

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. 86-42 p129

March 25, 1986

SUBJECT: Taxation And Revenue - Appropriate Authority
To Rule Upon Jurisdiction Of An Appeal To A
County Tax Appeals Board.

SYLLABUS: A county tax board of appeals is the proper
authority to rule upon whether a notice of
appeal to the board was timely made. This is
jurisdictional and may be raised by the
assessor on appeal to the South Carolina Tax
Commission if such be necessary.

TO: Honorable Vera R. Benton
Orangeburg County Assessor

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

QUESTION: Section 12-43-300 provides that a person may
appeal from the assessor's final action to the county tax
board of appeals. The appeal is perfected by written notice
"to the assessor within ten days from the date of the
mailing of the notice". The question is whether the
assessor or the board rules upon the timeliness of the
notice.

APPLICABLE LAW: Section 12-43-300, South Carolina Code of
Laws, 1976.

DISCUSSION:

A timely appeal is a prerequisite to the board's
jurisdiction. 84 C.J.S., Taxation, Sec. 529, p. 1024.
Whether the board has jurisdiction in a matter must first be
determined by the board.

"It is a general rule that an
administrative agency may and must
determine whether it has jurisdiction in
a particular situation. When a
particular statute authorizes an
administrative agency to act in a
particular situation it necessarily
confers upon such agency authority to

Honorable Vera R. Benton
Page Two

March 25, 1986

determine whether the situation is such
as to authorize the agency to act"
2d Am. Jur., Administrative Law, § 332.

See also McCauley v. Waterman, 327 U.S. 540, 66 S.Ct. 712.

The county board of tax appeals should first rule upon whether the appeal notice is timely, that is, whether the board has jurisdiction.

The assessor is given the right to appeal from any disapproval or modification of an appraisal made by him. The assessor may thus appeal from any decision of the board that disapproves or modifies his appraisal. Objection to the jurisdiction of the board should be raised by the assessor at the time that he notifies the board of the appeal. He may thereafter except to the board's action should an appeal from the board's decision be necessary.

CONCLUSION:

A county tax board of appeals is the proper authority to rule upon whether a notice of appeal to the board was timely made. This is jurisdictional and may be raised by the assessor on appeal to the South Carolina Tax Commission if such be necessary.

JLAJR/jws