

1977 S.C. Op. Atty. Gen. 51 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-51, 1977 WL 24394

Office of the Attorney General

State of South Carolina

Opinion No. 77-51

February 8, 1977

\*1 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.

TO: Honorable Hyman Rubin  
Chairman  
South Carolina Study Committee on Aging

#### QUESTION

Is 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, constitutional?

#### STATUTES CONSIDERED

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.

#### DISCUSSION

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 Mille, 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)

Clearly the proposed bill fail 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.

\*2 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.

#### CONCLUSION

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.

Joe. L. Allen, Jr.  
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