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OPINION NO. ~~84-334~~ 107 March 10, 1986

SUBJECT: Taxation And Revenue - Authority Of The Tax Assessor To Enter Premises.

SYLLABUS: An assessor cannot require or force entry upon premises for the purpose of appraising the same or for finding untaxed property.

TO: Honorable Benjamin E. Thrailkill, Jr.
Member Of South Carolina House Of Representatives, District 106
Horry County

FROM: Joe L. Allen, Jr. *JLA*
Chief Deputy Attorney General

QUESTION: Can a county tax assessor enter a home for the purpose of appraising the same?

APPLICABLE LAW: Section 12-37-90, South Carolina Code of Laws, 1976, as amended.

DISCUSSION:

The powers of a tax assessor are enumerated in § 12-37-90 of the South Carolina Code of Laws. All counties are required to have a full-time assessor whose duty is to assess and value the real property within the county not valued by the South Carolina Tax Commission. He is to "(b) Diligently search for and discover all real property not previously returned".

The statute does not, however, confer authority upon the assessor to require or force entry upon premises for the purpose of locating untaxed property or for determining the value of the property.

"Assessors can act officially only in pursuance of authority conferred on them by law and within the limits of such authority." 84 C.J.S., Taxation, § 376.

The General Assembly has not conferred that power hence the

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same cannot be exercised.¹ The Supreme Court of Iowa in the case of McCallum v. Board of Review of City of DesMoines, 178 Iowa 468, 159 N.W. 1036, held as follows:

[2,3] As will be seen from the foregoing the assessor is not armed with a statutory warrant to enter upon and search the premises of the person to be assessed, against his will, for the discovery of taxable property. He is doubtless authorized to take notice of such property as may come within his view without committing trespass. It is equally clear that he may call upon the owner either at his residence or at his place of business or wherever he may be found within the city or township for the purpose of making the assessment which the law requires, and while he may not search the premises for that purpose he may, and it is his duty, search the owner's conscience by administering the required oath and demanding that he make the verified list or roll which the statute prescribes." See also 84 C.J.S., Taxation, § 376.

CONCLUSION:

An assessor cannot require or force entry upon premises for the purpose of appraising the same or for finding untaxed property.

¹This is not, however, to be interpreted to preclude an assessor from instituting an action to require by judicial order an entry upon property when such is necessary in the performance of his duties. The same is further not to be interpreted to preclude a request for entry and an entry with approval of the owner or person in charge or possession of the property.

JLAJr/jws