

7088 Liberty



The State of South Carolina  
**OFFICE OF THE ATTORNEY GENERAL**

CHARLIE CONDON  
ATTORNEY GENERAL

March 2, 2001

Mr. J. William Taylor  
Cheraw Town Administrator  
P.O. Box 219  
Cheraw, South Carolina 29520

**RE: Informal Opinion**

Dear Mr. Taylor:

By your letter of February 7, 2001, you have requested an opinion of this Office concerning the collection of costs incurred by the Town of Cheraw for the removal of abandoned dwellings ("removal costs"). By way of background, you provide the following information:

Three years ago the Town of Cheraw, along with the other municipalities in Chesterfield County, entered into a contract with the County for the collection of municipal taxes. Since that time, the County Treasurer has refused to collect any fees associated with the removal of abandoned dwellings or overgrown lots stating that he is charged with the responsibility of collecting only taxes and that these fees do not constitute a "tax." ...

We are also informed by the county attorney that no written contract between the county and the town exists.

At the outset, we are ultimately unable to advise you whether the County Treasurer can be compelled to collect the Town's removal costs. The answer to this question turns on a resolution of factual questions concerning the terms of the contract. Only a court, as an appropriate fact finding body, could determine whether the agreement between the county and the town, in fact, included the collection of the removal costs, despite the lack of a written contract. We can, however, comment on the isolated legal questions presented without comment on the actual understanding between the parties. The parties appear to agree that, at the very least, the county agreed to collect the municipal taxes. Thus, the question we address is whether the Treasurer is obligated to collect municipal removal costs in addition to municipal taxes by operation of state statute.

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State law authorizes the Town of Cheraw to recover the costs associated with the removal of unfit dwellings by charging the costs to the property owner in the form of a lien upon the property. South Carolina Code Section 31-15-30 reads, in part:

Upon the adoption of an ordinance finding that dwelling conditions of the character described in § 31-15-20 exist within a municipality, the governing body of such municipality may adopt ordinances relating to the dwellings within such municipality which are unfit for human habitation. Such ordinances may include the following provisions:

...

(6) That the amount of the cost of such repairs, alterations or improvements, vacating and closing, or removal or demolition by the public officer shall be a lien against the real property upon which such cost was incurred and *shall be collectible in the same manner as municipal taxes.*

(Emphasis added).

Furthermore, municipalities are authorized by state law to contract with counties for the collection of municipal taxes:

A county and municipality may contract for the collection of municipal taxes by the county. When by contract a tax due a municipality is to be collected by the county, the provisions of this chapter are exercisable by the county official charged with the collection of the delinquent taxes. He may employ, appoint, or designate others to perform or carry out the provisions of the chapter.

S. C. CODE ANN. § 12-51-170.

An argument could be made that because the municipality is authorized to contract with the county for the collection of its taxes, and the removal costs "shall be collectible in the same manner as municipal taxes," then the removal costs are in effect the same as the taxes the Treasurer is compelled to collect. However, although the cost may be collectible in the same manner as a tax, the cost does not become a tax by operation of these words in the statute.

In a prior opinion of this Office, dated February 15, 1989, we addressed this exact question based upon the language of South Carolina Code Section 5-7-80. Section 5-7-80 authorizes municipalities to require owners of property to keep their lots free of debris or rubbish. The municipality's costs to correct the conditions "shall become a lien upon the real estate and shall be collectible in the same manner as municipal taxes." S.C. CODE ANN. § 5-7-80. In that opinion we cited the South Carolina Supreme Court in distinguishing these kinds of costs from taxes:

"Taxes are imposed on all property for the maintenance of government while assessments

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are placed only on the property to be benefited by the proposed improvements'. Celanese Corp. v. Strange, 272 S.C. 399, 252 S.E.2d 137 (1979)." Casey v. Richland County Council, 282 S.C. 387, 320 S.E.2d 443 (1984).

OP. ATTY. GEN. Feb. 15, 1989. We concluded, "the word 'tax' would therefore not include other charges made by the city..." Id. Since the issuance of that opinion, there have been no significant statutory amendments or case law that would impact the conclusion reached therein. Thus, it continues to be the opinion of this Office that the municipality's removal costs would not be included as part of the county's contract to collect municipal taxes by virtue of the language of Section 31-15-30 alone.

Of course, as stated earlier, this conclusion assumes the very least: Chesterfield County contracted with the Town of Cheraw to collect only its municipal taxes. But nothing would have prohibited the Town of Cheraw and Chesterfield County from entering into an agreement whereby the County could collect both municipal taxes and municipal costs. Whether, in fact, the terms of the original agreement provided for this additional collection is for a court to decide.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,



Susannah Cole  
Assistant Attorney General