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THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. _____

March 3, 1989

SUBJECT: Taxation and Revenue - Constitutionality Of
Business License Ordinance Of Jasper County.

SYLLABUS: The constitutionality of the business license ordinance of Jasper County is highly suspect because of the disparity between the tax rates of the different classifications, which in all probability denies equal protection of the laws to all businesses within the county.

TO: Honorable John Drummond, Senator
District No. 10

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

QUESTION: Does the business license ordinance of Jasper County satisfy the constitutional requirements for equal protection?

APPLICABLE LAW: The business license ordinance and the Equal Protection Clause of the Federal and State Constitutions, and Section 4-9-30 (12), Code of Laws of South Carolina, 1976.

DISCUSSION:

It is first recognized that the county council has the authority to separately classify businesses with different tax rates.

" . . . the power to impose a license tax implies a power to classify business and differentiate as to rates of taxation." Southern Bell Telephone & Telegraph Co. v. City of Aiken, 279 S.C. 269, 306 S.E.2d 220.

Section 4-9-30(12) confers the authority to levy and collect the business license tax.

Equally settled is the fact that because one class is required to pay tax at a higher rate, the ordinance is not necessarily invalid.

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"The fact that one class may pay more proportionately than other classes does not of itself make the license fee unreasonable or arbitrary since this is largely within the discretion of City Council." United States Fidelity & Guaranty Co. v. City of Newberry, 257 S.C. 433, 186 S.E.2d 239.

The ordinance is a legislative enactment and is presumed to be constitutional. The burden is upon the taxpayer to prove unconstitutionality beyond a reasonable doubt. North Charleston Land Corp. v. City of North Charleston, 281 S.C. 470, 316 S.E.2d 137 and Southern Bell Tel. & Tel. Co. v. City of Spartanburg, 285 S.C. 495, 331 S.E.2d 333.

In the last case, the court further held as follows:

"However, in all of our decisions wherein classification in a tax statute or ordinance has been challenged as being in violation of the equal protection clause . . . , this court has recognized that a reasonable basis for the different treatment was essential to the constitutionality thereof."

The court went on to hold the business license tax upon Southern Bell to be invalid because of the gross disparity in the license tax rate. Such a problem exists in this ordinance. In example, the tax on class one businesses that includes, among others, abattoirs and grocery stores, the tax on gross income of \$50,000 would be \$19.50. The tax on timber tracts from the \$50,000 in sales of timber is \$1,050.00. On sales of \$300,000, the tax on class one businesses is still \$19.50, while on timber sales of the same amount, the tax is \$11,050.00. From such, it is apparent that the constitutionality of the ordinance is highly suspect. The disparity in rates between the classes is quite large and we have no factual information that would justify the disparity.¹

¹The ordinance otherwise is well-drafted, however, there is some question about insurance companies. Section 38-7-100 precludes county license taxes on certain insurance companies. We have not calculated the difference in the tax rate for either class, however, it is apparent that the same is substantial.

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CONCLUSION:

The constitutionality of the business license ordinance of Jasper County is highly suspect because of the disparity between the tax rates of the different classifications, which in all probability denies equal protection of the law to all businesses within the county.

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