

1973 S.C. Op. Atty. Gen. 347 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3660, 1973 WL 21111

Office of the Attorney General

State of South Carolina

Opinion No. 3660

November 13, 1973

***1 A Memorandum of Lease which is not enforceable as a Lease Agreement does not require documentary stamps.**

Registrar of Mesne Conveyances

Charleston, South Carolina

The questions in your letter dated November 6 pertain to the taxation of leases. In our opinion, the Memorandums of Leases forwarded would not require documentary stamps as such since they do not completely evidence the leases and are not enforceable as leases. When, however, an instrument completely evidences a rental agreement, it is a taxable instrument and it requires documentary stamps, notwithstanding that it may be called a Memorandum of Lease. Such is in accord with the statements of our Court that the liability to pay documentary stamp tax is determinable from the form and the face of the instrument in question. *South Carolina Electric & Gas Company v. Pinckney*, 217 S. C. 407, 60 S. E. 2d 851; *Graniteville Mfg. Co. v. Query, et al.*, 44 F. 2d 64; *Textron, Inc. v. Livingston*, 244 S. C. 380, 137 S. E. 2d 267.

I am forwarding a copy of this opinion to the South Carolina Tax Commission to call attention to the fact that enforcement of this tax depends upon an investigation of Memorandums of Leases with appropriate follow-up to the lease. Additionally, the Commission, after receiving this letter, may want to require that proof be furnished that a lease is properly stamped as a condition to the recordation of a Memorandum of Lease and such could probably be accomplished by regulation or legislation.

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