

1977 WL 37241 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 8, 1977

*1 Ms. Scott Sanders

Director

Arts in Education

Arts Commission

829 Richland Street

Columbia, SC 29201

Dear Scott:

Some time ago, you posed several questions concerning the copyrighting of anthologies published by the South Carolina Arts Commission. The following constitutes brief answers to your specific questions.

1. Since anthologies are copyrighted, do poets have rights to future publishing of their poems? Since the author of the material is considered to be the holder of the copyright unless he has contracted to give his rights to the publisher, the author retains rights to control the future publishing of the poem. In addition to the copyright notice for the anthology, a copyright notice should be included for each poem in the name of the author.

2. Do we need permission to reprint photographs? Yes, if the photographs are already copyrighted. If the photographs have heretofore been published without copyright notice, statutory copyright protection has been forfeited.

3. Can student work be automatically copyrighted without permission from parents or students? Since copyright protection begins with publication with copyright notice, the answer is yes. But to avoid any problems in the future concerning authorization to use the work, it would be best to obtain written permission from the student and his parents.

4. Any problems selling SCAC anthologies to bookstores? Can price vary between bookstores and schools? Any control on retain price set by stores? The Art's Commission has the authority to sell its anthologies to whoever it wants to. The price for which the anthologies sell can be established by contract between the SCAC and whoever is to sell the anthologies. The SCAC can vary the price if it choses.

5. Does the fact that the anthologies will be sold effect what the SCAC tells the parents about the copyright? Yes, it would be best to tell the author exactly in what way you intend to use his work.

If you have any further questions about this, please do not hesitate to contact me. I assure you I will be more prompt in answering you in the future.

Yours very truly,

M. Elizabeth Crum

Assistant Attorney General

ATTACHMENT

OPINION NO. 77-49

February 7, 1977

Municipalities may not use tax revenues to support local, non-profit corporations as part of the GREAT TOWN program.

State Development Board

You have requested an opinion from this Office as to whether or not South Carolina municipalities are authorized to expend tax revenues to support local non-profit development corporations as part of the GREAT TOWN program. In my opinion, they are not.

As I mentioned in a previous opinion to you dated December 15, 1976, I think that the fact that the GREAT TOWN program is carried on by a private, albeit non-profit, corporation makes it likely that certain language of new Article X, Section 11 of the South Carolina Constitution of 1895, as amended, which will be ratified during the current session of the General Assembly, will be violated if a municipality supports such a corporation with tax revenues. Moreover, the current provisions of Article X, Section 6 of the State Constitution also prohibit the credit of the State and, by interpretation, the credit of its political subdivisions [*see, Elliott v. McNair*, 250 S. C. 75, 15 S. E. 2d 421] from being pledged or loaned for the benefit of an individual, company, association or corporation. While it is true that the South Carolina Supreme Court has determined that industrial and economic development is a public purpose as far as county revenue bonds are concerned [*see, Elliott v. McNair, supra*], again, the fact that such an undertaking, which, if undertaken by the municipality directly, would be constitutional, is carried on by a nonpublic corporation might very well negate the validity thereof. *Cf., Bolt v. Cobb*, 225 S. C. 408, 82 S. E. 2d 789.

*2 I am enclosing a copy of a recent opinion which the Attorney General issued to the members of the Aiken County Legislative Delegation containing a thorough discussion of the restrictions of Article X, Section 6 of the State Constitution upon public expenditures in support of private entities. I would again advise you that the opinion rendered herein is not free from doubt and that a judicial determination pursuant to Sections 10-2001 *et seq.*, Code of Laws of South Carolina, 1962, as amended, would provide the only definitive resolution of the question.

See also: Hoesloop v. City Council of Charleston, 123 S. C. 272, 115 S. E. 596.

BY: Karen LeCraft Henderson
Assistant Attorney General

Atty. Gen. Opin. dated Feb. 1, 1977.

ATTACHMENT

OPINION NO. 77-50

February 7, 1977

South Carolina Association of Counties

Columbia, South Carolina

The chairman of the council/administrator form of county government may not be given additional duties which conflict with duties of other county officials.

BY: Karen LeCraft Henderson
Assistant Attorney General

ATTACHMENT

OPINION NO. 77-51

February 8, 1977

: Chairman

South Carolina Study Committee on Aging

A bill that would limit the tax upon homesteads that qualify for the homestead exemption to the amount of taxes paid in the 1977 tax year or, if later, the year of qualification for such exemption, would be unconstitutional.

You have asked if a bill that would limit the tax upon homesteads for those persons qualifying for the homestead exemption to the amount of tax paid on such homestead for the 1977 tax year or the first year of qualification for such exemption, if later, is constitutional?

Section 65-1522.1 exempts from county, school and special assessment real estate property taxes the first \$10,000 of the fair market value of the homesteads of certain persons. The proposed bill would have the effect of limiting or freezing the taxes levied upon such property whether or not its value increases, remains constant or decreases.

Article 3, Section 29 of the Constitution provides that:

‘All taxes upon property, real and personal, shall be laid upon the *actual value* of the property taxed, as the same shall be ascertained by an assessment made for the purpose of laying such tax.’ (Emphasis added)

Article 10, Section 3A provides that:

‘All property subject to taxation shall be taxed in proportion to *its value*.’ (Emphasis added)

Article 10, Section 1 presently provides in part that:

‘The General Assembly shall provide by law for a *uniform and equal rate of assessment and taxation*, and shall prescribe regulations to secure a just valuation for taxation of all property, real, personal and possessory * * *.’ (Emphasis added)

Our Court has held permissible classification of property for tax purposes provided the tax is equal and uniform within the class. ‘Generally, within constitutional limitations, the state has power to classify persons or property for purposes of taxation, and the exercise of such power is not forbidden by the constitutional requirement that taxation be uniform and equal *provided the tax is uniform on all members of the same class and provided the classification is reasonable and not arbitrary*.’ 84 C.J.S. Taxation, Section 36, P. 112.’ *Newberry Mills, Inc. v. Dawkins*, 259 S. C. 7, 190 S. E. 2d 503; *Holzwasser v. Brady*, 262 S. C. 481, 205 S. E. 2d 701. (Emphasis added)

*3 Clearly the proposed bill fails to meet the requirements of uniformity within the class of persons qualifying for the exemption and the bill further precludes the property's taxation upon its actual value.

The freezing of the tax to the 1977 tax year or the year of qualification for the exemption would create added inequities between persons qualifying for the exemption. A homestead's value in 1977 may be greater, less or the same as its value in 1978, or subsequent years. The tax would not be upon the property's value and there would be no uniformity of taxation within the class of persons or property qualifying for the exemption. Undoubtedly, some homesteads will increase in value, some will decrease in value and some will remain constant in years subsequent to 1977 or the year of exemption qualification.

Additionally, Article 10, as proposed by Act 750, Acts of 1976, would proscribe the constitutionality of the bill. Section 1 provides in part that:

'The General Assembly may provide for the ad valorem taxation by the State or any of its political subdivisions of all real and personal property. *The assessment of all property shall be equal and uniform in the following classifications:*

(3) The legal residence and not more than five acres contiguous thereto shall be taxed on an assessment equal to four percent of the fair market value of such property.' (Emphasis added)

Section 3 provides for specific exemptions and subsection (i) thereof provides:

'There shall be exempt from ad valorem taxation:

(i) a homestead exemption for persons sixty-five years of age and older, for persons permanently and totally disabled and for blind persons in the amount of ten thousand dollars of the fair market value of the homestead under conditions prescribed by the General Assembly by general law; provided, that the amount may be increased by the General Assembly by general law, passed by a majority vote of both houses;'

The bill as proposed would likewise fail to satisfy these constitutional requirements.

AUTHORITIES:

Article 10, Section 1; Article 10, Section 3A; Article 3, Section 29, and the proposed amendments to Article 10 of the South Carolina Constitution; Section 65-1522.1 of the South Carolina Code of Laws.

BY: Joe L. Allen, Jr.
Deputy Attorney General

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