4179 Library

THE STATE OF SOUTH CAROLINA

OFFICE OF THE ATTORNEY GENERAL

COLUMBIA

OPINION NO. _____ August 2, 1990

SUBJECT: Taxation & Revenue - Authority of a county to charge an impact fee.[1]

SYLLABUS: A county may levy and collect impact fees provided the same are reasonable and relate to the benefit the subdivision is to receive.

TO: Jack M. Scoville, Jr., Esquire
Georgetown County Attorney

FROM: Joe L. Allen, Jr.
Chief Deputy Attorney General

QUESTION: Does a county have authority to levy and collect impact fees?

APPLICABLE LAW: Sections 4-9-25, 4-9-30 and Chapter 7 of Title 6, of the South Carolina Code of Laws, 1976, as amended; and Article X, Section 6 and Article VIII, Section 17 of the South Carolina Constitution.

DISCUSSION:

We find no statutory provision that expressly provides that a county may levy and collect the fee. Section 4-9-30(5) provides authority for a county to levy and collect property taxes. If the fee is a tax then it would be invalid under the provisions of Article X, Section 6. That article re-

---

[1]"Impact fees" are charges levied by local governments against new developments to generate revenue for capital funding necessitated by that development. See Juergensmeyer and Blake, Impact Fees: An Answer to Local Governments' Capital Funding Dilemma, 9 Fla. St. U.L. Rev. 415, 417 (1981), Price Development Co. v. Redevelopment Agency, 852 F. 2d 1123 (9 Cir. 1988).

quires that the tax apply uniformly to all property within the county. Upon its face, the fee would apply only to a land that is being developed as a subdivision.[2] It may be closely akin to an "assessment" for the cost of benefits that improve the property, however, its purpose is not to enhance the property; instead it is to help fund the cost of providing services the need for which is generated by the development of the land into a subdivision.

Chapter 7 of Title 6 provides for "Planning By Local Governments." Section 6-7-10 of the Chapter sets forth the purposes of the Chapter in part to be:

> "The intent of this chapter is to enable municipalities and counties acting individually or in concert to preserve and enhance their present advantages, to overcome their present handicaps, and to prevent or minimize such future problems as may be foreseen. To accomplish this intent local governments are encouraged to plan for future development; to prepare, adopt, and from time to time revise, comprehensive plan to guide future local development; and to participate in a regional planning organization to coordinate local planning and development with that of the surrounding region."

The section further declares the chapter to be:

> ". . . necessary for the promotion, protection and improvement of the public health, safety, comfort, good order, appearance, convenience, prosperity, morals, and general welfare."

The chapter further provides extensive and broad power for the planning and development of a county. Again, the language of the chapter does not refer to "impact fees." Au-

---

[2]A subdivision is a division of a parcel of land into smaller parcels or lots so that new lots may be sold or developed individually. 8 McQuillin Municipal Corp., Section 25.11 8(a) p. 344.

thority for the same may, however, be necessarily implied from the language of the Chapter. This result is further supported by Article VIII, Section 17 of the South Carolina Constitution. It provides that:

> "The provisions of this Constitution and all laws concerning local government shall be liberally construed in their favor. Powers, duties, and responsibilities granted local government subdivisions by this Constitution and by law shall include those fairly implied and not prohibited by this Constitution."

In Creech v. South Carolina Public Service Authority, 200 S.C. 127, S.E.2d 645 at 652 (1942), the court, commenting upon the liberal construction of a statute, held that the court's duty was to determine from the language used, the subject matter, and the purpose of those framing them, the statute's true meaning.

The Supreme Court of Texas upheld the imposition of impact fees in the case of City of College Station v. Turtle Rock Corporation, 680 S.W. 2d 802 (1984). The court there stated:

> "Until recent years, urban life was comparatively simple; but with the great increase and concentration of population, problems have developed, and constantly are developing, which require, and will continue to require, additional restrictions in respect of the use and occupation of private lands in urban communities. Regulations, the wisdom, necessity and validity of which, as applied to existing conditions, are so apparent that they are now uniformly sustained, a century ago, or even half a century ago, probably would have been rejected as arbitrary and oppressive."

Impact fees have also been upheld in Home Builders and Contractors Ass'n. v. Board of County Com'rs., 446 So.2d 140 (Fla. App. 1983), appeal dismissed, 469 U.S. 976, 83 L.Ed.2d 311, 105 S.Ct. 376 (1984); and in J. W. Jones Co. v. City of San Diego, 157 Cal. App. 3rd 375, 203 Cal. Rep. 580

(1984).[3]

Such fees are held to be levied and collected under the police powers. Chapter 7 exercises the state's police power and Section 4-9-25 sets forth the police powers of a county. Again, the same are to be liberally construed in favor of a county.[4] Of course, this opinion addresses only the question of the county's authority and makes no comment as to the policy considerations involved as to whether a county would adopt an ordinance relating to impact fees.

CONCLUSION:

A county has authority to levy and collect impact fees provided the same are reasonable and relate to the benefit the subdivision is to receive.

JLAJR/jws

---

[3]The fee was also sustained against equal protection arguments in these cases. (See also 8 McQuillin, Municipal Corp., Section 25.118 (e) Supplement)

[4]We do not address the contents of the plan and the ordinance, however, suggest that careful study be given so that its terms are reasonable and relate to the benefits the subdivision is to receive.