

1973 S.C. Op. Atty. Gen. 247 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3589, 1973 WL 21044

Office of the Attorney General

State of South Carolina

Opinion No. 3589

August 2, 1973

**\*1 A mortgage completely executed and delivered without the territorial limits of this State is not subject to the tax imposed by Section 65–688, as amended.**

Clerk of Court

McCormick County

You have requested the opinion of this office of whether a mortgage that is executed outside the geographical boundaries of the State is subject to the tax imposed by Section 65–688, as amended by Bill S 31. Section 1 of the Bill levies the tax, and Subparagraph 4 thereof provides as follows:

‘On mortgages and each renewal of any thereof; *provided*, however, that the tax upon a mortgage that secures future advances shall be upon the consideration advanced on the mortgage at the times of its execution. Notes and other written obligations of indebtedness secured by a mortgage previously executed shall be taxed upon their execution, and documentary stamps shall be affixed to the instrument evidencing the additional advance. Failure to pay the tax shall not affect the lien for any such future advance, but the mortgage or other instrument securing the advance shall not be enforceable in any court in this State as to such advance unless and until the tax due thereon has been paid.’

The tax therein imposed is:

‘an excise tax, of a familiar sort, levied with respect to the creation of instruments within the state; it is simply a tax levied in relation to an act done within the state in making an instrument.’ *Graniteville Manufacturing Co. v. Query*, 44 F. 2d 64, affirmed 283 U. S. 376, 51 S. Ct. 515, 75 L. Ed. 1126. *Textron, Inc. v. Livingston*, 244 S. C. 380, 137 S. E. 2d 267.

Our Court, in the case of *South Carolina Electric & Gas Co. v. Pinckney*, 217 S. C. 407, 60 S. E. 2d 851, while considering the issue of the taxability of certain bonds secured by mortgages stated:

‘It may be fairly inferred that the mortgage securing these bonds was recorded in South Carolina. While many states levy an excise tax upon the privilege of admitting mortgages to record under their registration laws (see *Community Public Service Co. v. James et al.*, Tex. Civ. App., 167 S. W. 2d 588, where many of these statutes are reviewed), the statute in question *does not impose a mortgage registration tax.*’ (Emphasis added)

The above Bill does provide that in the case of a lease, the tax is applicable regardless of whether the lease is executed within or without the State giving the tax certain elements of a recording tax. There is, however, no provision for such to mortgages; therefore, it is the opinion of this office that a mortgage that is completely executed and delivered outside the State is not subject to the tax imposed by Section 65–688, as amended.

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South Carolina Tax Commission

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