*1 Mr. Francis K. Sullivan
Executive Secretary
Office of Charleston County
Legislative Delegation
P. O. Box 487
Charleston, South Carolina

Dear Mr. Sullivan:

You have requested an opinion from this Office as to whether or not the Charleston County Tax Exempt Board has any discretion in its imposition of the penalty charge provided for in Section 4 of Act No. 494 of 1969, as amended. See, 56 STAT. 857 (1969); 57 STAT. 1089 (1971); 57 STAT. 2735 (1972).

Section 4 of Act No. 494 of 1969, as amended, provides in part:

All owners of tax-exempt property or any owner requesting tax exemption shall furnish the Tax Exempt Board, from January first to the last day of February each year, such information or records as may be requested on an annual basis.

Any owner of tax-exempt property who fails to furnish such information by such date shall be penalized one hundred dollars as a late charge in lieu of an assessment on such property, but not in lieu of an assessment on any taxable property. 59 STAT. Act No. 1489 § 1 at 2735 (1972). [Emphasis added.]

The language of the above-quoted provision is mandatory insofar as the imposition of a one hundred dollar late charge upon those owners of tax-exempt property who do not furnish timely the information requested by the Tax Exempt Board is concerned, and, therefore, the Board has no discretion relating thereto, if the property owner desires the tax-exempt status. On the other hand, if the property owner chose not to claim a tax exempt status and to pay the assessment instead, then the late charge could not be imposed.

You have also asked if Section 4 of Act No. 494 of 1969, as amended, can again be amended so as to make the imposition of the late charge discretionary. In my opinion, such a legislative amendment would most probably be violative of Article VIII, Sections 1 and 7 of the State Constitution as construed by the South Carolina Supreme Court. See, Neel v. Shealy, 261 S.C. 266, 199 S.E.2d 542 (1973); Knight v. Salisbury, 262 S.C. 565, 206 S.E.2d 875 (1974); Thorne v. Seabrook, 264 S.C. 503, 216 S.E.2d 177 (1975); Kleckley v. Pulliam, 265 S.C. 177, 217 S.E.2d 217 (1975); cf., Moly v. Caughman, 265 S.C. 140, 217 S.E.2d 36 (1975); Booth v. Grissom, 265 S.C. 190, 217 S.E.2d 223 (1975).

With kind regards,

Karen LeCraft Henderson
Assistant Attorney General

1976 WL 30739 (S.C.A.G.)