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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

HENRY MCMASTER  
ATTORNEY GENERAL

January 13, 2004

Jonathan M. Robinson, Esquire  
Assistant Kershaw County Attorney  
Post Office Drawer 39  
Camden, South Carolina 29020

Dear Mr. Robinson:

You have requested an opinion concerning whether a county treasurer may withhold a tax receipt until the entire outstanding balance owed to the county, including the cost of demolition of a dwelling that is demolished pursuant to county ordinance and state statute, is paid. You state that in accordance with S.C. Code Ann. Sec. 31-15-310 *et seq.*, Kershaw County has adopted "An Ordinance Related to Dwellings Which Are Unfit for Human Habitation." Pursuant to this Ordinance as well as the statute, the County has demolished a home, placed a lien upon the real property, and added the cost of demolition to the county tax bill. You indicate that the property was seized by the County and sold for delinquent property taxes around the time the house was demolished. The owner is now attempting to redeem the property and, having paid all back taxes, is demanding a tax receipt pursuant to § 12-45-70. You indicate that it is the policy of the County Treasurer to issue tax receipts upon the payment of the full balance owned the County, which may include taxes, assessments, penalties and costs. Your question is whether the Treasurer may rightfully withhold the tax receipt and subsequently seize the property if the owner refuses to pay the demolition costs added to his tax bill pursuant to the statute and ordinance.

**Law / Analysis**

Section 31-15-320 empowers the governing body of a county to "exercise its police powers to repair, close or demolish" dwellings which it determines are unfit for human habitation. Counties are authorized, pursuant to § 31-15-330, to enact appropriate ordinances for such purpose. Section 31-15-330(6) provides that

[t]he amount of the cost of such repairs, alterations or improvements, vacating and closing, or removal or demolition by the public officer shall be a lien against the real property upon which such cost was incurred and shall be collectible in the same manner as county taxes.

(emphasis added).

*Rembert C. Dennis*

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In the interpretation of a statute, the primary objective is, of course, to ascertain and effectuate the intent of the General Assembly. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). The statute's words must be given their plain and ordinary meaning without resort to subtle or forced construction either to limit or expand the statute's operation. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991). Where the terms of a statute are clear and unambiguous, the court must apply those terms according to their literal meaning. Paschal v. State Election Commission, 317 S.C. 434, 454 S.E.2d 890 (1995).

We have not yet addressed the precise question raised in your letter. In an opinion of March 17, 1998, we interpreted a similar provision contained in § 31-15-30(6) relating to municipalities, there noting that "based on the plain meaning of the terms used, ... Section 31-15-30(6) ... grants the City of Bamberg the authority to collect the costs incurred thereunder in the same manner as it collects taxes, including delinquent ad valorem property taxes." However, that opinion did not answer the question of whether the Treasurer could also withhold the tax receipt for non-payment of the demolition fee. Only recently, we concluded that a similar statute authorized fees for removal of rubbish and unsightly material to be listed on "municipal tax notices for collection by the town clerk." Op. S.C. Atty. Gen., December 17, 2003. Again, however we were not asked to address the issue of withholding tax receipts for nonpayment of these fees.

However, in an opinion dated March 2, 2001, we discussed at some length the meaning of § 31-15-30(6), a statute almost identical to § 31-15-330(6) [relating to municipalities]. There, we cited an earlier opinion of February 15, 1989, which had addressed the meaning of a statute (§ 5-7-80) containing virtually identical language to both §§ 31-15-30(6) and -330(6). Further, we noted that 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." We also quoted the following language from the February 15, 1989 opinion:

"Taxes are imposed on all property for the maintenance of government while assessments are placed only on the property to be benefitted by the proposed improvements.' Celanese Corp. v. Strange, 272 S.C. 399, 252 S.E.2d 137 (1979)." Op. Atty. Gen. Feb. 15, 1989. We concluded, "the word 'tax' would therefore not include other charges made by the city ..." Id. Since the issuance of that opinion, there would have been no significant statutory amendments or case law that would impact the conclusion reached therein. Thus, it continues to be the opinion of this Office 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, Franken Investments, Inc. v. City of Flint, 218 F.Supp.2d 876, 885 (E.D. Mich., Southern Division 2002) ["The mere fact that demolition costs may be collected in the same way as a tax does not thereby convert the demolition cost to a tax."].

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Having recognized that the demolition fee authorized by § 31-15-320 constitutes a lien upon the property which is "collectible in the same manner as county taxes," but is not a "tax," we now turn to your specific question as to whether a tax receipt may be withheld for failure to pay the fee. Section 12-45-70 provides as follows:

[a]ll taxes are due and payable between the thirtieth day of September and the fifteenth day of January after their assessment in each year. The several county treasurers under the direction and supervision of the Comptroller General shall collect the taxes in the manner prescribed by law and give receipts therefor to the persons paying them. In the receipts and tax notices the real estate paid on must be briefly described including tax map number and an identifiable description and the value and description of the personal property paid on must be stated, together with the time the taxes are paid, the amount paid, and the township where the property is located.

The treasurer, tax collector, or other official charged with the collection of ad valorem property taxes in each county may delegate the collection of ad valorem property taxes ... . The receipt given to the taxpayer, in addition to the information required in this section and by § 12-37-3650, shall contain the name and office of the treasurer or tax collector of the county and shall also show the name of the banking institution to which payment was made.

The county official charged with the collection of taxes shall send a list of the institutions collecting the taxes to the Department of Public Safety. Each institution shall certify to the Department of Public Safety that the taxes have been paid, and the Department of Public Safety may accept certification in lieu of the tax receipt given to the taxpayer if that certification contains the information required in Section 12-37-2650. (emphasis added).

It can readily be seen that § 12-45-70 deals expressly throughout with the payment of "taxes." Specifically, the statute mandates the county treasurer to give receipts for the payment of taxes "to the persons paying them." Moreover, § 12-37-2650, which encompasses the assessment and payment of property taxes on motor vehicles, provides that "[w]hen the tax is paid, the treasurer shall issue the taxpayer two copies of the paid receipt." (emphasis added).

In an opinion dated August 3, 1987, we concluded that a County Treasurer is required by § 12-37-2650 to issue two copies of a paid receipt when taxes on a motor vehicle are paid. Thus, in our view, the Treasurer could not withhold the tax receipt for non-payment of a fee levied by the county upon such vehicle. Implicit in this opinion was the conclusion that the Treasurer could withhold the tax receipt only for the non-payment of "taxes."

Moreover, our Supreme Court has similarly commented concerning a statute not unlike § 31-15-30(6). In Town of Cheraw v. Turnage, 184 S.C. 76, 191 S.E. 831 (1937), the Court addressed the meaning of a statute providing for the enforcement of a paving assessment which 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 read in pertinent part as follows:

[i]t is to be borne in mind that a paving assessment lien is in no sense a real tax. Weatherly v. Medlin, 141 S.C. 290, 139 S.E. 633 ; Beatty v. Wittekamp, 171 S.C. 326, 172 S.E. 122; Sutton v. Town of Fort Mill, 171 S.C. 291, 172 S.E. 119.

Unlike a tax, the assessment creates a paramount lien which is superior to every private interest in the property. Beatty v. Wittekamp, *supra*.

Taxes on real estate are primarily enforceable against the personalty of the taxpayer, and in fact the exhaustion of the personalty appears to be a prerequisite to collection out of the real estate. Code § 1853 *et seq.*, and annotations. And both by statute and judicial decisions taxes are declared to be a debt of the taxpayer, enforceable as such. Code § 2569; Fuller v. Payne, 96 S.C. 471, 81 S.E. 176. Too, real estate taxes are not enforceable against the fee, where there is an outstanding life estate. Taylor v. Strauss, 95 S.C. 295, 78 S.E. 883. These are among the attributes of the tax enforcement statutes that can hardly be said to apply to the enforcement of a paving assessment lien. To what further extent the tax enforcement procedure may be found inapplicable, we need not inquire here. Certainly there is doubt as to the applicability of such procedure on many points, and its efficacy in many cases. All of which in itself furnishes a sound basis for the interposition of the Court of equity to enforce the lien ... .

Independently of these considerations, however, it has been uniformly held that the proceeding to enforce an assessment is in rem, and not in personam. Weatherly v. Medlin, *supra*; Beatty v. Wittekamp, *supra*.

Our Supreme Court has held that a court of equity can adjudicate the validity of a paving assessment lien in a suit brought for that purpose. Sutton v. Town of Fort Mill, *supra*. That is not true of a tax, where the statutory requirement is that a tax which is alleged to be illegal must be paid under protest, and recovered by suit, no injunctive remedy being available (Code, § 2548). Thus we have a definite adjudication of another phase of tax enforcement procedure which has been held to be inapplicable to paving assessment liens. And, if a court of equity can entertain jurisdiction of a suit to test the validity of such a lien, why may it not also entertain a suit to enforce collection of the lien?

191 S.E. at 836-837. In Town of Cheraw, the Court allowed a foreclosure action by the Town for the enforcement of the paving assessment.

Similarly recognizing the distinction between assessments and taxes, the Attorney General of Montana has concluded that a county treasurer may not withhold a tax receipt for the non-payment of service charges. In Opinion No. 45 (April 4, 1984), the Montana Attorney General reasoned that the applicable statutes required the treasurer to give a receipt for the payment of "taxes." The Attorney General's conclusion was as follows:

I have already concluded that the fee for receiving service from the refuse disposal district is not due until service has commenced. Certainly, then, a receipt should be issued to those taxpayers who withheld payment of the refuse disposal service fee but paid other property taxes, since they were not yet required to pay the service fee. Once refuse disposal service has commenced, I am of the opinion that a county treasurer must issue a receipt for payment of real estate taxes even if the refuse disposal assessment is withheld. The language of [the statute] ... directs that a receipt be given for the payment of "any tax." Since real estate taxes would clearly be included in the phrase "any tax," payment of such taxes warrants the issuance of a receipt.

Finally, in Williams v. City of Indianapolis Dept. of Pub. Works, 558 N.E.2d 884 (Ind. Ct. App. 1990), the Court construed a statute which constituted the nonpayment of delinquent fees as a lien against property which "shall be collected in the same manner as delinquent property taxes." The Court stated that "[t]his means that if the fees are not paid, the property is subject to tax sale" pursuant to the Indians tax sale statutes.

### Conclusion

Section 31-15-330(6) makes it clear that the county possesses "a lien against the real property" upon which the costs of repairs, alterations or improvements for demolition by the county are conducted. Such lien "shall be collectible in the same manner as county taxes." However, the precise meaning of this statute is not clear. No decisions by our Supreme Court or Court of Appeals interpreting this provision have been found.

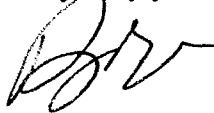
This statute appears to provide the county the same remedy which it would have for the non-payment of property taxes. Chapter 51 of Title 12 of the Code establishes the procedure which is typically utilized against the defaulting taxpayer. See also Durham v. United Companies Financial Corp., 331 S.C. 600, 503 S.E.2d 465 (1998). In addition, our Supreme Court has strongly suggested in Town of Cheraw v. Turnage, supra that a statute similar to § 31-15-3330(6) gives the governmental entity the right to pursue a foreclosure action for enforcement of such liens.

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What is particularly unclear here is whether a tax receipt may be withheld where all taxes are paid, but payment of the demolition fee is delinquent. 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.

Notwithstanding this one issue, however, it appears the demolition fee is enforceable either through the same procedure as exists for the non-payment of taxes or through a foreclosure action.

Very truly yours,



Robert D. Cook  
Assistant Deputy Attorney General

RDC/an