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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

November 6, 2000

Samuel W. Howell, IV, Esquire
Charleston County Attorney
Post Office Box 486
Charleston, South Carolina 29402

Dear Mr. Howell:

By your letter of October 5, 2000, you have requested an opinion of this Office on the validity of a proposed reassessment tax cap in Charleston County. It is our opinion that the ordinance in question would be upheld as constitutional.

Briefly, and by way of background, you provide us with the following information: Charleston County Council ("Council") conducted extensive studies and received reports from numerous governmental, industry, and private individuals and groups on the effect of countywide reassessment on real property in Charleston County. Based on this information, and in order to address their concerns over unexpected and unduly inflated property values and the displacement of lower income families, Council decided to utilize the provisions of Section 4 of Act No. 283 of 2000 ("Act No. 283"). Act No. 283 amends Code § 12-37-223 by providing an exemption for the amount of fair market value of real property sufficient to limit to 15% any valuation increase attributable to a countywide reassessment program. Based upon the studies and reports, Council determined that public welfare and good government is best served in Charleston County by implementing the reassessment cap exemption solely for properties which qualify for the 4% assessment ratio (legal residential properties) provided in Code § 12-43-220(c).

As a preliminary note, we have read the impressive memorandum in which you thoroughly address the numerous legal concerns accompanying complicated tax issues such as reassessment caps. Your memorandum provides an excellent analysis of almost all relevant concerns involving a county ordinance that places a reassessment tax cap on certain residential homes only. Ultimately, we concur with your conclusions and believe that a court would uphold the Charleston County ordinance as valid. A few key points, however, should be addressed concerning the validity of the ordinance. Specifically, arguable violations of

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the South Carolina Constitution and the Equal Protection clause present the most serious issues. Of course, while this Office may comment on potential constitutional concerns, only the courts of this State may declare an act unconstitutional. However, for the following reasons, it is our opinion that the Charleston County ordinance would survive a challenge on constitutional grounds.

First, the General Assembly may enact any law not expressly forbidden by the State or Federal Constitution. See Cox v. Bates, 237 S.C. 198, 116 S.E.2d 828 (196). Once the legislation is enacted, it is entitled to every presumption of constitutionality. Any doubt concerning the validity of a statute must be resolved in favor of validity. See Scroggie v. Scarborough, 162 S.C. 218, 160 S.E. 596 (1931). Similarly, an ordinance is entitled to the same presumption of validity as a statute of the General Assembly, and must be proved unconstitutional beyond a reasonable doubt. Southern Bell Tel. and Tel. Co. v. City of Spartanburg, 285 S.C. 495, 331 S.E. 2d 333 (1985). Thus, at the outset, both Act No. 283 of 2000 and the Charleston County Ordinance are entitled to great deference.

Let us begin with the argument that the ordinance violates the South Carolina Constitution. Article X, Section 1 of the State Constitution states that "[t]he assessment of all property shall be equal and uniform..." and that "[t]he legal residence... shall be taxed on an assessment equal to four percent of the fair market value of such property." In another provision, Article III, Section 29 provides that "all taxes upon property ... shall be laid upon the actual value of the property taxed, as the same shall be ascertained by an assessment made...." Both of these constitutional provisions concern the assessment of property for levying tax. In contrast, Article X, Section 3 sets forth an exemption from ad valorem property taxation for certain enumerated categories of property. The last paragraph of Article X, Section 3 provides that "in addition to the exemptions listed in this section, the General Assembly may provide for exemptions from the property tax, by general laws applicable uniformly to property throughout the State and in all political subdivisions, but only with the approval of two-thirds of the members of each House."

Section 4 of Act No. 283 of 2000, or § 12-37-223(A) as amended, authorizes counties to "exempt an amount of fair market value of real property located in the county sufficient to limit to fifteen percent any valuation increase...." Accordingly, the County ordinance provides "an exemption for real property... sufficient to limit to 15% any valuation increase" for certain residences. Because the Act and the ordinance seek to exempt property from taxation, not to affect the property's assessment, then the provisions of S.C. Constitution Article X, Section 3 apply. In other words, the property continues to be assessed at its actual value, but the value of the property above the 15% cap is exempt from

taxation. Under Article X, Section 3, the General Assembly can authorize this exemption. To further illustrate the difference, in an informal opinion of this Office dated April 6, 1998, we addressed pending legislation that attempted to restrict the increase in the fair market value of residential property to no more than the value of permanent improvements made. Aside from the general rule that pending legislation is not entitled to the same presumption of constitutionality as enacted legislation, we were concerned that the attempt to cap the increase in fair market value would run afoul of Article X, Section 1 and Article III, Section 29 of the State Constitution. In the instant case, Act No. 283 and the County ordinance make no such efforts to restrict the assessment of the property. Instead, the General Assembly and the County invoke the authority of Article X, Section 3 to exempt certain property from taxation. This distinction is essential to the success of the Act and the ordinance.

Even assuming that Article X, Section 3 authorizes this exemption, an argument might be made that the ordinance is invalid because the reassessment tax cap does not apply uniformly to all properties in the County. On the other hand, Section 3 allows the exemption "by general laws applicable uniformly to property throughout the State." It is the general laws that must be applicable uniformly, not the exemption. The uniform applicability requirement is met when each county council is empowered to provide the exemption, at its option and in its discretion, in its county. Quirk v. Campbell, 302 S.C. 148, 394 S.E.2d 320 (1990). In Quirk, the constitutionality of the fee-in-lieu of tax provisions of Code § 4-29-67 were challenged, in part, on the basis that they violate the uniformity provisions of Article X of the South Carolina Constitution. Rejecting the contention that only certain industries (not all) benefit from the tax exemptions under the statute, and for those industries that qualify, different results can obtain in the negotiation process provided in the statute, the Court concluded that uniformity and equal protection requirements are met if all businesses are "granted the opportunity to negotiate for fees in lieu of taxes." Id. Likewise, in Charleston County Aviation Auth v. Wasson, 277 S.C. 480, 289 S.E.2d 416 (1982), it was argued that procedures used to implement the property tax exemption provided in S.C. Constitution Article X, Section 3(a) violated the uniformity requirements because the procedures could result in unequal treatment of otherwise similarly-owned properties. The Court rejected that argument and further held that a failure to tax or exempt similar property in another county, while not desired, constitutes no legal basis to void a proper application in Charleston County where there is equal treatment. Thus, despite the differences in the treatment of properties among the counties, because the counties are uniformly empowered to opt in to the exemptions provided for by the general law, Article X, Section 3 has not been violated.

The next issue, which is somewhat related, concerns a challenge on Equal Protection grounds. The federal courts have acknowledged that the States have broad powers to impose and collect taxes. A State may divide different kinds of property into classes and assign to each class a different tax burden so long as those divisions and burdens are reasonable. Allied Stores of Ohio v. Bowers, 358 U.S. 522, 526-527(1959). A State might, for example, decide to tax property held by corporations at a different rate than property held by individuals. Allegheny Pittsburgh Coal Co. v. County Comm'n. of Webster County. W. Va., 488 U.S. 335 (1989) (citing, Lehnhausen v. Lake Shore Auto Parts Co., 410 U.S. 356). In dividing property into classes, the State must still meet the requirements of Equal Protection under the U.S. Constitution. The Equal Protection Clause does not mean that a State may not draw lines that treat one class of individuals or entities differently from the others. The test is whether the difference in treatment is invidious discrimination. See Lehnhausen, supra.

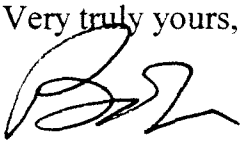
Where taxation is concerned and no specific federal right apart from Equal Protection is imperiled, the States have large leeway in making classifications and drawing lines which in their judgment produce reasonable systems of taxation. Id. And a legitimate State purpose in making those classifications may be ascertained even when the legislative or administrative history is silent. Nordlinger v. Hahn, 505 U.S. 1, 112 S.Ct. 2336, 120 L.Ed.2d 1 (1992). The appropriate standard of review for such classification systems is whether the difference in treatment from one category to another rationally furthers a legitimate state interest. Id. For purposes of this rational-basis review, the latitude of discretion is notably wide in the granting of partial or total exemptions from taxation upon grounds of policy. Id.

Council has articulated several reasons for its classification system for tax exemption, at least two of which have been reviewed and considered valid by the United States Supreme Court. As stated in Nordlinger, the State has a legitimate interest in local neighborhood preservation, continuity, and stability, and in order to inhibit displacement of lower income families by the forces of gentrification, the State can allow older owners to pay progressively less in taxes than new owners of comparable property. Nordlinger, 505 U.S. at 12. In addition, the purposes to be served by an ordinance such as that proposed by Council are that (1) it prevents property taxes from reflecting unduly inflated and unforeseen current values and (2) it allows property owners to estimate future liability with substantial certainty. As in the Nordlinger case, Council's exemption plan rationally furthers legitimate government interests.

Again, we believe the State Constitution and Equal Protection arguments present serious legal issues which a court would have to address. However, it is our opinion that that the Charleston County ordinance violates neither state nor federal law. Indeed, for all of the foregoing reasons, we are convinced that the ordinance would withstand a challenge based on these grounds. Of course, we make no attempt to advise the County Council on whether it should, in fact, enact the ordinance. That decision must be made in the discretion of the Council.

With kind regards, I remain

Very truly yours,



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