

THE STATE OF SOUTH CAROLINA  
OFFICE OF THE ATTORNEY GENERAL  
COLUMBIA

OPINION NO. \_\_\_\_\_

February 5, 1990

SUBJECT: Taxation and Revenue - Authority to change penalty date for late payment of property taxes.

SYLLABI: 1. The governing body of a county is without authority to extend the date that penalties are imposed by Section 12-45-180 for late payment of property taxes.

2. A county treasurer is without authority to override a directive of the county governing body that county office buildings would be closed in observance of Martin Luther King's birthday, January 15, 1990.

TO: Honorable Irene K. Rudnick  
Member, House of Representatives

FROM: Joe L. Allen, Jr. *[Signature]*  
Chief Deputy Attorney General

QUESTIONS:

1. Does a county council have authority to change the date for the imposition of a penalty for late payment of a property tax?

2. Does a county treasurer have authority to override a decision of a county governing body that directs that county office buildings be closed on a designated holiday?

APPLICABLE LAW: Sections 4-1-80, 4-9-30, and 12-45-180, South Carolina Code of Laws, 1976.

DISCUSSION - (Question 1):

Section 4-9-30 provides the powers of a county governing body. The applicable language is that:

"Under each of the alternate forms of government . . . , each county government within the authority granted by the Constitution and subject to the

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general law of this State shall have  
the following . . . powers . . .  
(5) to assess property and levy ad  
valorem property taxes . . ."

The authority there conferred to levy property taxes is subject to the general law of this State. Section 12-45-180 prescribes the date and amount of penalties for late payment of property taxes. This is a general law and a county council is thus without authority to amend or modify a general law.

CONCLUSION:

The governing body of a county is without authority to extend the date that penalties are imposed by Section 12-45-180 for late payment of property taxes.

DISCUSSION - (Question 2):

The county offices were closed in Aiken County on January 15, 1990, because that was a legal holiday as declared by Section 53-5-10. The last day property taxes for 1989 could have been paid without penalty was also January 15, 1990. The inquiry is whether the county treasurer had authority to override the declaration of the county's governing body that the county office building in which the treasurer's office is located be closed. We find no authority for such an override.

It has been long settled that the management and control of the property of a county are vested with the governing body. Werts v. Feagle, 83 S.C. 128, 65 S.E. 226 (1909); Ex Parte Greenville County v. Bowen, 190 S.C. 188, 2 S.E.2d 47 (1939). See also 7 S.C.D., Counties, Key 47. This is fortified by Section 4-1-80 that requires the governing body to provide offices for the county treasurer and other officials.

Additionally, the employees in the treasurer's office are entitled to the same holidays as other county employees having similar responsibilities. To have required those employees to work during this time period could create serious personnel problems. (See Heath v. Aiken County, 295 S.C. 416, 368 S.E.2d 904.)

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CONCLUSION:

A county treasurer is without authority to override a directive of the county governing body that county office buildings would be closed in observance of Martin Luther King's birthday, January 15, 1990.

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