

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. _____

April 1, 1991

SUBJECT: Taxation & Revenue - Transfer Of Budgeted Tax
Collections To Pay Unbudgeted Expenses.

SYLLABUS: Taxes collected for specific public purposes
cannot be diverted to fund unbudgeted
expenses unless the purpose for which the tax
was levied is first satisfied.

TO: John G. Frampton, Esquire
Dorchester County Attorney

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

QUESTION: Can taxes collected to fund specific budgeted
items be used to pay unbudgeted expenses?

APPLICABLE LAW: S.C. Const. art. X, Sections 5, 7(b) and 8;
and S.C. Code Ann. Sections 4-9-30 and 4-9-140 (Supp. 1990)

DISCUSSION:

The powers of a county governing body are set forth in
Section 4-9-30 and subject to the Constitution and general
law. Subsection 5 of the Section further provides authority
for the governing body to

. . . assess property and levy ad valorem
property taxes and uniform service
charges, . . . and make appropriations
for functions and operations of the
county, . . .

Article X, Section 5 of the South Carolina Constitution
provides in part that

No tax, subsidy or charge shall be
established, fixed, laid or levied, under
any pretext whatsoever, without the
consent of the people or their
representatives lawfully assembled. Any
tax which shall be levied shall
distinctly state the public purpose to

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which the proceeds of the tax shall be applied. (Emphasis added)

Annual budgets are required by Article X, Section 7(b). The pertinent language is that

Each political subdivision of the State as defined in Section 14 of this article and each school district of this State shall prepare and maintain annual budgets which provide for sufficient income to meet its estimated expenses for each year. Whenever it shall happen that the ordinary expenses of a political subdivision for any year shall exceed the income of such political subdivision, the governing body of such political subdivision shall provide for levying a tax in the ensuing year sufficient, with other sources of income, to pay the deficiency of the preceding year together with the estimated expenses for such ensuing year. The General Assembly shall establish procedures to insure that the provisions of this section are enforced.

In addition, Article X, Section 8 provides that

Money shall be drawn from the treasury of the State or the treasury of any of its political subdivisions only in pursuance of appropriations made by law.

It is thus constitutionally mandated that (a) for any tax levy the public purpose for which the same is levied must be distinctly stated, (b) the county must adopt an annual budget and provide sufficient income to fund the same and (c) money can only be paid out pursuant to an appropriation.

Section 4-9-140 codifies the constitutional requirement that annual budgets be adopted. The section provides in part that

County council shall adopt annually and prior to the beginning of the fiscal year operating and capital budgets for the operation of county government and shall in such budgets identify the sources of

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anticipated revenue including taxes necessary to meet the financial requirements of the budgets adopted. Council shall further provide for the levy and collection of taxes necessary to meet all budget requirements except as provided for by other revenue sources.

The section also provides added authority to make supplemental appropriations. A supplemental appropriation is the expenditure of "additional funds which have come available during the fiscal year and which have not been previously obligated by the current operating and capital budget."

The section further authorizes the "transfer of funds appropriated in the annual budget for purposes other than as specified in such annual budget when such transfers are approved by the council." This provision, however, must be considered in light of the provisions of Article X, Section 5 of our Constitution. The language is clear, a tax cannot be levied for one purpose and, in the absence of that purpose being satisfied, diverted to fund other expenses. In State v. Osborne, 193 S.C. 158, 7 S.E.2d 526 (1940), the court favorably quoted from Morton, Bliss & Co. v. Comptroller Gen'l., 4 S.C. 430, 456 as follows:

If it had been intended that the Legislature should have any discretion as to the objects to which such funds should be applied, this clause would not have been inserted in the Constitution. Its insertion evidences the intent of the Constitution to deprive the Legislature of all power of misapplication, by an authoritative and imperative appropriation to the specific object set forth in the tax law as the ground of raising the specific tax.

For purposes of this opinion, it is assumed that the tax levied by the county was for specific purposes that were set out in the budget.¹ Under Osborne, the county could not

¹Under general terms, this tax would be considered to constitute a special fund. It is a tax levied to fund a specific purpose, and because of such, cannot be diverted. 56 Am.Jur., Municipal Corporations, Section 582, p. 634.

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thus divert the taxes to pay for other expenses unless the purpose for which the tax was levied was satisfied. The holding of Osborne does not apply to surplus funds. Parker v. Bates, 216 S.C. 52, 56 S.E.2d 723 (1949). The authority conferred by Section 4-9-140 to transfer funds includes surplus tax collection and other non-tax funds. If it is construed to include taxes levied for specific purposes, then the constitutionality of the statute could be seriously questioned. Such a construction is to be avoided. (For cases, see 6 S.C.D., Const. Law, Key 48.)

CONCLUSION:

Taxes collected for specific public purposes cannot be diverted to fund unbudgeted expenses unless the purpose for which the tax was levied is first satisfied.

JLAJR/jws