

# The State of South Carolina



## Office of the Attorney General

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June 16, 1986

The Honorable Dick Elliott  
Member, House of Representatives  
Post Office Box 3165  
North Myrtle Beach, South Carolina 29582

Dear Representative Elliott:

Attorney General Medlock has referred your letter of June 5, 1986, to the Opinion Section for response. Referencing a notice of intent to implement fees for public swimming pool facilities by the South Carolina Department of Health and Environmental Control, you have asked whether these fees could be implemented without conflicting with the constitutional prohibition of taxation without representation. Based on the following, we advise that these fees are assessments rather than taxes, and implementation thereof is not within the purview of taxation without representation.

This distinction between taxes and assessments was discussed in Jackson v. Breeland, 103 S.C. 184, 88 S.E. 128 (1915), as follows:

Taxes, in the strict sense of the word, are imposed upon all property, both real and personal, for the maintenance of the government or some division thereof, while assessments are laid only on the property to be benefitted by the proposed improvements [here, operation of public swimming facilities].

Id., 103 S.C. at 190. Because, as the public notice states, the fees are to be imposed only upon public swimming facilities, rather than upon all real and personal property in general, and only those facilities, rather than all property in general, will

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benefit from the services provided by DHEC pursuant to Regulation 61-51, the fees would be assessments rather than taxes.

We would also note that within Regulation 61-51, the assessments in question are specifically referred to as "fees." As noted above, taxes are levied for the purpose of raising revenue, but fees are ordinarily imposed to cover costs and expense of supervision or regulation. Valandra v. Viedt, 259 N.W.2d 510 (S. D. 1977). This definition is consistent with Regulation 61-51 and the notion of an assessment rather than taxation.

Whether these monetary requirements are denominated fees or assessments, clearly such are not taxes. At least one noted authority has concluded that provisions relating to taxes generally are held not to be applicable to special assessments and the like. 14 McQuillin, Municipal Corporations, § 38.01. Thus, there is no problem of taxation without representation in this instance.

We trust that the foregoing has satisfactorily responded to your inquiry. Please let us know if you need additional information or clarification.

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:

*Robert D. Cook*

Robert D. Cook  
Executive Assistant for Opinions