit operation to subject so expressed in title.” [State v. Blease, 79 S.E. 247, 95 S.C. 403](#). “The purpose of the constitutional requirement that the subject matter of an act be expressed in title is to prevent surprise or fraud upon the Legislature, and to apprise the people, through publication of legislative proceedings, that the subjects embraced in the titles of pending bills are under consideration, so that they may participate in the consideration of the proposed laws. Const. art. 3, § 17.” [O’Shields v. Caldwell, 35 S.E.\(2d\) 184, 207 S.C. 194](#).

*2 Section 60–51, as amended, provides in part:

“Before any deed or other instrument in writing can be recorded in this State:

(1) The execution thereof shall be first proved by the affidavit of a subscribing witness to such instrument, taken before some officer within this State competent to administer an oath. If the affidavit be taken without the limits of this State, it may be taken before:....

(2) The Uniform Recognition of Acknowledgments Act shall be complied with; or

(3) The person executing it shall submit an affidavit subscribed to before a person authorized to perform notarial acts herein or by the Uniform Recognition of Acknowledgments Act that the signature on the deed or other instrument is his signature and that the instrument was executed for the uses and purposes stated therein.”

One of the three (3) conditions required under amended Section 60–51 must be met before the deed or other instrument in writing is entitled to be recorded. In the instant case we are confronted with a form of acknowledgment and not by a form of affidavit of a subscribing witness commonly called a “probate” in South Carolina. The question therefore is whether or not the Uniform Recognition of Acknowledgments Act, Section 49–61 et seq., can be considered to determine if the acknowledgment meets the requirements of Section 60–51.

The State of South Carolina adopted with one slight variation the Model Uniform Recognition of Acknowledgments Act drafted by the Committee on Suggested State Legislation of the Council of State Governments and promulgated in Suggested State Legislation, Vol. XXVIII, 1969, p. F–67 et seq. The Committee’s explanatory note at F–66 states in part:

“... Deeds for conveyance of land are in most States required to have a statement by a notary public that the person signing the deed acknowledged the act as his act. The problem is whether the State will recognize the act performed before an official of another State....

“The present draft is designed to recognize acknowledgments taken by many officials of the United States, other States and foreign governments.

“The Act does not prescribe when a notarial act is necessary; it deals only with the recognition of a notarial act performed outside of the State in which it is to be used.” (Emphasis added)

Subject deed contains only the cited “acknowledgment” of the grantor, and does not contain an affidavit of a subscribing witness nor does it contain an affidavit of the person executing it subscribed to before a person authorized to perform a notarial act under subsection (3) of 60–51, that the signature on the deed or other instrument is his signature and that the instrument was executed for the uses and purposes stated therein. In other words the form of “acknowledgment” does not comply with Section 60–51, subsection (3), the deed having been executed within the State, however, the form of acknowledgment used is one that can be recognized under the Uniform Act under Section 60–51(2) if the notarial act had been executed without the State of South Carolina.

*3 In light of the foregoing it is the opinion of this office that subject deed is not entitled to be recorded for failure of the instrument to comply with Section 60–51. In the opinion of this office the Uniform Recognition of Acknowledgments Act as codified in Section 49–61 et seq., applies only to notarial acts performed without the State of South Carolina and the same cannot be considered applicable to any notarial act executed within the State of South Carolina. Any form of affidavit of a subscribing witness, or form of “acknowledgment” would have to comply with the requirements of Section 60–51, as amended.

Raymond G. Halford
Assistant Attorney General

Footnotes

- [a1](#) Signature illegible
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