

1977 S.C. Op. Atty. Gen. 277 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-346, 1977 WL 24685

Office of the Attorney General

State of South Carolina

Opinion No. 77-346

November 2, 1977

\*1 (1) A person is not entitled to an appeal of his reassessment after thirty days of the mailing of the reassessment notices, notwithstanding a returned notice or an owner's claim that notice was not received but which was mailed and not returned.

(2) The date for making application for agricultural use assessment may not be extended by the county, generally, or to any class of owners asserting lack of notice.

TO: Assessor  
Greenwood County

#### QUESTIONS

You have inquired:

1. If a person's reassessment notice was returned by the postal service, is that person entitled to an appeal two months after mailing of the notice?
2. If a property owner received his tax notice, but claims that he did not receive his reassessment notice, since both carry the same address and the reassessment notice was not returned by the postal service to the assessor's office, is that property owner entitled to a review and appeal procedure two months after the reassessment notices were mailed?
3. If a property owner failed to make application for agricultural use value by May 1, 1977, does the appeal board have the authority to grant this use value if the property owner claims that he knew nothing about having to file an application or if he lives out of state or in another county and does not know what South Carolina law pertaining to use value is?
4. If by some means property owners in the above-mentioned cases are entitled to an appeal, since the county taxes may be paid as late as December 31, 1977 without penalty, at what point if any may the assessor deny a property owner an appeal for the current tax year?

#### STATUTES

Sections 12-43-300 and 12-43-220(d) of the Code of Laws of South Carolina, 1976.

#### DISCUSSION

Greenwood County implemented a reassessment program this year. On August 3, 1977, reassessment notices were mailed to all property owners. On some properties the only addresses known were the addresses used upon tax notices and the notices were sent to this address. On October 3, the annual tax notices were mailed, after which came a number of inquiries concerning the reassessment program, land use and appeal procedure. The above questions arise from this procedure.

Section 12-43-300 requires notice to the owner when an assessment is increased by \$100 or more than the value returned by the owner. This notice is to be given as soon as may be practical after the third Monday in June in the year in which the reassessment is made. In the notice the owner must be advised of the total market value estimate, the assessment ratio and the total new assessment. Service of the notice to the owner or his agent may be made personally or by mail to the owner or agent at his last known place of residence. This may be determined from the most recent listing in the telephone directory, South Carolina Highway Department Motor Vehicle Registration List, County Treasurer's records or official notice of the owner or his agent. Thereafter the owner, if he objects to the valuation and assessment, shall within thirty days of the date of the mailing of such notice, give written notice of his objection to the assessor. The assessor shall hear the objection and give the owner notice of his action. Afterwards, within ten days of this notice, the owner may appeal from the action of the assessor to the Board of Assessment Appeals.

\*2 The above section recognizes the two kinds of notices, actual and constructive. Actual notice is recognized when service is made personally. Constructive notice is the law's substitute for actual notice. It is said that constructive notice is equivalent to evidence of notice, the presumption of which is so violent that the Court would not allow it to be controverted.

In [Williams v. Jefferson Std. Life Ins. Co.](#), 187 S. C. 103, 196 S. E. 519, the Court said:

'Constructive notice is thus defined in Black's Law Dictionary, 3d Ed., p. 1258: 'Constructive notice is a presumption of law making it impossible for one to deny the matter covering which notice is given.'

'Constructive notice is a legal inference from established facts, and like other legal presumptions does not admit of dispute. It is in its nature no more than evidence of notice, the presumption of which is so violent that the Courts will not even allow its being controverted.' 20 R. C. L. 340.'

'Constructive notice, strictly speaking, is ineffective unless there is a statute providing therefor.' 20 R. C. L. 342.'

'In some cases it has been said that constructive notice is a creature of 'positive law' or a 'creature of the statute,' ineffectual unless provided by statute, and that, to be of any force, the statute must be strictly complied with.'

This case recognized that constructive notice is a part of the law in South Carolina and when provided for by statute is as effective as personal and actual notice.

In [Martin v. Hutto](#), 82 S. C. 132, 64 S. E. 412, our Court said that:

'Service by mail in the manner required by the statute is good service, and all judgments and other completed legal proceedings resting thereon will be binding. Even in the course of the proceedings without a showing of injury to the adverse party, the service by mail in accordance with the statute will be regarded complete, and the party so served will not be relieved against the very strong presumption, except on clear proof that he was taken by surprise.'

Thus, service by mail gives notice. Other cases are found in 58 Am. Jur. 2d., [Notice](#), at Section 6, page 489.

In response to Question 1, we must advise that a person is not entitled to appeal a reassessment two months after the reassessment notices are mailed. This will apply to all situations where notice is made to the last known address as provided for in Section 12-43-300 of the Code.

In response to Question 2, the answer is the same as given in response to Question 1, that such persons have no standing to appeal where the notice requirements of the statute are strictly complied with by the assessor.

In response to Question 3, attention is directed to Section 12-43-220(d) of the Code. Subsection (3) thereof requires specifically that property shall not be qualified for use taxation unless the owners make application therefor on or before May 1 of the tax year in which the special assessment is claimed. This is a general law made applicable to all property owners. All persons are deemed to know the law and therefore do not qualify for the special assessment unless the conditions of the statute are complied with.

\*3 There is no authority for an extension of the filing date as is so provided in Section 12-43-220(c) relating to legal residences and the inclusion of such evidences an intent that the county is without authority to extend the application date.

The answers to the above negate any further comment or opinion on your Question 4.

#### CONCLUSIONS

1. A person is not entitled to an appeal of his reassessment after thirty days of the mailing of the reassessment notices, notwithstanding a returned notice or an owner's claim that notice was not received but which was mailed and not returned.
2. The date for making application for agricultural use assessment may not be extended by the county, generally, or to any class of owners asserting lack of notice.

G. Lewis Argoe, Jr.  
Assistant Attorney General

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