

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL

COLUMBIA

OPINION NO.

88-29 pg 224

October 14, 1988

SUBJECT: Taxation & Revenue - County Taxation For
Independent Agencies.

SYLLABUS: All appropriations by a county must be reflected in its budget adopted pursuant to Section 4-9-140. A county is without authority to create or designate an independent entity to be a millage agency, such term being construed to mean the authority to levy taxes. If funds are to be provided such an agency, the same must be for a public purpose and must be set forth in the county's budget.

TO: C. Dennis Aughtry, Esquire
Richland County Attorney

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

QUESTIONS: 1. What process is to be utilized when a county wishes to make an entity--whether private or public; incorporated or unincorporated--a millage agency?

2. Would the agency, corporation, company, etc., have to be included in the budgetary process to satisfy due process requirements prior to the levy of taxes. More specifically, assuming that the Babcock Center otherwise could be made a millage agency, could such change to a millage agency be effected after approval of the budget on or about July 1, 1988?

APPLICABLE LAW: Article VIII, Section 7; Article X, Sections 6 and 11 of the South Carolina Constitution; and Sections 4-9-30 and 4-9-140 of the South Carolina Code of Laws, 1976, as amended.

DISCUSSION:

Article VIII, Section 7 of our Constitution states that the General Assembly shall provide for the powers and duties of a county. Included therein is the "power to tax different areas at different rates of taxation related to the nature

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and level of governmental services provided." Additionally, Article X, Section 6 provides authority to the General Assembly "to vest the power of assessing and collecting taxes in all the political subdivisions of the state."

We do not find any authority conferred upon a county to create or accept an entity separate from the county and confer upon it taxing power.

Section 4-9-30(6), however, does provide authority for the county:

" . . . to establish such agencies, department, boards, commissions and positions in the county as may be necessary and proper to provide services of local concern for public purposes . . . "

Also, Sections 4-9-30(5) and 4-19-10, et seq., provide for the establishment of tax districts. The purpose of these districts is to provide special services for a selected area of the county. (See Owen Industrial Products, Inc. v. Sharpe, 274 S.C. 193, 262 S.E.2d 33 and Myrtle Beach v. Richardson, 280 S.C. 167, 311 S.E.2d 922 and Act 408, Acts of 1984, that re-enacted Section 4-19-10, et seq.)

It is also settled that an appointive body cannot levy taxes. Crow v. McAlpine, 277 S.C. 240, 285 S.E.2d 355. Of further significance is Article X, Section 11 of the Constitution that prohibits the pledge or loan of the credit of the state and its political subdivision for the benefit of any individual, company, association, corporation or any religious or other private education institution except as permitted by Section 3 of Article XI of the Constitution.

Accordingly, any appropriation by the county should be reflected in its budget that is required by Section 4-9-140. This would include all appropriations of county funds.

CONCLUSION:

All appropriations by a county must be reflected in its budget adopted pursuant to Section 4-9-140. A county is without authority to create or designate an independent entity to be a millage agency, such term being construed to

Honorable C. Dennis Aughtry
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JLAJr/jws