

THE STATE OF SOUTH CAROLINA  
OFFICE OF THE ATTORNEY GENERAL  
COLUMBIA

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

October 13, 1989

SUBJECT: Taxation and Revenue - Municipal License Tax  
- Doing Business by Delivery of Goods into  
City.

SYLLABI: (a) An isolated delivery of goods into a  
municipality and in the absence of other  
business activities within the municipality  
would not subject the persons making the  
delivery to the business license tax of the  
municipality.

(b) Frequent deliveries of goods into a  
municipality would subject the person making  
the deliveries to the business license tax of  
the municipality.

(c) A wholesaler who delivers goods to a  
retailer within a municipality is not subject  
to the business license tax of the municipali-  
ty unless he maintains within the municipali-  
ty a warehouse or mercantile establishment  
for the distribution of wholesale goods.

TO: Honorable Hugh K. Leatherman, Sr.  
Senator, District 31

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

QUESTION: Does the statute law authorize a municipality to  
require payment of a business license tax upon a person  
whose activity is the delivery of goods into the city?

APPLICABLE LAW: Section 5-7-30, Code of Laws of South  
Carolina, 1976.

DISCUSSION:

Section 5-7-30 provides authority to a municipality to:

" . . . levy a business license tax on

October 13, 1989

gross income, but a wholesaler delivering goods to retailers in a municipality is not subject to the business license tax unless he maintains within the corporate limits of the municipality a warehouse or mercantile establishment for the distribution of wholesale goods; . . ."

The section has other provisions that exclude certain businesses that make loans secured by real estate or is subject to a license tax under another law and further provides for a surtax on certain businesses to support parking facilities. For purposes of the opinion, however, we treat only the quoted language.

A wholesaler whose only activity within a municipality is the delivery of goods to retailers is by specific language of the statute exempt or excluded from the tax.

Whether a person who delivers goods to users or consumers is liable for payment of the tax is dependent upon all facts surrounding the delivery. While our statute does not now contain the words "doing business", the same is necessarily implied. If there is no income from business within the municipality, there is no tax. (See Southern Bell Tel. and Tel. Co. v. City of Spartanburg, 285 S.C. 495, 331 S.E.2d 333 (1985).)

In Pee Dee Chair Co. v. City of Camden, 165 S.C. 86, 162 S.E. 771 (1934), our Court held that a company that manufactured and sold chairs in Darlington and made one delivery without charge to a furniture store in Camden was not subject to the business license tax of the City of Camden.

In Crosswell & Co. v. Town of Bishopville, 172 S.C. 26, 172 S.E. 698 (1934), a wholesale grocer who for two years sent a truck once or twice a week to deliver merchandise to retailers within Bishopville was held liable for the payment of the town's business license tax.

It is thus evident that the imposition of the tax is generally governed by the frequency of the deliveries.

CONCLUSION:

(a) An isolated delivery of goods into a municipality and in the absence of other business activities within the municipality would not subject the persons making the

October 13, 1989

delivery to the business license tax of the municipality.<sup>1</sup>

(b) Frequent deliveries of goods into a municipality would subject the person making the deliveries to the business license tax of the municipality.

(c) A wholesaler who delivers goods to a retailer within a municipality is not subject to the business license tax of the municipality unless he maintains within the municipality a warehouse or mercantile establishment for the distribution of wholesale goods.

JLAJr:wcg

-----  
<sup>1</sup>This is premised upon an assumption of fact that the person making the delivery has no other business activity within the municipality. Other activity may constitute doing business within the municipality and the single delivery could trigger the tax. In Pee Dee Chair, supra, the Court stated:

" . . . a single act might, under some conditions, constitute the carrying on of a business."

There, however, must be other facts to establish that the person was doing business in the municipality.