



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON  
ATTORNEY GENERAL

May 19, 1999

The Honorable John C. Land, III  
Senate Majority Leader  
South Carolina Senate  
P.O. Box 142  
Columbia, South Carolina 29201

**RE: Informal Opinion**

Dear Senator Land:

Attorney General Condon has forwarded your opinion request to me for reply. You have asked whether it is appropriate for a county to impose a business license tax on individuals who reside in one county but own rental property in the county imposing the tax. You note that while all rental transactions are completed outside the county imposing the tax, the property being rented is physically located within the county where the tax is imposed.

The counties' authority to impose business license taxes is found in Section 4-9-30(12) of the South Carolina Code of Laws. In this Section, the General Assembly has granted county governing bodies the power "[t]o levy uniform license taxes upon persons and businesses engaged in or intending to engage in a business, occupation, or profession, in whole or in part, within the county outside the corporate limits of a municipality ... ."

The prevailing rule that ordinances of a general nature are binding upon all persons within the corporate area, whether residents are not, and upon all property within the corporate boundaries whether owned by inhabitants or strangers, applies to licensing ordinances. McQuillin, Municipal Corporations, § 26.48 (3<sup>rd</sup> Ed. 1995). That is to say,

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license requirements and taxes imposed upon all engaging in certain businesses, occupations or activities within the county may be made and generally are binding on residents and nonresidents alike. Id. In addition, the power of a municipal corporation to require licenses of occupations adheres to the place in which the occupations are pursued, and not to the domicile of the person pursuing them. 51 Am.Jur.2d Licenses and Permits §120 (1970). Municipal corporations commonly impose license charges upon nonresidents who perform an act or engage in an occupation within the limits of the licensing municipal corporation. Id.

Based on the foregoing, it would not be improper for a county to impose a business license tax upon nonresident persons or businesses if those persons or businesses are engaged in a business or occupation in the county. However, as this Office determined in an opinion dated January 7, 1988, whether the license tax may be levied on a particular person or business is dependent on the activities of the person or business within the county. In this opinion, we were asked whether a county or city may impose a business license fee upon a realtor who does not have an office located in the county or city but travels there for the purpose of selling a piece of property listed with the realtor. After reviewing the prevailing rule on this subject contained in McQuillin, as cited above, the author found:

Whether the realtor is subject to the licensing ordinance is dependent upon the realtor's activities within the municipality. It is a factual question of whether such constitutes doing business within the municipality. In example, if the nonresident realtor advertises the property from his nonresident office and has no activity within the municipality, then such would not constitute doing business. Should the realtor, however, actively participate in the showing, listing, advertising or other solicitation of buyers within the municipality, then under such circumstances, the realtor would most probably be doing business within the municipality and subject to its license fees. In *Pee Dee Chair Co. v. City of Camden*, 165 S.C. 86, 162 S.E. 771, the court held that:

“it is not always an easy matter to give a satisfactory definition of ‘business’ or ‘occupation,’ as used in a statute or ordinance like the one before us, but the terms ordinarily carry with them some idea of custom or continuity as opposed to an isolated or sporadic act.”

It is thus apparent that it is the total activity of the realtor that must be reviewed to determine whether the activity constitutes doing business within

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the intent and meaning of the municipal ordinance. (footnote omitted).

...

Whether a nonresident realtor is subject to a municipal license tax is dependent upon the activities of the realtor within the municipality. If the same is the showing, listing, advertising or other solicitation of buyers, there is in most probability a sufficient activity to constitute doing business.

Since the question of whether the realtor's activities constituted doing business within the municipality was a factual one, the author suggested that the realtor review the matter with the municipal office charged with the duty of issuing the license. Depending on the facts, the sale of a single property could be isolated or constitute an extensive business activity within the city.

Whether it is appropriate for a county to levy a business license tax in a particular case is a factual question beyond the scope of a legal opinion of this Office. Op. Atty. Gen. dated December 12, 1983. As a general rule, a county may impose a business license tax upon nonresidents who perform an act or engage in an occupation within the county limits. However, as noted in the January 7<sup>th</sup> opinion, in a questionable case, the activities of a person or business must be reviewed to determine whether those activities constitute doing business within the county. Thus, we would recommend contacting the appropriate Sumter County officials to determine whether the particular activities described in your opinion request constitute doing business within the county.

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 questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I remain

Very truly yours,



Paul M. Koch

Assistant Attorney General