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The State of South Carolina

Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE 803-758-3970

January 22, 1986

The Honorable Joseph T. Petty
Member, House of Representatives
Post Office Box 128
Landrum, South Carolina 29356

Dear Representative Petty:

By your recent letter you have asked that this Office research the situation created by the levy and collection of taxes for the Liberty-Chesnee-Fingerville Water District for several years from residents of the district who desire water service but have not yet received the services. Enclosed were a letter and petition from several of your constituents, asking that tax levies be removed and past taxes refunded. You have inquired as to the legalities of the situation and any possible resolution.

The Liberty-Chesnee-Fingerville Water District was created by Act No. 1120, 1960 Acts and Joint Resolutions, as amended. By Section 10 of Act No. 703 of 1965, the Auditor and Treasurer of Spartanburg County are to levy and collect, respectively, a tax annually on all taxable property within the district sufficient to pay the principal and interest of bonds issued by the District. The language of the statute specifies that the tax is to be levied upon "all taxable property" and does not exclude from taxation property of those persons who do not receive benefits from the District.

Similar situations were addressed in prior opinions of this Office which are enclosed herewith. By Opinion No. 1329, dated June 18, 1962, it was found to be lawful for a town to assess taxes against property where sewage service was available, whether or not the property owner elected to use the service.

As was stated therein,

> [a]ll property not exempt by law, within the limits of a town or township is subject to assessment or taxation by it, and the absence of special benefit to any such property does not prevent taxation for public purposes authorized by law. ...

Likewise, in an opinion dated October 31, 1973, a city levied a charge against all property owners for water services, though most property owners were not utilizing water services. Former Attorney General Dan McLeod stated, "On the bare surface of the question as presented, it appears that the imposition of the charge for water is legal."

The Supreme Court of South Carolina has clearly set forth the basis upon which Attorney General McLeod relied in prior opinions. In Evans v. Beattie, 137 S.C. 496, 135 S.E. 538 (1926), taxpayers attacked a tax imposed uniformly upon all property in a specified district for the purposes of highway construction on the theory that the tax was assessed in proportion to the value of the property rather than according to the proportion of the benefits to be received, since property farther away from the highway would not receive the same benefits as property located closer to the highway. The state Supreme Court rejected this argument, stating that the United States Supreme Court had frequently upheld such taxes against this very argument.

One such case, which was quoted at length in Evans, was Houck v. Little River Drainage District, 239 U.S. 254, 36 S.Ct. 58, 60 L.Ed. 266 (1915). The taxpayers in Houck sought to enjoin imposition of a tax of twenty-five cents per acre for preliminary expenses in establishing a drainage system since none of the property owned by the plaintiffs would be benefitted by the drainage plan; they argued that such was an unconstitutional deprivation of property without due process of law. The United States Supreme Court stated:

> In view of the nature of this enterprise it is obvious that, so far as the Federal Constitution is concerned, the state might have defrayed the entire expense out of the state funds raised by general taxation, or it could have apportioned the burden among

> the counties in which the lands were situated and the improvements were to be made. ... It was equally within the power of the state to create tax districts to meet the authorized outlays. ... And with respect to districts thus formed whether by the legislature directly or in an appropriate proceeding under its authority, the legislature may itself fix the basis of taxation or assessment; that is, it may define the apportionment of the burden, and its action cannot be assailed under the 14th Amendment unless it is palpably arbitrary and a plain abuse. These principles have been established by repeated decisions. [Citations omitted.]
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> The ultimate contention, then, is that the plaintiffs in error cannot be subjected to this preliminary tax of 25 cents an acre because their lands, as they insist, will not be benefitted by the plan of drainage. In authorizing the tax, it is said, the legislature has departed from the principle of benefits, and the tax is asserted to be pro tanto an uncompensated taking of their property for public use. But the power of taxation should not be confused with the power of eminent domain. Each is governed by its own principles. ... When local improvements may be deemed to result in special benefits, a further classification may be made and special assessments imposed accordingly; but even in such case there is no requirement of the Federal Constitution that for every payment there must be an equal benefit. The state in its discretion may lay such assessments in proportion to position, frontage, area, market value, or to benefits estimated by commissioners. ... And, as we have said, unless the exaction is a flagrant abuse, and by reason of its arbitrary character is merely confiscation

> of particular property, it cannot be maintained that the state has exceeded its taxing power. ... [Emphasis added.]

36 S.Ct. at 60-62. In upholding a similar tax according to acreage in another drainage district in Miller & Lux v. Sacramento Drainage District, 256 U.S. 129, 41 S.Ct. 404, 65 L.Ed. 859 (1921), the Supreme Court reiterated that since Houck had been decided,

> the doctrine has been definitely settled that in the absence of flagrant abuse or purely arbitrary action a state may establish drainage districts and tax lands therein for local improvements, and that none of such lands may escape liability solely because they will not receive direct benefits. [Emphasis added.]

41 S.Ct. at 405.

Numerous similar cases are cited with approval by our Supreme Court in Evans for the principle that merely because the property owner will not receive direct benefits, he must still pay the tax unless there has been a flagrant abuse or purely arbitrary action by the legislature. In addition, the South Carolina Supreme Court has upheld assessments of taxes in situations where benefits were not proportional to taxes levied and assessed. See, for example, Bagnall v. Clarendon & Orangeburg Bridge District, 131 S.C. 109, 126 S.E. 644 (1925); Sanders v. Greater Greenville Sewer District, 211 S.C. 141, 44 S.E.2d 185 (1947); Ashmore v. Greater Greenville Sewer District, 211 S.C. 77, 44 S.E.2d 88 (1947); Jackson v. Breeland, 103 S.C. 184, 88 S.E. 128 (1915) (distinguishing taxes from assessments, which may be made proportional to the benefits received); Dillon Catfish Drainage District v. Bank of Dillon, 143 S.C. 178, 141 S.E. 274 (1927) (facts virtually identical to Houck, supra); Floyd v. Parker Water and Sewer Sub-district, 203 S.C. 276, 17 S.E.2d 223 (1941).

Based on the foregoing prior opinions and decisions of the South Carolina and United States Supreme Courts, a special purpose district such as Liberty-Chesnee-Fingerville Water District, as authorized by the General Assembly, has the power to assess, levy, and collect a tax uniformly imposed upon all taxable property located within the district, without regard to benefits

received, absent an abuse of power or purely arbitrary action by the General Assembly, which would be determined only by a court of competent jurisdiction.

While such a practice is legal, absent a finding to the contrary by a court as stated above, a taxpayer may possibly be entitled to relief. Cf., Asmer v. Livingston, 225 S.C. 341, 82 S.E.2d 465 (1954); Elmwood Cemetery Association v. South Carolina Tax Commission, 255 S.C. 457, 179 S.E.2d 609 (1971). The aggrieved taxpayers may wish to consult with their respective attorneys, since these would be private legal matters, to determine the necessary steps to take toward possible relief. This Office does not comment upon the fact situation described in the petition enclosed with your request or upon the likelihood that relief from imposition of the tax would be granted.

We hope that the foregoing has resolved your inquiry as to imposition of the tax. Please let us know if you need clarification or additional assistance.

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

Enclosures

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions