

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. 87-778/19

August 27, 1987

SUBJECT: Taxation & Revenue - Homestead Exemption
Qualifications.

SYLLABUS: A person, having failed to obtain a
declaration of disability by the South
Carolina Department of Vocational
Rehabilitation and not having been so
classified by the Department of Health and
Human Services, Social Security
Administration, until January 1, 1987,
does not satisfy the conditions for the
homestead exemption for years prior to the
determination.

TO: Honorable Delorice B. Cox
Marlboro County Auditor

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

QUESTION: On January 1, 1987, the Department of Health and
Human Services, Social Security Administration, classified
an individual to be disabled as of September 1983. It is
alleged that the individual had on previous occasions
visited the county auditor's office to file for the
homestead exemption, however, at that time there existed no
declaration of disability. The application was not taken.
The question is whether the person is entitled to the
exemption for years from 1983 through 1986.

APPLICABLE LAW: Section 12-37-250, South Carolina Code of
Laws, 1976, as amended.

DISCUSSION:

The statute provides an exemption to resident persons that:

" . . . have each reached the age of
sixty-five years on or before December
thirty-first or any person who has been
classified as totally and permanently
disabled by a state or federal agency having

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the function of so classifying persons or any person who is legally blind as defined in Section 43-25-20 preceding the tax years in which the exemption is claimed . . ."
(Emphasis added)

Here the person had not been declared disabled preceding the years for which the exemption may have been sought. The question of disability was under review by the federal agency, however, the statute provided the person with an adequate remedy for an immediate determination. While contesting disability with the Social Security Administration during the period since 1983, the person could have made an application to the Department of Vocational Rehabilitation for a disability declaration. The pertinent language is that:

"Any person claiming to be totally and permanently disabled, but who has not been so classified by one of such agencies, may apply to the state agency of Vocational Rehabilitation. The agency shall make an evaluation of such person using its own standards."

The exemption statute contemplates a declaration that the person is disabled prior to the year for which the exemption is claimed. An exemption cannot be granted when the person fails to meet the conditions therefor. (For cases so holding see 17A, S.C.D., Taxation, Key 204, et seq.)

CONCLUSION:

A person, having failed to obtain a declaration of disability by the South Carolina Department of Vocational Rehabilitation and not having been so classified by the Department of Health and Human Services, Social Security Administration until January 1, 1987, does not satisfy the conditions for the homestead exemption for years prior to the determination.¹

¹ The opinion herein is not in conflict with that issued May 16, 1979, 1979 OAG No. 79-73, p. 96. There an

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individual was in March 1979 declared disabled as of sometime in 1978. He was thus eligible for the exemption in 1979 and the application for 1979 was timely. The opinion is further not in conflict with Opinion No. 4231, 1975-76 OAG, p. 14. There a person who was at that time qualified to receive the exemption applied, and through no fault of the person was prevented from filing the application by the county official. Here the individual was not qualified at the time an attempt to file the application may have been made. The individual did not meet the conditions for the exemption until after the time in which to apply for the exemption had expired.

JALJr/jws