

August 15, 2007

The Honorable Sharon H. West
Auditor, Spartanburg County
Suite 200 County Administration Building
366 North Church Street
Spartanburg, South Carolina 29303

Dear Ms. West:

We received your letter addressed to Attorney General Henry McMaster concerning a potential amendment to an existing ordinance passed by the Spartanburg County Council (“County Council”). This ordinance, of which you attached a copy to your request letter, provides for the imposition of a \$25.00 road maintenance fee to be collected on all vehicles in the county. This fee is collected from the vehicles’ owners along with property taxes on motor vehicles. Currently, the ordinance only exempts manufactured homes and non-motorized vehicles from collection of the road maintenance fee. However, you ask:

Understanding that a \$25.00 fee is a hardship on some of our citizens, and we now have new council members, is there a way council can exempt the fee for persons age 69 and older by adding this group to the exclusions [listed in the ordinance]?

Law/Analysis

Our courts, as well as this Office in several opinions, recognized the validity of the imposition of road maintenance fees by county governments under section 4-9-30 of the South Carolina Code. Brown v. County of Horry, 308 S.C. 180, 417 S.E.2d 565 (1992); Ops. S.C. Atty. Gen., August 24, 2006. In Brown v. County of Horry, 308 S.C. 180, 184, 417 S.E.2d 565, 567 (1992), the Supreme Court observed that section 4-9-30 of the South Carolina Code “does not specify the amount of such fees or the persons upon whom they can be imposed.” Thus, upon finding the Horry County had the authority to levy a road maintenance fee, the Court considered whether that fee was uniform and whether it was contrary to the equal protection clause. Id. Because the fee was imposed on all motor vehicles registered in Horry County, the Court found it uniform and therefore, “[t]here is not inequity or discrimination which would render the fee invalid.” Id. at 186, 417 S.E.2d at 568.

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The Court also considered whether placing Horry County registered vehicles in a class violated the equal protection clause. The Court stated:

If a classification is reasonably related to a proper legislative purpose and the members of each class are treated equally, any challenge under the equal protection clause fails. Robinson v. Richland County Council, *supra*; Medlock v. S.C. Fam. Farm Dev., 279 S.C. 316, 306 S.E.2d 605 (1983). The requirements of equal protection are satisfied if: (1) the classification bears a reasonable relation to the legislative purpose; (2) the members of the class are treated alike under similar circumstances; and (3) the classification rests on some reasonable basis. Medlock, *supra*. In addition, the burden is upon those challenging the legislation to prove lack of rational basis. Ex parte Yeargin, 295 S.C. 521, 369 S.E.2d 844 (1988).

A legislatively created classification will not be set aside as violative of the equal protection clause unless it is plainly arbitrary and there is no reasonable hypothesis to support the classification. Samson v. Greenville Hosp. System, 295 S.C. 359, 368 S.E.2d 665 (1988); Medlock, *supra*.

Id. at 186, 417 S.E.2d at 568-69.

The Spartanburg County ordinance you provided to us imposes a \$25 road maintenance fee on the “owners of every vehicle . . . required to be registered and licensed in Spartanburg County by the South Carolina Department of Motor Vehicles.” Currently, this ordinance excludes only manufactured homes and non-motorized vehicles. As we understand from your letter, County Council is considering an additional exemption for person over age 69. Thus, this proposed change raises issues of whether the fee is valid as a uniform fee and whether it runs afoul of the equal protection clause.

In our research, we did not locate a South Carolina case dealing with the uniformity of a law exempting elderly citizens from a uniform service charge. However, we discovered an opinion issued by the New Hampshire Supreme Court considering the constitutionality of a bill providing real estate tax exemptions to the elderly under New Hampshire’s constitutionally mandated requirement for uniformity and equality of taxation. Opinion of the Justices, 338 A.2d 553 (N.H. 1975). That Court reasoned:

While we are furnished no statistical studies which would supply factual bases for the conclusion (Cf. Opinion of the Justices, 111 N.H. 136, 143, 276 A.2d 821, 825 (1971)), it is reasonable to assume that with advancing age the average earning power diminishes, and

income from shrinking principal decreases. The provisions by which increased exemptions would be afforded to resident owners in advanced age brackets appear to be reasonable upon their face, and hence to furnish just reason for the exemptions proposed . . . Within constitutional limits, the wisdom and reasonableness of legislative measures are for the legislature to determine and not the courts. The increases would not offend constitutional requirements of uniformity and equality, since all resident owners within a specified class would qualify for the same exemption, subject to the same limitations.

Id. at 555-56.

Following the reasoning of the New Hampshire Supreme Court, we do not believe exempting elderly motor vehicle owners from the County's road maintenance fee creates a uniformity issue. Under the proposed amendment, all vehicle owners obtaining the age of 69 are exempt. Thus, all members of this specified class qualify for the same exemption. Furthermore, we do not believe by singling out vehicle owners over the age of 69 the ordinance creates a classification violating the equal protection clause.

Although South Carolina courts have yet to address the constitutionality of a statute or ordinance classifying individuals based on age, we note cases in other jurisdictions considering this issue. The United States District Court for the District of Connecticut considered the constitutionality of a town's decision to adopt a fee waiver for the use of the town's pool and fitness room by residents age 60 and older. Presnick v. Berger, 837 F.Supp. 475 (D. Conn. 1993). The Court, citing several United States Supreme Court cases, noted:

The Constitution, however, does not preclude the creation of classifications that result in disparate treatment; the Equal Protection Clause does not mandate that every individual be treated exactly alike. It is well settled that governments may draw lines or make decisions which treat individuals or entities differently. The Equal Protection Clause requires only that persons who are similarly situated be treated similarly.

However, governmental classifications must be reasonable . . . and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced may be treated alike.

Id. at 477 (citations and quotations omitted). Further, that Court stated: "the Supreme Court has repeatedly asserted that classifications based on age are not suspect classifications subject to strict scrutiny." Id. Thus, the Court applied the rational basis test to determine whether the fee waiver

violates the equal protection clause. Considering whether the fee waiver bears a rational relationship to a legitimate governmental objective, the Court determined as follows:

[O]ne can readily ascertain the natural and substantial differences between the seniors and the younger population in Orange. The physical and mental health of seniors clearly differs from that of the younger Orange residents. The policy of the Town or Orange embodied in the fee waiver seeks to encourage seniors to come and exercise at the town facilities-where they can improve their physical condition, socialize with fellow residents from Orange, participate in other senior programs which are housed in the town community center, and simply relax and enjoy themselves. These opportunities clearly help to enhance and promote the health and well-being of the seniors-as well as the overall public welfare of a town inhabited by active, healthy seniors.

Id. at 478. The Court added:

The fact that the fee waiver does not depend on the ability to pay does not in any way affect the court's conclusion that the town's policy in this regard is a rational and legitimate one. Regardless of income, seniors have special physical and mental needs, and the fee waiver is designed to encourage use of the pool and fitness center by all seniors.

In sum, the court found encouraging the health, well-being, and happiness of the town's seniors is a legitimate governmental objective. The court further finds that the fee waiver has a direct and rational relation to this legitimate objective. Accordingly, the fee waiver does not violate the Equal Protection Clause, and the defendant's motion for summary judgment as to the plaintiff's equal protection claim must be granted.

Id.

A case decided by the North Carolina Court of Appeals in 1993 examined the constitutionality of a county board of commissioners' decision to grant a property tax exemption to operators of homes for the aged, sick or infirmed. Appeal of Barbour, 436 S.E.2d 169 (N. C. App. 1993). The Court determined the individual residential property owners involved are not a suspect class and therefore, the classification would survive if it bore "some rational relationship to a conceivable legitimate interest of government" Id. at 177. Moreover, the Court stated in applying this lower level of scrutiny to the classification, there also is a presumption of validity. Id.

The Court found “the General Assembly intended to promote residential communities for the elderly which did not qualify for tax-exemptions under prior statutes by classifying certain of these homes as tax-exempt” Id. Moreover, “[p]romoting the safety and welfare of the aged and infirm is a legitimate state objective. Further, the exemption from taxation of these certain homes and the property used to run them has some rational relationship to this legitimate state interest.” Id. Accordingly, the Court found such a classification not unconstitutional. Id.

In considering the constitutionality of the proposed exemption from the road maintenance fee for elderly motor vehicle owners, we must keep in mind that an ordinance is a legislative enactment and therefore, is presumed to be constitutional. Harkins v. Greenville County, 340 S.C. 606, 533 S.E.2d 886 (2000). Moreover, only a court, not this Office, may declare an ordinance unconstitutional. Op. S.C. Atty. Gen., December 14, 2006.

In accordance with the cases cited above, we employ the rational basis analysis to determine whether the exemption for the elderly violates the equal protection clause. Thus, we must consider whether a legitimate governmental objective is served by exempting motor vehicle owners over age 69 from the road maintenance fee. As the cases cited above indicate, courts in many jurisdictions found statutes and ordinances exempting elderly from fees and taxes serve a legitimate governmental interest, whether they compensated for the decreased earning power of seniors, promoted of the health and welfare of seniors, or the created residential opportunities for seniors.

From your letter, we do not have a full understanding of County Council’s objective in exempting elderly motor vehicle owners from the road maintenance fee. We gather that County Council finds a particular hardship exists with regard to these individuals making them less able to afford the \$25 fee. However, in order to properly analyze and determine whether the objective sought by County Council in its passage of an exemption furthers a legitimate County interest, requires an examination and determination of factual issues. This Office is without jurisdiction to investigate and determine factual issues. Op. S.C. Atty. Gen., June 20, 2007. Thus, whether or not exempting motor vehicle owners over the age of 69 from the County’s road maintenance fee bears a reasonable relationship to a legitimate County objective is a determination that must be left to a court. Furthermore, if a court were to find the County Council’s rationale in providing an exemption to these individuals is a legitimate governmental objective, the court also would need to consider whether this governmental objective is served by exempting motor vehicle owners over the age of 69. This determination is yet another factual determination that can only be decided by a court. Thus, we cannot make an ultimate determination as to the legality of the proposed exemptions. However, we hope you find this guidance helpful to County Council’s consideration of the proposed road maintenance fee exemption.

Conclusion

As we noted above, exempting elderly motor vehicle owners from the County’s road maintenance fee may raise issues concerning the fee’s uniformity and validity under the equal

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protection clause. Based on our analysis above, we believe providing an exemption from the road maintenance fee to the elderly does not create a uniformity issue because all members of this specified class qualify for the same exemption. Furthermore, although you gave some indication as to the objective sought by County Council in granting an exemption from the road maintenance fee to elderly motor vehicle owners, only a court may ultimately determine whether this exemption serves the asserted legitimate governmental objective. Thus, we must leave the determination as to whether it violates the equal protection clause to the courts.

Very truly yours,

Henry McMaster
Attorney General

By: Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
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