

1972 S.C. Op. Atty. Gen. 165 (S.C.A.G.), 1972 S.C. Op. Atty. Gen. No. 3333, 1972 WL 20471

Office of the Attorney General

State of South Carolina

Opinion No. 3333

June 27, 1972

***1** A penalty or interest charge is not applicable to special assessments except where specifically provided for by statute.

Honorable Dee F. Bradley
Bamberg County Treasurer
Bamberg, South Carolina 29003

Dear Mr. Bradley:

Thank you for your letter of June 23, 1972, with the information requested in our letter of June 21, 1972. You ask for the opinion of this office of whether the penalties provided in Section 65–2008 of the Code and the execution fee provided by Section 65–2803 can be levied and collected from the owners of real property situate in Willow Swamp Watershed District when the ‘taxes’ and/or ‘assessments’ of the District are unpaid.

The District was created by Act No. 650, Acts of 1967, and that Act gave the District authority to impose ‘taxes’ and ‘a special assessment’. The ‘taxes’ applies only to the real property in the District and is levied to cover the operating expenses of the District. The ‘special assessment’ is graduated according to benefits received and is in an amount sufficient to repay bonds issued by the District and again is levied only upon the real property situate in the District.

The General Assembly by Act No. 593, Acts of 1969, additionally authorized the District to issue up to \$90,000.00 in bonds and to impose an assessment upon real property for payment thereof.

The first question is whether the levies constitute a ‘tax’ or a ‘special assessment’, and in this connection, it must be recognized that if the levy is a tax, it must be equal and uniform throughout the District and applicable to all property except such as is exempt from taxation. [Smith v. Robertson](#), 210 S. C. 99, 41 S. E. 2d 631. Here the levy is upon real property only and the same is therefore a ‘special assessment’.

‘The differences between a special assessment and a tax are that (1) a special assessment can be levied only on land; (2) a special assessment cannot * * * be made a personal liability of the person assessed; (3) a special assessment is based wholly on benefits; and (4) a special assessment is exceptional both as to time and locality.’ [Cooley on Taxation](#), Vol. 1, Section 31, page 106; 48 Am. Jur., Special and Local Assessments, Section 3, page 565.

It has been also held by our Courts that such assessments are not taxes. [Sanders v. Greater Greenville Sewer District](#), 211 S. C. 141, 44 S. E. 2d 185. Statutes creating special assessments are likewise subject to strict construction in favor of the owners of the property assessed and against the assessment. 48 Am. Jur., Special and Local Assessments, Section 4, page 568.

The levy, being a special assessment, carries no penalty or interest charge for late payment unless specifically provided for by statute.

* * * the generally accepted view * * * is that a special assessment for benefits bears no interest or penalty for nonpayment unless the law so provides * * *. [Town of Monticello v. Finlayson](#), 156 Fla. 568, 23 So. 2d 843.

*2 It is therefore necessary to look to the 1967 and 1969 Acts to determine whether a penalty or interest charge is levied. The 1967 Act concerning the assessment for payment of bonds provides in part:

‘Bond taxes shall be due and payable between the fifteenth day of September and the thirty-first day of December of the year in which they are levied. Bond taxes not paid on or before the thirty-first day of December shall bear interest, not as a penalty, thereafter until paid at a rate * * *.’

With reference to the special assessment provided for in the 1967 Act, exclusive of the bond levy, the Act provides:

‘Except as provided in Section 9 of this act, the county treasurers shall collect the taxes due the district as (at) the same time and in the same manner as they collect other taxes of the counties and the taxes due the district shall be subject to the same due and delinquency dates, discounts, penalties, and interest as are applied to the collection of county taxes; provided, that penalties and costs of collection shall be paid to and retained by the county procuring such collection.’

It is therefore the opinion of this office that interest may be levied for late payment upon the special assessment imposed pursuant to the 1967 Act for the purpose of bond repayment and that the penalty or interest charge provided for in Section 65–2008 and Section 65–2803 may be levied for late payment upon other special assessments authorized in the 1967 Act.

The 1969 Act provides for no penalty or interest charges and because of such, it is the opinion of this office that the same cannot be levied upon a special assessment imposed by the 1969 Act. Legislative intent therefor may be found in the fact that penal statutes are strictly construed, plus the fact that the 1967 Act provides for the interest or penalty while the 1969 Act is silent thereon.

With best wishes, I am

Yours very truly,

Joe L. Allen, Jr.

Assistant Attorney General

SOUTH CAROLINA TAX COMMISSION

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