

1984 WL 249897 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 31, 1984

\*1 W. Clarkson McDow, Jr., Esquire  
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Dear Mr. McDow:

Reference is to your letter of May 16, 1984, requesting the opinion of this office concerning certain tax levies of the City of Tega Cay. You first inquire as to what effect, if any, is to be given changes in property between the date of assessment and the beginning of the City's fiscal year. The City's fiscal year is October 1-September 30.

We concur in your opinion that the City must copy the assessment made by the State or county officials. Article X, § 4 precludes any other assessment. In [Atkinson Dredging Co. v. Thomas](#), 266 S.C. 361, 223 S.E.2d 592, the court held:

“If a Charleston taxpayer had bought an automobile on Christmas Day, 1974, and that automobile had been totally destroyed on New Year's Day, he would, none the less, be liable to pay property tax for the entire year 1975. On the other hand, if he had bought an automobile on January 2, 1975, he would owe no personal property tax on that for the year 1975. In an ideal state, it would probably be well to levy the personal property tax on a daily basis. However, this would be an administrative impossibility. Under our taxing system, there have always been inequalities and inequities resulting from the fact that the tax for an entire year is contingent under Sec. 65-1644 on possession or control on the 31st day of December next preceding the tax year in question.”

The consideration of your second inquiry is more difficult. The statutes relative to the collection of municipal taxes and the lien therefor were repealed in 1975. (See Act 283, Acts of 1975.) Presently, § 5-7-30 authorizes a municipality ‘\* \* \* to levy and collect taxes on real and personal property \* \* \*.’ The section further provides that the municipality ‘\* \* \* may fix fines and penalties for the violation of municipal ordinances and regulations not exceeding two hundred dollars or imprisonment not exceeding thirty days.’

The obvious questions are whether these provisions of § 5-7-30 authorize the City to create a lien upon the property and, secondly, whether an execution and levy may be made.

The general rule is that the powers conferred by § 5-7-30 are to be strictly construed. 56 Am.Jur.2d, [Municipal Corporations](#), § 195. [Article VIII, § 17 of our Constitution](#), however, specifically provides that the powers are to be liberally construed and that the same are to include those powers implied from the grant.

Should the City wish to enact an ordinance providing for the lien and penalties, we recommend that an action to determine the validity of the ordinance be instituted. The extent of the City's authority in this area is subject to doubt, especially since the section further prescribes with limitation the penalties that the City may establish.

Attention is called, however, to the provisions of Chapter 51 of Title 12. The chapter provides a procedure for the collection of the City's tax. You may wish to consider that procedure in lieu of the ordinance.

Yours very truly,

\*2 Joe L. Allen Jr.  
Chief Deputy Attorney General

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