

1972 WL 26142 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 24, 1972

*1 A bill that authorizes the county and municipality to tax motels measured by gross proceeds of rental or accommodations with the limitation that the county cannot tax such proceeds of a motel within the limits of a municipality which levies the tax is in conflict with Article 10, Section 5 of the Constitution that requires the constitution to be uniform with respect to persons and property.

The Honorable Arnold S. Goodstein
Member
House of Representatives
Drawer D
Charleston, South Carolina

Dear Mr. Goodstein:

Mr. McLeod has handed me your letter of April 20, 1972, in which you request the opinion of this office of the constitutionality of House Bill 1848. The Bill would authorize the governing bodies of counties and municipalities to levy a license tax on persons that furnish living accommodations (hotels, motels, etc.) for periods of less than one month, the tax however not to exceed 5% of the gross proceeds of the rental or accommodations.

Section 6 of the Bill provides:

‘No county shall levy and collect a tax pursuant to this act on the rental of any property located within the corporate limits of a municipality which levies such a tax.’

Your attention is called to that part of Article 10, Section 5 of the Constitution that provides:

‘The corporate authorities of counties, townships, school districts, cities, towns and villages may be vested with power to assess and collect taxes for corporate purposes; such taxes to be uniform in respect to persons and property within the jurisdiction of the body imposing the same. * * *’

The Bill precludes such uniformity and hence the same is in conflict with this constitutional mandate. A county could only tax those businesses outside the corporate limits of a municipality when the municipality imposed the tax. Incidentally, Article 8, Section 6 contains the same requirement for cities, and Section 47-271 now authorizes the imposition of the tax by a municipality. Where however the tax is higher than that imposed on other businesses, the classification must be justified. [United States Fidelity and Guaranty Co. v. City of Newberry \(1972\), 257 S. C. 433, 186 S. E. 2d 239.](#)

With best wishes, I am

Yours very truly,

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

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