

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. _____

May 10, 1993

SUBJECT: Taxation and Revenue - Solid Waste Service Fee.

- SYLLABI:
1. McCormick County Ordinance 92-17 does not conflict with the delinquent tax collection provisions of Title 12, S.C. Code of Laws.
 2. The McCormick County Treasurer does not have the authority to bring an action in Magistrate Court to enforce the collection of unpaid solid waste service fees.

TO: Honorable Glenda Q. Wright
McCormick County Treasurer

FROM: Ronald W. Urban *RWU*
Deputy Attorney General

QUESTIONS:

1. Does McCormick County Ordinance 92-17 conflict with the delinquent tax collection provisions of Title 12, S.C. Code of Laws?
2. Does the McCormick County Treasurer have the authority to bring an action in Magistrate Court to enforce the collection of unpaid solid waste service fees?

APPLICABLE LAW: S.C. Code Ann. Sections 12-49-10, et seq. (1976); 12-49-210, et seq. (1976); 12-49-410, et seq. (1976); 12-51-40, et seq. (Supp. 1992); Act 677, Acts of 1882; Act 559, Acts of 1908; Act 31, Acts of 1923; Act 393, Acts of 1944; and Act 102, Acts of 1973.

DISCUSSION 1:

McCormick, Edgefield, and Saluda Counties have entered into a joint effort to manage solid waste through the formation of the Tri-County Services Authority. In furtherance of

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this, McCormick County Ordinance 92-17 was enacted to charge a service fee on producers of solid waste who use the Authority's landfill. Included in this ordinance is a provision wherein McCormick County is to turn unpaid fees "over to the Magistrate for necessary civil action".

It is well settled that a county cannot enact an ordinance that is at variance with the general laws of a state. 56 Am.Jur.2d, Municipal Corporations, Section 374. The question posed here is whether the collection procedures in Ordinance 92-17 improperly conflict with the collection provisions of Title 12, S.C. Code of Laws. Those provisions provide that counties are to enforce collection of "taxes, assessments, and penalties" by means of execution and tax sale.¹ See Sections 12-49-10, et seq. and 12-51-40, et seq.

There appears to be no conflict between Ordinance 92-17 and Title 12. The original enactment of the relevant collection procedures in Title 12 shows that the phrase "taxes, assessments, and penalties", as used therein, relates to property taxes and the assessment thereof.² Accordingly, such procedures have no application to the collection of a service charge for solid waste disposal.

The exclusion of service charges from Title 12's collection provisions is further supported by the various judicial definitions given to "taxes" and "assessments". For example, in Brown v. County of Horry, ___ S.C. ___, 417 S.E.2d 565 (1992), the Court noted a distinct difference between taxes and service charges. There it was stated that

. . . a tax is an enforced contribution
to provide for the support of

¹OAG 79-49, dated March 13, 1979, indicates that a judicial action to foreclose Section 12-49-10's statutory lien would also be proper.

²Said collection procedures were first enacted as part of Act 677, Acts of 1882. That act instituted a comprehensive system whereby property taxes were levied and collected throughout the state. Much of that system remains in effect.

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government, whereas a fee is a charge
for a particular service. . . .

Similarly, the meaning given to "assessment" distinguishes it also from a service charge. An assessment is levied against a particular property because such property has been benefited by a proposed improvement. Celanese Corp. v. Strange, 272 S.C. 399, 252 S.E.2d 137 (1979). Conversely, a service charge, like the subject,³ does not result in an improvement to a particular property.

In sum, Ordinance 92-17's service charge is neither a tax nor an assessment. Thus, there is no conflict between the ordinance and the relevant collection provisions of Title 12.

CONCLUSION 1:

McCormick County Ordinance 92-17 does not conflict with the delinquent tax collection provisions of Title 12, S.C. Code of Laws.⁴

DISCUSSION 2:

As stated, McCormick County Ordinance 92-17 directs that unpaid solid waste fees are to be turned "over to the Magistrate Court for civil action". Here, it is asked whether the County Treasurer has the authority to prosecute such actions on behalf of the county.

Inasmuch as county treasurers collect taxes, they are public officers. 84 C.J.S., Taxation, Section 645. Accordingly, as public officers, their powers are restricted to those granted by statute. 63A Am.Jur.2d, Public Officers and Employees, Section 300. Moreover, county governing bodies have no authority to increase or decrease these statutory

³Also see, Ruggles v. Padgett, 240 S.C. 516, 126 S.E.2d 553 (1962), wherein a service charge was determined not to be an assessment.

⁴In reaching this conclusion, we express no opinion as to whether the Magistrate Court has jurisdiction to enforce collection of McCormick County's solid waste service fees.

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powers. See OAG 4431, dated August 26, 1976.

The only general statutory authority county treasurers have to collect delinquent taxes is found at Section 12-49-10 wherein it is stated:

All taxes, assessments and penalties legally assessed shall be considered and held as a debt payable to the State by the person against whom they shall be charged and such taxes, assessments and penalties shall be a first lien in all cases whatsoever upon the property taxed, the lien to attach at the beginning of the fiscal year during which the tax is levied. Such taxes shall be first paid out of assets of any estate of deceased persons or held in trust as assignee or trustee or the proceeds of any property held on execution or attachment. The county treasurer may enforce such lien by execution against such property or, if it cannot be levied on, he may proceed by action at law against the person holding such property. (Emphasis added)

This statute, however, does not allow the McCormick County Treasurer to enforce the collection of unpaid solid waste service fees. As indicated in the first discussion, the taxes, assessments, and penalties referred to in Section 12-49-10 relate to property taxes, not service charges.

Aside from the foregoing, certain delinquent tax collecting duties have also been conferred upon the McCormick County Treasurer by special legislation. See Act 102, Acts of 1973. Those duties are the same as originally given to the County Tax Collector by Act 393, Acts of 1944. They consist of

. . . all powers and duties heretofore vested in the Sheriff of McCormick County as to the collection of delinquent taxes, seizure and sale of property, etc., . . . and . . . full power and authority to execute all processes and the laws now pertaining

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to the execution and collection of delinquent taxes, as Sheriffs are authorized to do under the general law, . . .

At the time of the above enactment, the authority vested in the Sheriff of McCormick County to collect taxes was limited to those provisions found at Sections 12-49-10, et seq., 12-49-210, et seq., and 12-49-410, et seq. Once again, such provisions relate solely to property taxes and their enforced collection. Thus, like Section 12-49-10, this special legislation does not give the McCormick County Treasurer the authority to enforce the collection of unpaid solid waste fees by prosecuting civil actions in Magistrate Court.⁵

CONCLUSION 2:

The McCormick County Treasurer does not have the authority to bring an action in Magistrate Court to enforce the collection of unpaid solid waste service fees.

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⁵It should be noted that Act 393, Acts of 1944, also alludes to arrest warrants issued by Magistrates for violation of tax laws. This, however, concerns the enforcement of poll taxes and road taxes, neither of which is relevant to the question presented. See Act 559, Acts of 1908, Section 6, and Act 31, Acts of 1923.