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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

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Dear Jeff:

You have asked for our opinion regarding the constitutionality of R-425, a "bill that was passed by the General Assembly that only applies to Lexington County." You note that the legislation was passed by the Legislature on or about May 10, 2002, ratified June 4, 2002 and signed by the Governor on June 7. The law became effective June 7, 2002. By way of background, you state the following with respect to this newly enacted law:

1. R-425 is not applicable to the other 45 counties of the State of South Carolina and is applicable only to Lexington County.

2. Section 1 of R-425 is inconsistent with South Carolina Code § 50-23-295.

3. Section 2 of R-425 is inconsistent with South Carolina Code § 12-49-10 which provides that property taxes are a first lien on property taxed.

4. Article VIII, § 7 of the south Carolina Constitution specifically provides that "no laws for a specific county shall be enacted."

5. Article III, Section 34 (IX) (X), of the South Carolina Constitution require that whenever a general law can be made applicable, a special law not be adopted and that general laws are to be uniform in their operation.

In light of the above, it is your opinion that R-425 is "special legislation that is prohibited by the South Carolina Constitution." I agree.

LAW / ANALYSIS

R-425, by its title, is

> An Act to Direct the Lexington County Official Charged With the Responsibility of Collecting Delinquent Taxes, In Connection With The Requirement For Personal Property Taxes on a Watercraft and Outboard Motor, Be Current Before The Title To These Items May Be Transferred, That This Prohibition On The Transfer of Title Applies Only For Property Taxes Due For Property Tax Years Beginning After 1999, That Used Watercraft and Used Outboard Motors Obtained From A Licensed Dealer or Individual On or After October 3, 2000, Are Free of the Lien For the Payment of Property Taxes For Property Tax Years Before 2000, And Delinquent Taxes Must Be Collected From The Previous Owner, Not Including The Dealer, and That, No Refunds of Property Taxes on Watercraft And Outboard Motors Are Payable for Property Tax Years Before.

The thrust of this statute is that "[u]sed watercraft and outboard motors obtained from a licensed boat dealer or an individual on or after October 3, 2000, are free and clear of the lien for property taxes for Lexington County property tax years before the 2000 property tax year." Instead, the Lexington Treasurer or other appropriate official must "seek the collection of delinquent taxes on the used watercraft or outboard motor only from the previous owner, not including the licensed boat dealer."

In other words, in Lexington County, the requirement that no transfer of a watercraft or outboard motor may be made unless personal property taxes are current prior to the tax years before 2000 is inapplicable. This general law requirement – S.C. Code Ann. Sec. 50-23-295 – provides as follows:

> [a] certificate of title to watercraft or an outboard motor may not be transferred if the department has notice that property taxes payable by the current owner within the past three years are owed on the watercraft or outboard motor. If transfer of title has been denied pursuant to this section, a tax receipt on the watercraft or outboard motor from the person officially charged with the collection of ad valorem taxes in the county of residence must be accepted as proof that the taxes have been paid. The bill of sale or title to watercraft or an outboard motor shall require certification that property taxes have been paid by the current owner as of the date of sale.
>
> The county treasurer or other appropriate official annually, or more frequently as the county may deem appropriate, shall transmit a list of delinquent taxes due on watercraft or outboard motors to the department. The list may be transmitted in any electronic format as may be deemed acceptable by the department.

> The current owner is not required to pay property taxes pursuant to the provisions of this section if such tax levy is below exemption for the minimum tax on boats. The tax levies for the prior three years may not be used cumulatively to exceed the minimum tax levy collection threshold. (emphasis added).

As can be seen, pursuant to general law, enacted in 2000, there exists the requirement that if personal property taxes on a watercraft or outboard motor, "payable by the current owner within the past three years" are owed, a certificate of title may not be transferred for such watercraft or outboard motor until there has been "certification that property taxes have been paid by the current owner as of the date of sale." No exception for any particular county is referenced in § 50-23-295. R-425, however, finds that, due to "great inconvenience to both the sellers and owners of used watercraft and outboard motors in Lexington County," it is appropriate to provide clearly that this requirement applies only to property taxes on watercraft and outboard motors which become due and payable "for property tax years beginning after 1999." The result of the enactment of R-425 is to render all purchases of such watercraft and outboard motors "free and clear of the liens for Lexington County property tax years before the 2000 property tax year." In other words, R-425 "grandfathers" all watercraft and outboard motor title transfers with respect to the requirement of the current owner having paid delinquent Lexington County taxes for tax years prior to 2000. The question here is whether such legislation is unconstitutional.

Of course, the South Carolina General Assembly possesses full power to enact any law not inconsistent with the Constitution. Riley v. Martin, 274 S.C. 106, 262 S.E.2d 404 (1980). As often stated by this Office, in considering the constitutionality of an Act, it must be presumed that the Act is constitutional in all respects. No statute will be considered void unless the constitutionality is clear beyond all reasonable doubt. Thomas v. Macklen, 186 S.C. 290, 190 S.E. 539 (1938); Townend v. Richland County, 190 S.C. 270, 2 S.E.2d 777 (1939). All doubts of constitutionality are generally resolved in favor of constitutionality. While this Office may comment upon potential constitutional problems, it is solely within the province of the courts of this State to declare an act unconstitutional. It is well established that a statute "must continue to be followed until a court declares otherwise." Op. Atty. Gen., June 11, 1997 (Informal Opinion).

Art. III, § 34 of the South Carolina Constitution (1895, as amended) states that

> [t]he General Assembly of this State shall not enact local or special laws concerning any of the following subjects or for any of the following purposes, to wit: ... (IX) In all other cases, where a general law can be made applicable, no special law shall be enacted ... .
>
> (X) The General Assembly shall forthwith enact general laws concerning said subjects for said purposes, which shall be uniform in their operations: Provided, that nothing contained in this section shall prohibit the General Assembly from enacting special provisions in general laws.

Over the years, our courts have rendered a number of decisions regarding the constitutionality of so-called "special legislation." The Court has not spoken with one voice, certainly but, in many instances, has upheld a challenge based upon a violation of Art. III, § 34. For example, the Court has recognized that because an enactment only affects one person or one locale does not render the enactment unconstitutional as special legislation. Timmons v. S.C. Tricentennial Comm., 254 S.C. 378, 175 S.E.2d 805 (1970). Moreover, the Court has emphasized that

> [e]ach county in this State is a separate taxing district and a statute providing for the levy of taxes on the property within a county for corporate purposes, while special in the sense that it imposes a tax limited in application to the property within such county does not contravene the enactment of a special law where a general can be made applicable.

Mosely v. Welch, 209 S.C. 19, 39 S.E.2d 33 (1946). See also, Hay v. Leonard, 212 S.C. 81, 46 S.E.2d 653 (1948).

On the other hand, legislation relating to a single county has often been held to be unconstitutional special legislation. Art. VIII, § 7 provides that "[n]o laws for a specific county shall be enacted." Furthermore, Art. X, § 3 provides that "[i]n addition to the exemptions listed in this section, the General Assembly may provide for exemptions from the property tax, by general laws applicable throughout the State ...."

Moreover, there are a number of decisions rendered by our Supreme Court which have struck down special legislation. In Horry County v. Horry County Higher Ed. Comm., 306 S.C. 416, 412 S.E.2d 421 (1991), the Court held that statutes requiring Horry County to levy a property tax and directing that any surplus be paid to the local university constituted unconstitutional special legislation. The Court concluded that "there is no reasonable or logical justification to single out Horry County and Coastal Carolina for special treatment." 306 S.C. at 419. And in Thorne v. Seabrook, 264 S.C. 503, 216 S.E.2d 177 (1975), the Court struck down a statute which required landowners in Charleston County to return for taxes improvements on their land on the first day of the month following occupancy while other landowners in the State under similar circumstances were not required to return improvements and pay taxes thereon until the following calendar year.

In Webster v. Williams, 183 S.C. 368, 191 S.E. 51, 111 A.L.R. 1348 (1937), the Court declared unconstitutional as special legislation statutes imposing interest at the rate of one per cent per month on delinquent Orangeburg County taxes. Such taxes were governed by an existing general law, the Court found. Accordingly, the Court reasoned:

> [t]his undoubtedly is a subject within the legislative province, and one requiring legislative action. Accordingly, we find that to meet the very purposes of the legislation now in question, the Legislature has provided by general law, in section 2830 of the Code, for certain penalties, in the form of graduated payments, when taxes

become delinquent; and in section 2854 of the Code, further provisions are made, imposing additional penalties in the form of costs, when the taxes go into execution.

If there is anything in the situation of Orangeburg County to differentiate the tax problem there from that prevailing in other counties of the state (assuming, without deciding, that this could affect the principle now under discussion), the record fails to disclose it. We are dealing with legislation that very clearly on its face extends by additional charges the consequences of the failure to pay taxes in Orangeburg County.

We have, then, a subject which is in fact covered by the general law of the state, and as to which the Legislature has undertaken to make a special and different provision, by a separate enactment, for Orangeburg County only.

We are unable to perceive how such a statute can escape the literal condemnation of the constitutional provision above referred to, which provision condemns a local law made to cover a situation "where a general law can be made applicable."

As we have occasion to say of another statute relating to Orangeburg County, in the case of Salley v. McCoy, 182 S.C. 249, 289, 189 S.E. 196, 214:

> "That the subject is one that can be covered by the general law is not open to serious question. It has been in fact so covered, and neither the generality of the coverage, nor the soundness of the classification of salaries of county officers on the basis implied in the act, is open to serious question."

The same idea had been previously stated by this court in the case of Gillespie v. Blackwell, 164 S.C. 115, 161 S.E. 869, 871 where the principle was thus expressed: "The Legislature, by enacting a general law with respect to the acceptability of sureties on official bonds of county officials required by law to give bond, has declared in effect that a general law can be made applicable in such cases."

While it is impossible to lay down any general rule by which to determine whether a special or local statute comes within the constitutional inhibition now under discussion, there can be no doubt about the applicability of the inhibition in that class of cases, such as the present, where the record discloses no peculiar local conditions requiring special treatment, and where there is in force a statute of state-wide operation on the subject with which the special act seeks to deal on behalf of a particular county.

191 S.E. at 53.

With respect to R-425, the Legislature has made a specific finding that "the application of the requirement that personal property taxes on a watercraft and outboard motor be current before transfer of the title to property tax years before the enactment of the requirement has caused great inconvenience to both the sellers and the owners of used watercraft and outboard motors in Lexington County." Accordingly, the General Assembly has found that

> ... it is appropriate to provide clearly that the requirement applies only to watercraft and outboard motors that become due and payable after the enactment of the requirement and that this property is purchased free and clear of the liens for Lexington County property tax years before the 2000 property tax year.

While not conclusive, legislative findings are given "great weight" in considering whether a classification made by the General Assembly is rational. Doran v. Robertson, 203 S.C. 434, 27 S.E.2d 714 (1943); Ruggles v. Padgett, 240 S.C. 494, 126 S.E.2d 553 (1962); Townsend v. Richland Co., Supra; Op. Atty. Gen., dated September 26, 1984. Thus, legislative findings would be accorded great weight by a court considering the constitutionality of R-425. It is not known whether such findings would, however, be sufficient to uphold the constitutionality of R-425.

CONCLUSION

In our opinion, the referenced statute – R-425 – is constitutionally suspect as "special legislation" in contravention of Art. III, § 34 of the South Carolina Constitution. Here, as in a number of the cases cited above, a general law not only could be made applicable, but has been made so. Thus, if challenged in court, R-425 may well not survive constitutional scrutiny.

However, as indicated above, only a court, rather than an opinion of this Office, may declare the referenced legislation void. Although such is unlikely, a court could conceivably uphold the statute based upon the legislative findings of "uniqueness" with respect to Lexington County. Thus, the statute must continue to be followed unless and until declared invalid by a court.

Sincerely,

Robert D. Cook
Assistant Deputy Attorney General

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