

OFFICE OF THE
ATTORNEY GENERAL
DON SIEGELMAN
ATTORNEY GENERAL
MONTGOMERY, ALABAMA 36130
(205) 242-7300



STATE OF ALABAMA

APR 27 1990

90-00246

Honorable George R. Reynolds
Judge of Probate
Probate Court of Jefferson County
Birmingham, AL 35263-0068

Probate Judges -- Deed Tax --
Recordation of Documents

The Judge of Probate must record an instrument without charging deed tax where the nominee purchased the real estate for an undisclosed principal in organization and thereafter executed a deed for nominal consideration transferring record title to the now disclosed principal.

Dear Judge Reynolds:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTION

Whether §40-22-1, Code of Alabama 1975, requires payment of recording tax on a deed transferring property from "A," as nominee for an undisclosed principal to the now disclosed principal, for the purpose of perfecting title.

FACTS AND ANALYSIS

Your request presents the following facts:

On May 24, 1988, "A" purchased certain real property in an arm's-length transaction.

The deed given in connection with the transaction reflected that "A" was purchasing the real estate "as nominee for an undisclosed principal in organization." Shortly thereafter, the deed was recorded in the Office of the Judge of Probate of Jefferson County, Alabama, and the full recording tax was paid. The undisclosed principal was an institution which could not be organized until appropriate regulatory approvals had been obtained. It was nevertheless necessary for the real property to be purchased by "A" on behalf of the undisclosed principal in formation so that the real property could be renovated for occupancy by the principal as soon as the regulatory approvals for the formation of the principal were obtained. Following the obtaining of such approvals, the nominee, "A," who is a major shareholder of the undisclosed principal, executed a deed for nominal consideration transferring record title to the principal, which was now fully formed and could be disclosed.

Code of Alabama 1975, §40-22-1, states the following as far as deeds or instruments executed for a nominal consideration are concerned:

"No deed, bill of sale or other instrument of like character which conveys any real or personal property within this state or which conveys any interest in any such property, except the transfer of mortgages on real or personal property within this state upon which the mortgage tax has been paid, deeds or instruments executed for a nominal consideration for the purpose of perfecting the title to real estate . . . shall be received for record unless the following privilege or license tax shall have been paid upon such instrument before the same is offered for record . . ." (Emphasis added.)

Since the deed given in connection with the transaction reflected that A was purchasing the real estate "as nominee for an undisclosed principal in an organization," pending appropriate regulatory approval, it follows that "A" never obtained legal title. When proper regulatory approval was granted, "A" merely transferred record title to the principal which was consistent with "A's" initial disclosure at the time of purchase; therefore, the transfer was merely to perfect title to the real estate in the proper owner, the undisclosed principal, since "A" was not the legal owner.

CONCLUSION

As Judge of Probate of Jefferson County, you should record the instrument without charging deed tax, as it is a deed executed for nominal consideration transferring record title to the principal and the conveyance is consistent with the statute.

I hope that this sufficiently answers your question. If our office can be of any further assistance, please do not hesitate to contact me.

Sincerely,

DON SIEGELMAN
Attorney General

By-



GWENDOLYN B. GARNER
Assistant Attorney General

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