

1983 WL 181735 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 3, 1983

***1 SUBJECT: Property Tax—Authority of Greenville County Tax Collector to permit banks to collect property tax on motor vehicles and issue receipts for such payment.**

The Greenville County Tax Collector is without statutory authority to license banks to collect taxes and issue receipts of ad valorem taxation of motor vehicles. Receipts issued by a bank as payment of taxes are not the receipts from the treasurer as required in § 12-37-2650.

Mr. Michael L. Horton
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QUESTION:

May a receipt issued by a bank evidencing payment of personal property tax be used by a taxpayer to secure a motor vehicle license pursuant to § 12-37-2650?

APPLICABLE LAW:

§§ 12-37-2650 and 12-45-70, [South Carolina Code](#) of Laws, 1976, as amended, and Act No. 647, Acts of 1954.

DISCUSSION:

The General Assembly has enacted statutes creating and prescribing the duties of county treasurers to collect county taxes. See Title 12, Chapter 45, South Carolina Code of Laws, 1976, as amended. The power to create the office of county treasurer and to prescribe the powers and duties thereof is fully within the control of the General Assembly. [Bank of Johnston v. Prince](#), 136 S.C. 439, 134 S.E. 387 (1926).

The General Assembly has specifically imposed upon the county treasurer the duty of collecting ad valorem tax under § 12-45-70. This section states that the county treasurer, under supervision and direction of the Comptroller General, shall collect taxes in the manner prescribed by law and give receipts to the person paying such taxes. Thus, the county treasurer is directed to collect taxes ‘in the manner prescribed by law’.

[Section 12-37-2650](#) sets forth the manner in which ad valorem taxes on motor vehicles are to be collected:

‘The auditor shall prepare a tax notice for all vehicles owned by the same person and licensed at the same time. * * *. The notice shall be delivered to the county treasurer and it shall be the treasurer's responsibility to collect or receive payment of the taxes. One copy of the notice shall be in the form of a bill or statement for the taxes due on the motor vehicle and, when practical, the treasurer shall mail that copy to the owner or person having control of the vehicle. When the tax is paid the treasurer shall issue the taxpayer two copies of the paid receipt. One copy shall be delivered by the taxpayer to the South Carolina Department of Highways and Public Transportation with the application for the motor vehicle license and the other copy shall be retained by the treasurer. The auditor shall maintain a separate duplicate for motor vehicles. No license shall be issued without such receipt being attached to the application or a copy of the notification required by § 12-37-2610.

In Greenville County, the duties and powers normally vested in the treasurer relating to the collection of taxes are vested in the tax collector by Act 647 of the Acts of 1954. This act also specifically provides:

*2 'The tax collector shall appoint such clerical help as he deems necessary. The salary of such help shall not exceed the sum provided therefor in each annual supply act * * *.'

Under this act, the tax collector is authorized to hire salaried clerical help to collect taxes. Such reflects legislative intent that the collector could appoint clerks to collect or assist in the collection. Had the General Assembly intended authority to appoint banks to collect the tax, such could easily have been provided.

It is therefore the opinion of this office that the Greenville County Tax Collector may not authorize a bank to collect motor vehicle taxes and to issue receipts therefor. A receipt issued by a bank evidencing payment of such taxes is not sufficient for the purpose of obtaining a motor vehicle license pursuant to [§ 12-37-2650](#).

The opinion is fortified by the general rule that the powers of public officers are limited to those expressed or necessarily implied. 'In general, the powers and duties of officers are prescribed by the Constitution or by statute, or both, and they are measured by the terms and necessary implication of the grant, and must be executed in the manner directed and by the officer specified. If broader powers are desirable, they must be conferred by the proper authority. They cannot be merely assumed by administrative officers, nor can they be created by the courts in the proper exercise of their judicial functions.' 63 Am.Jur.2d, Public Officers and Employees, § 263.

The statutes, having set the manner for collection, leave no authority for the treasurer to collect in an alternative manner. 'It is, no doubt, true—to use a phrase which has become trite through constant use—that in assaying the acts of public officers, 'the mode is the measure of the power'. This means that a public officer, in exercising powers conferred upon him by statute and regulation, is bound to follow the mode or manner prescribed.' [United States v. Jones, 176 F.2d 278](#).

In order to broaden such powers, the General Assembly must act and such authority to allow banks to collect taxes and issue receipts may not be assumed.

CONCLUSION:

The Greenville County Tax Collector is without statutory authority to license banks to collect taxes and issue receipts of ad valorem taxation of motor vehicles. Receipts issued by a bank as payment of taxes are not the receipts from the treasurer as required in [§ 12-37-2650](#).

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