

**OPINION**  
**46-225**

February 11, 1946            (OPINION)

POWER OF ATTORNEY

RE:    Duration of

Your letter of February 5, 1946, has been received in which you ask for how long a period of time a power of attorney is valid.

Ordinarily, a power of attorney must be revoked by an instrument of the same formality and solemnity as the power of attorney itself. When the power of attorney deals with real property the revocation thereof should be recorded. In order to determine the nature of the power of attorney, it is almost necessary to examine the instrument itself. Some powers of attorney are irrevocable by their own terms and if a power of attorney is coupled with an interest even death does not revoke it.

In your letter you submit the following example:

Mr. A. gives a power of attorney to Mr. B. covering his real estate. After a couple of years Mr. A. conveys his real property to another person (the power of attorney has not been revoked and Mr. A. is still living). Does Mr. A. have a right to sell the property when he has given a power of attorney to Mr. B.?"

A power of attorney constitutes the appointment of an agent by an instrument, usually in writing, authorizing the person appointed to act as an agent or attorney for the person granting the power.

Unless the power of attorney by its terms is exclusive, indicating that "B" has the sole power to deal with the real property of "A," and further indicating that "A" by the grant of power has given to "B" the sole right to deal with the property for a definite term, then it would appear to me that "A," although he had granted a power of attorney to "B" covering his real property, could convey the property while the power was still outstanding and the grantee would procure a good title.

We find the following language dealing with this subject matter in 2 C.J. p. 534, par. 157:

But if the contract of agency contains no terms indicating the creation of an agency for a definite term, or if the contract is not supported by a sufficient consideration, it is terminable at will, and the principal by revoking the authority incurs no liability to the agent, unless the agent has entered upon performance of the contract so that a revocation of his authority will work him legal injury."

I assume from your example that "B" had not entered upon the performance of the contract, so that the conveyance by "A" of his real estate constituted virtually the termination or revocation of

the power of attorney, and that since "A" conveyed his own real estate, "B" having done nothing under the power which constituted him the agent of "A" would have no rights as against "A." I further assume that the power of attorney was merely a grant of power to deal with the real estate of "A" unsupported by any consideration, unless "B" performed the acts covered by the power granted to him.

In par. 58 on the same page, 2 C.J., we find: "So a principal may, at any time before its execution, revoke an authority to sell goods or lands, unless the power is coupled with an interest or given as security within the rules already explained."

The power of attorney given by "A" to "B" should be removed from the record by a proper revocation and recording thereof. Although it appears to me that the grantee of "A" obtained a valid title to the real property referred to in your example, the power of attorney from "A" to "B" was not coupled with an interest, still the power might be considered a cloud on the title and should be removed.

I do not enter into a discussion of a power of attorney coupled with an interest since the situations are so many and varied that it would be impossible within the scope of a short opinion to cover such situations.

NELS G. JOHNSON

Attorney General