

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. _____

May 15, 1989

SUBJECT: Taxation and Revenue - Funding For Garbage Collection.

SYLLABI: 1. A county may not levy a countywide property tax to provide garbage service unless the conditions of Section 4-9-30(5) are satisfied. To levy the tax, the county must have been providing the service on March 7, 1973 and no municipality within the county was providing or funding the service otherwise the consent of the municipality's governing body has to be obtained.

2. The payment of a uniform service charge for the collection of garbage can be enforced by judicial action. An ordinance conferring power to the County Treasurer to levy upon and sell property of a person failing to pay the service charge would be in conflict with the general law.

3. A county may create a special tax district to provide garbage service and may levy an ad valorem tax on property within the district to fund the same. The levy must be equal and uniform to all persons and property within the tax district.

TO: C. Dennis Aughtry, Esq.
Richland County Attorney

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

QUESTIONS:

1. Can the county levy a countywide millage for the purpose of providing garbage collection services only to the residents of the unincorporated areas of the county?

2. Can a County Treasurer sell property at a tax sale because of unpaid garbage service fees when the ad valorem taxes on said property have been paid?

May 15, 1989

3. Can the county levy a millage in the unincorporated area of the county only for the purpose of providing garbage collection service to the residents of said unincorporated area?

APPLICABLE LAW: Section 4-9-30, Code of Laws of South Carolina, 1976 and Article X, Section 6, South Carolina Constitution.

DISCUSSION (Question 1):

The powers of a county governing body relating to these questions are set forth in the Section 4-9-30 of the Code. Those powers are subject to the general law and the section, with limited exceptions, specifically prohibits the taxing of property within a municipality to fund a county service. Section 4-9-30(5) provides in part that:

" . . . the governing body of a county shall not finance any service not being rendered by the county on March 7, 1973, by a countywide tax where such service is being provided by any municipality within such municipality or where such service has been budgeted or funds have been applied for as certified by the municipal governing body, except upon concurrence of the municipal governing body; . . ."

It is understood that the county did not provide garbage service on March 7, 1973 and that at least some municipalities did then provide the service. The tax could not therefore be levied within those municipalities without the consent of the governing bodies of the municipalities.

CONCLUSION (Question 1):

A county may not levy a countywide property tax to provide garbage service unless the conditions of Section 4-9-30(5) are satisfied. To levy the tax, the county must have been providing the service on March 7, 1973 and no municipality within the county was providing or funding the service otherwise the consent of the municipality's governing body has to be obtained.

DISCUSSION (Question 2)

Section 4-9-30(14) provides authority to a county:

May 15, 1989

"to enact ordinances for the implementation and enforcement of the powers granted in this section and provide penalties for violations thereof not to exceed the penalty jurisdiction of magistrates' courts. Alleged violations of such ordinances shall be heard and disposed of in courts created by the general law including the magistrates' courts of the county. County officials are further empowered to seek and obtain compliance with ordinances and regulations issued pursuant thereto through injunctive relief in courts of competent jurisdiction. . . ."

As stated, the county may not enact an ordinance in conflict with general law. The general law as set forth above provides the means and procedures the county is to follow to enforce the payment of the uniform service charge for the collection of garbage.

CONCLUSION (Question 2):

The payment of a uniform service charge for the collection of garbage can be enforced by judicial action. An ordinance conferring power to the County Treasurer to levy upon and sell property of a person failing to pay the service charge would be in conflict with the general law.

DISCUSSION (Question 3):

Article X, Section 6, provides in part that:

" . . . Property tax levies shall be uniform in respect to persons and property within the jurisdiction of the body imposing such taxes; provided, that on properties located in an area receiving special benefits from the taxes collected, special levies may be permitted by general law . . ."

Section 4-9-30(5) provides for the taxation of these areas to fund special services, however, the tax must be equal and uniform to all persons and property within the special tax district. See Ex Parte Yeargin In Re Wicker v. Anderson County Council, ___ S.C. ___, 369 S.E.2d 844

C. Dennis Aughtry, Esq.
Page Four

May 15, 1989

(1988).¹

CONCLUSION (Question 3):

A county may create a special tax district to provide garbage service and may levy an ad valorem tax to fund the same. The levy must be equal and uniform to all persons and property within the tax district.

JLAJr:wcg

Footnote: The general rules of construction applicable to statutes were here followed. The language of both the Constitution and Section 4-9-30 is clear and must be applied as written. For cases see 17 S.C.D., Statutes, Keys 188 and 212.6.

¹There the court held that the tax was required to be uniform and equal and that it met the constitutional requirements of equal protection.