

1977 WL 37335 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 9, 1977

*1 William Neil Graham
Department of Criminal Justice
P. O. Box 587
Pendleton, SC 29670

Dear Mr. Graham:

You have requested advice as to whether it would be a violation of the dual office holding prohibition of the State Constitution for a State Constable serving without compensation to hold the office of town councilman simultaneously. This Office has consistently ruled that a town councilman's position is an office. The enclosed opinion also establishes that a State Constable serving without compensation is also an officer, so that one person may not validly hold both offices without violating the dual office holding prohibition of the Constitution.

If I can be of any further help, please let me know.

Sincerely,

Richard D. Bybee
Legal Assistant

ATTACHMENT

OPINION NO. 77-144

May 9, 1977
State Senator

Section 65-688.1, 1962 Code, imposing taxes on leases is not so vague or uncertain, nor does it contain inequities and ambiguities, that would render it legally invalid.

You have asked whether Section 65-688.1 of the South Carolina Code of Laws (Act No. 388, 1973 General Assembly) contains ambiguities and inequities that render it invalid?

Section 65-688.1 of the Code imposes a stamp tax upon leases. It is similar to the tax imposed upon other legal documents. The tax is based upon the amount of consideration measured in dollars and there is a provision where the measure cannot be determined upon execution.

The courts have had occasion to examine the stamp taxing provisions for other kinds of documents in the cases cited below. The tax in *Graniteville* and several of the later cases was stated to be a tax levied upon the creation of a taxable document. In the *Textron* case it was said that the liability for the tax must be determined from the form and face of the instrument in question.

An examination of the documentary stamp taxing provisions reveals different classes of instruments, i.e., corporate bonds, Section 65-682; conveyances, Section 65-689; notes and mortgages, Section 65-688; powers of attorney, Section 65-690; and leases, Section 65-688.1. These classes of instruments are taxed at different rates. The tax on bonds is ten cents per hundred dollars face value. The tax on conveyances of real property is one dollar per five hundred dollars consideration, exclusive of liens. There is no tax on transfers of personal property. The tax on notes and mortgages and other similar instruments is four cents

per hundred dollars consideration. A power of attorney is taxed flatly at fifty cents. Leases of real property are all taxed at four cents per hundred dollars consideration when such is determinable from the lease. If such is not readily determinable, then an evaluation method is provided to arrive at the measure. An exclusion is provided for the first five thousand dollars of any lease.

All legislation is presumed to be constitutional and will be construed in such manner as to render it constitutional. *See*, 16 Am. Jur. 2d, *Constitutional Law*, Section 137. It has further been stated that the courts are not at liberty to declare a statute invalid because the statute may appear to be unfair or inequitable or because it may create a hardship or inconvenience. It is not for the courts to decide if a measure is wise or unwise. *Merchants Bank v. Brigman*. The question of reasonableness of a statute which is otherwise within constitutional bounds is for the legislature exclusively. *S. C. State Highway Department v. Barnwell Bros.*

*2 This office is advised by representatives of the Tax Commission, charged with enforcing the documentary tax, that it is their opinion that the tax on leases has been fairly and uniformly administered and that it is based upon a measure that provides for equality and uniformity. In fact, we are advised that fewer complaints and issues are brought to the Commission under this section than the other documentary sections.

In our opinion, the statute taxing leases is not so vague or uncertain, nor does it contain inequities and ambiguities, that would render it legally invalid.

AUTHORITIES

Section 65-688.1; *Textron, Inc. v. Livingston*, 244 S. C. 380, 137 S. E. 2d 267; *Investors Premium Corp. v. South Carolina Tax Commission*, 260 S. C. 13, 193 S. E. 2d 642; *Graniteville v. Query*, 44 F. 2d 64, aff'd 283 U. S. 376, 51 S. Ct. 515, 75 L. Ed. 1126; *S. C. Electric & Gas v. Pinckney*, 217 S. C. 407, 60 S. E. 2d 851; *Laurens Federal Savings & Loan v. South Carolina Tax Commission*, 236 S. C. 2, 112 S. E. 2d 716, 365 U. S. 517, 81 S. Ct. 719, 5 L. Ed. 749; *S. C. State Highway Department v. Barnwell Bros.*, 303 U. S. 177, 58 S. Ct. 510, 82 L. Ed. 734, reh. den. 303 U. S. 667, 58

G. Lewis Argoe, Jr.
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