

1976 S.C. Op. Atty. Gen. 214 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4376, 1976 WL 22995

Office of the Attorney General

State of South Carolina

Opinion No. 4376

June 22, 1976

***1 An ordinance imposing license taxes on insurance companies doing business in the City of Allendale is constitutional, provided a rational basis exists for the separate classifications of such businesses.**

Attorney for the Town of Allendale

You have asked whether or not the Ordinance of the Town of Allendale that imposes a business license tax on health and accident insurance companies is unconstitutional?

The Ordinance provides in part as follows:

‘Section 1. There is hereby levied for the year 1968 and for each year thereafter an annual license tax upon each insurance company other than life insurance companies having an agent or agents in the Town of Allendale, or issuing policies of any nature covering any property, real or personal, or receiving premiums covering any risk located in the Town of Allendale of 2% of gross premiums received.’

Section 47–271 authorizes the license tax, however, the same must be ‘graduated according to the gross income of the person required to pay it or upon the amount of capital invested in the business.’

The Town may thus fix different rates for licenses for different classes provided the same are graduated according to gross income or investment. *Town of Forest Lake v. Town of Forest Acres*, 227 S. C. 163, 87 S. E. 2d 587. *City of Columbia v. Putnam*, 241 S. C. 195, 127 S. E. 2d 631.

Whether the statute is unconstitutional as being discriminatory and thus denying equal protection of the law must be resolved by a determination of whether there was a rational basis for the differentiation. *USF&G v. City of Newberry*, 257 S. C. 433, 186 S. E. 2d 239. The Court, in referring to this decision in a later case, stated:

‘The clear rationale of the second Newberry decision is that a gross disparity between license taxes laid on different classifications of businesses is constitutionally impermissible unless a rational basis therefor exists.’ *USF&G v. City of Spartanburg*, 263 S. C. 169, 209 S. E. 2d 36.

Whether such a basis exists can only be determined by a careful study of all facts and purposes for the differentiation.

It is therefore the opinion of this office that the Ordinance is constitutional, provided there exists a rational basis for the differentiation between the classes.

Joe L. Allen, Jr.
Deputy Attorney General

1976 S.C. Op. Atty. Gen. 214 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4376, 1976 WL 22995