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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY MCMASTER
ATTORNEY GENERAL

March 26, 2004

C. Anthony Harris, Jr., Esquire
Cheraw Town Attorney
Post Office Drawer 1449
Cheraw, South Carolina 29520

Dear Mr. Harris:

In a letter to this office you raised questions regarding the collection of municipal cleanup fees and costs such as those established by S.C. Code Ann. Sections 5-7-80 and 31-15-30. Section 5-7-80 requires that the owner of municipal property keep property free of rubbish and other unsightly material. The statute further provides that when the owner fails to comply, cleanup can be accomplished by the municipality with the cost of such cleanup becoming a lien upon the property "collectable in the same manner as municipal taxes." Section 31-15-30 provides for the repair or removal of abandoned dwellings in a municipality with the costs incurred by the municipality being "collectible in the same manner as municipal taxes." An opinion of this office dated December 17, 2003 determined that

> ...a city may collect the costs associated with correction of conditions...in the same manner as it collects municipal taxes. This would include placing these costs onto municipal tax notices by the town clerk.

You noted an opinion of this office dated March 2, 2001 which referenced that the Town of Cheraw had entered into a contract with Chesterfield County for the collection of municipal taxes by the County. Reference was made to S.C. Code Ann. Section 12-51-170 which provides

> A county and municipality may contract for the collection of municipal taxes by the county. When by contract a tax due a municipality is to be collected by the county, the provisions of this chapter are exercisable by the county official charged with the collection of delinquent taxes....

The question was raised as to whether the County Treasurer was obligated to collect municipal removal costs, such as those incurred by Section 31-15-30, in addition to municipal taxes. The opinion determined that

> An argument could be made that because the municipality is authorized to contract with the county for the collection of its taxes, and the removal costs "shall be collectible in the same manner as municipal taxes," then the removal costs are in effect the same as the taxes the Treasurer is compelled to collect. However, although the cost may be collectible in the same manner as a tax, the cost does not become a tax by operation of these words in the statute.

The opinion concluded that "...the municipality's removal costs would not be included as part of the county's contract to collect municipal taxes by virtue of the language of Section 31-15-30 alone." See also: Op. Atty. Gen. dated February 15, 1998 (a county is not required to collect the clean-up cost for a lot under an agreement with a municipality to collect property taxes due the municipality because the clean-up cost is not a tax.) While the March 2, 2002 opinion concluded that the removal costs would not necessarily be included as part of the county's contract to collect municipal taxes, it also concluded that nothing would prohibit the Town and the County from entering into an agreement which would authorize the County to collect both municipal taxes and municipal costs.

As to your question as to whether this conclusion remains the opinion of this office, we are unaware of any basis which would call into question such conclusion. In an opinion of this office dated January 13, 2004, the question was raised as to whether a County Treasurer may withhold a tax receipt until the entire outstanding balance owed to a county, including the cost of demolition of a building determined to be unfit for human habitation which was added to a tax bill, was paid. The opinion concluded

> In our opinion, there is serious doubt that the tax receipt could be withheld. State law requires the County Treasurer to issue a tax receipt upon the payment of "taxes" owed. We have previously concluded that the demolition fee is not a "tax" and that one of the statutes requiring the giving of a tax receipt upon the taxpayer's payment of taxes does not authorize withholding of the tax receipt for non-payment of a "fee". Thus, in our opinion, there is substantial doubt that such withholding of the tax receipt by the Treasurer for non-payment of the demolition fee is authorized pursuant to current law.

Consistent with such, it remains our opinion that the County would not be obligated to collect costs incurred by a municipality for the removal of trash and the demolition of houses absent a specific agreement to that effect between the County and the Town.

You next asked whether the Town could conduct a delinquent tax sale on real property for which the taxpayer paid ad valorem taxes only and not the costs which the Town might add to a tax

bill pursuant to Sections 5-7-80 and 31-15-30. S.C. Code Ann. Section 12-51-40 (Supp. 2003) provides the procedure for notifying delinquent taxpayers that property will be sold for the purpose of collecting delinquent taxes. Such provision was included in Act No. 399 of 2000 which in its title indicated that the amendment to Section 12-51-40 relates "...to levy of execution and sale of property for delinquent taxes...." No reference is made to the levy of execution and sale of property for any costs other than delinquent taxes. Generally, the title of an act may be used to aid in construing a statute. University of South Carolina v. Elliott, 248 S.C. 218, 149 S.E.2d 433 (1966).

As noted previously, this office in the prior opinions referenced above has distinguished between taxes and other assessments, such as a demoliton fee or costs associated with cleaning up sites. As noted in an opinion of this office dated March 2, 2001, while the cost of demolition "may be collectible in the same manner as a tax, the cost does not become a tax by operation of these words in the statute." Reference was made in an opinion of this office dated February 15, 1989 to the statement by the State Supreme Court in Celanese Corporation v. Strange, 272 S.C. 399, 401-402, 252 S.E.2d 137 (1979) where the Court noted the distinction between taxes and other assessments stating that

> Taxes, in the strict sense of the word, are imposed on all property, both real and personal, for the maintenance of the government, or some division thereof, while assessments are laid only on the property to be benefitted by the proposed improvements.

The March, 2001 opinion recognized that while the demolition fee constitutes a lien "collectible in the same manner as..(a)...taxes", it is not a tax.

In the January 13, 2004 opinion previously noted, reference was made to the decision in Town of Cheraw v. Turnage, 184 S.C. 76, 191 S.E. 831 (1937) where the court dealt with the meaning of a statute providing for the enforcement of a paving assessment. The statute provided that the paving assessment lien was to be collected "in the same manner as the collection of taxes is now enforced." The court adopted the decree of the circuit judge which provided "(i)t is to be borne in mind that a paving assessment lien is in no real sense a tax." 184 S.C. at 86. In Town of Cheraw, the court did allow a foreclosure action by the town for the enforcement of the paving assessment.

Consistent with the above, noting the distinction between a tax and an assessment, it is my opinion that as to the assessments generated by Sections 5-7-80 and 31-15-30 for the cleanup of property, a town would not be authorized to conduct a delinquent tax sale on real property where the taxpayer paid only the ad valorem taxes and not the assessments.

With kind regards, I am,

Very truly yours,

Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Assistant Deputy Attorney General