

1972 WL 26149 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 7, 1972

*1 (1) Where a hearing is held by the Greenwood County Board of Equalization and/or the Greenwood County Board of Tax Appeals and the property owner, without cause, fails to appear, the Boards may confirm, increase or decrease the assessment that is the subject of the appeal.

(2) Where an appeal involving several parcels is heard and no evidence or testimony is offered concerning one of such parcels, there can be no change in the tax assessment because there is no competent evidence upon which to base the same.

(3) Where an appeal is made to part of the assessment, in example, improvements and not land, then in such an event the appeal goes to the total assessment, that is the improvements and land together.

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Dear Mr. Callison:

Reference is made to your request of May 29, 1972, for the opinion of this office concerning the authority of the Greenwood County Board of Equalization and the Greenwood County Board of Tax Appeals. Specifically you request our opinion regarding.

1. In cases where an appeal is made to either Board by a property owner and a hearing thereon is scheduled and the property owner fails without cause to appear, does either Board have the power to increase, decrease or confirm the valuation that is the subject of the appeal.

2. In cases where several parcels are the subject of the appeal for the same hearing and evidence is not offered concerning one or more of such parcels, does either Board have authority to increase, decrease or confirm the valuation that is the subject of the appeal.

3. In cases where the value of improvements is accepted and the valuation of the land is appealed, does the Board have power to act on the whole property.

The board of equalization was created by Act 572, Acts of 1967, and the Act provides in part that:

‘The board of equalization shall hear all appeals from the assessments and reassessments of property by the tax assessor. * * *.’

‘In the event the owner or his agent appeals * * *, the tax assessor shall set a time for the hearing * * *. The board of equalization may confirm, decrease or increase any assessment, reassessment or valuation. * * *.’

The board of tax appeals was created by the same Act, however, the same was amended by Act 265, Acts of 1969, and under this Act any property owner or his agent may appeal from the finding of the board of equalization. The Act further provides that:

‘Within ten days after receipt by the tax assessor of the copy of the nature of appeal, the tax assessor shall transmit to the board of tax appeals a copy of the proceedings leading to the action or decision appealed from, together with a copy of the testimony

if any was taken. Thereupon the board of tax appeals shall fix a time and place for hearing of appeal * * *. At the hearing, both the appellant and the board of equalization shall have the right to be heard, and the board of tax appeals may inspect the property under consideration, and receive any other relevant evidence offered by either party. Upon the hearing of the appeal, the board of tax appeals shall either confirm, increase or reduce the valuation of assessment complained of * * *.'

*2 The statute or Act controls the answer to the first two questions.

'Whether a board * * * has power to increase or reduce the valuation in case of individual assessments depends wholly on the terms of the governing statute.' Vol. 3, Cooley on Taxation, Section 1210, p. 2425.

The provisions of this Act are that each board may confirm, increase or decrease the assessment. The next consideration is whether there has been a hearing of the appeal and in this connection it should be noted that the filing of the appeal, the scheduling of the hearing and the hearing vests jurisdiction in the Boards, however, the decision of the Boards must be upon the evidence properly submitted at the hearing.

'Under some statutes a board of review may base its decisions only on the evidence adduced before it, but under other statutes its members may avail themselves of their own experiences and knowledge.' 84 Corpus Juris Secundum, Taxation, Sec. 537, page 1040.

The latter statement must however, in the opinion of this office, be reconciled with the due process requirements of the Constitution that require the fair and impartial hearing.

Here it is assumed, with reference to question one, that the hearing was conducted and the evidence there presented a justifiable basis for the decision to increase the valuation, and under such assumption the Boards have jurisdiction to act.

With reference to the second question, there would have been no hearing and no evidence upon which to base the increase, therefore the Boards could not act.

In connection with the third question, your attention is directed to Section 65-1501(1) that defines real property, Section 65-1644 that requires the tax return, Section 65-1758 that requires the listing and Section 65-1768 that provides for the tax duplicate. We assume that the land and improvements are taxes to the same person and we find no authority to list or value improvements separately from the land of which they are a part. Therefore the valuation is of the land with improvements thereon and the appeal would be to the whole assessment. This opinion is fortified by Section 65-1620 that provides for the initial taxation of improvements.

Yours very truly,

Joe L. Allen, Jr.
Assistant Attorney General
South Carolina Tax Commission

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