

December 20th, 1968

#14972

Deed Book 858, page 296

COURTESY COPY TO CLERKS OF COURT



DANIEL R. McLEOD
ATTORNEY

JULIAN L. JOHNSON
GRADY L. PATTERSON, JR.
J. C. COLEMAN, JR.
BENJAMIN B. DUNLAP
EVERETT N. BRANDON
J. MCNARY SPICNER
VICTOR S. EVANS
C. T. GOOLSBY, JR.
EDWARD B. LATIMER
BEN T. DEBERRY
JAMES B. ELLISOR
ROBERT W. BROWN
ASSISTANT ATTORNEYS GENERAL

STATE OF SOUTH CAROLINA

OFFICE OF THE ATTORNEY GENERAL
COLUMBIA, S. C. 29202

November 12, 1965

ASSISTANT ATTORNEYS GENERAL

JOE ALLEN
TAX COMMISSIONER

DAVID ANKEN
INDUSTRIAL COMMISSIONER

HARRY M. LIGHTSEY, JR.
PUBLIC SERVICE COMMISSIONER

MRS. SADYE E. DAVIS
SECRETARY - LAW CLERK

FROM: Joseph C. Coleman
Assistant Attorney General

TO: Mr. B. S. Brazeele
Director, License Tax Division

SUBJECT: Documentary Stamp Tax -
Leases of Real Property

You have inquired whether or not a lease of real property is subject to imposition of the State documentary stamp tax:

- (1) If the rental is paid in advance for the entire period covered by the lease.
- (2) If the rental is to be paid, at least in part, in the future.

The Supreme Court of Florida has ruled on both questions in Dundee Corporation v. Lee, 24 So. 2d 234, (1945). Sitting en banc, the Court held by way of dictum that a lease of real estate must convey some kind of an "interest" in land, taxable under the Florida documentary stamp law; and, on the point at issue in the case, it was held that the covenant in a lease to pay rent constituted a "written obligation to pay money," also taxable under Florida law.

The Court said, 24 So. Rep. 2nd at p. 235:

"We think the phrase 'written obligation to pay money' must comprehend the covenant in a lease to pay rent."

And, again at p. 235:

"Certainly a - - - lease must convey some kind of an 'interest' in land."

The Florida Court later reversed its ruling that the covenant in a lease to pay rental constituted a taxable "obligation to pay money," but affirmed its holding in Dundee that a lease of land, short-term or long-term, was taxable as the transfer of an "interest in land" under Florida law, which imposed a documentary stamp tax: