

THE STATE OF SOUTH CAROLINA  
OFFICE OF THE ATTORNEY GENERAL  
COLUMBIA


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

January 24, 1991

SUBJECT: Taxation & Revenue - Constitutionality Of  
Added Fee To Register A Vehicle Previously  
Registered In Another State.

SYLLABUS: The constitutionality of a statute that would  
levy an additional fee for each original  
certificate of title issued to a vehicle  
previously registered outside of this state  
would be constitutionally suspect.

TO: Honorable Nell W. Smith  
Senator, Pickens County  
District No. 2

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

QUESTION: May the state levy a separate and additional  
charge of \$100 to register a vehicle previously registered  
in another state?

APPLICABLE LAW: Section 1 of the Fourteenth Amendment to  
the Constitution of the United States and Article I, Section  
3 of the Constitution of South Carolina.

DISCUSSION:

A bill is proposed to levy a charge of \$100 for "each origi-  
nal certificate of title issued to a vehicle previously reg-  
istered outside of this state." This charge is in addition  
to the charge otherwise provided. The question is whether  
this additional charge can be constitutionally levied. For  
the reasons hereinafter stated, it is the opinion of this of-  
fice that such a charge is constitutionally suspect.

It is first noted that the charge is a revenue measure to  
provide funds for the Heritage Land Trust, the trust having  
been created pursuant to S.C. Code Ann. Section 51-17-115.  
Its purpose is to acquire "fee simple or lesser interest in  
priority areas, . . ." The charge is thus a tax and not a  
charge to fund the cost of enforcing the registration.

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. . . "A tax," according to Webster's Dictionary, "is a rate or sum of money assessed on the person or property of a citizen by the government for the use of the nation or state." Cooley in his Constitutional Limitations, Section 479, says: "Taxes are burdens or charges imposed by the Legislature upon persons or property to raise money for public purposes."

Aetna Fire Ins. Co. v. Jones, 78 S.C. 445, 59 S.E. 148.

Further evidence that the charge is a revenue measure is found in the language of the proposed bill. The actual cost of administering the proposal is to be deducted from the fee and the remainder is to be transferred to the trust fund. Such conclusively establishes that the charge is not to fund the costs of registering and titling the vehicle.

Both Section I of the Fourteenth Amendment to the Constitution of the United States and Article I, Section 3 of the Constitution of South Carolina require equal protection in law. Such, however, does not preclude the state from classifying persons and property for tax purposes.

"Generally, within constitutional limitations, the state has power to classify persons or property for purposes of taxation, and the exercise of such power is not forbidden by the constitutional requirement that taxation be uniform and equal, provided the tax is uniform on all members of the same class and provided the classification is reasonable and not arbitrary." 84 C.J.S. Taxation Section 36, p. 112.

Newberry Mills v. Dawkins, 259 S.C. 7, 190 S.E.2d 503 (1972).

The question is thus whether the classification for this tax is reasonable. In a somewhat related case, the United States Supreme Court in Williams v. Vermont, 472 U.S. 14, 105 S.Ct. 2465, 86 L.Ed. 2d 11 (1985), quoted from its decision of Halleburton Oil Well Co. v. Ruby, 373 U.S. 64, 83 S.Ct. 1201, 10 L.Ed 2d 202 (1963), as follows:

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"The dominant theme running through all state taxation cases" is the "concern with the actuality of operation."

While it is true that a South Carolina resident who acquires a vehicle previously registered and titled in another state would pay the fee, the tax is most likely to fall upon persons other than present South Carolina residents. It will primarily fall upon those persons coming into the state.

The question must therefore be asked of the rational and reasonable basis to treat those owners differently from the South Carolina owner who first registers and titles a vehicle acquired from a South Carolina source. Upon the information available, it is difficult to define such a basis.

In Williams v. Vermont, supra, the court further held that:

The Equal Protection Clause requires more of a state law than nondiscriminatory application within the class it establishes.

Serious questions of equal protection exist because of the different treatment of the owners of vehicles first registered and titled in this state from owners of vehicles first registered and titled in another state. By reason thereof, the validity of the proposed bill is doubtful.

CONCLUSION:

The constitutionality of a statute that would levy an additional fee for each original certificate of title issued to a vehicle previously registered outside of this state would be constitutionally suspect.

JLAJR/jws