

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. _____

May 27, 1986

SUBJECT: Taxation & Revenue - Office Of The Delinquent
Tax Collector Of Orangeburg County.

SYLLABUS: The office of Delinquent Tax Collector for
Orangeburg County was established by Act 353,
Acts of 1961. The office continues until the
Act is repealed or modified. The governing
body of Orangeburg County may now repeal or
modify the provisions of Act 353, Acts of
1961 and create the office of tax collector,
provided the ordinance is not in conflict
with general laws of this state.

TO: Robert R. Horger, Esquire
Orangeburg County Attorney

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

QUESTION: Does the Orangeburg County Council have
authority to establish the office of Delinquent Tax
Collector and if not, may the same be authorized by local or
general law?

APPLICABLE LAW: Section 3 of Article 7 of Act 283, Acts of
1975, Act 353, Acts of 1961, and Section 4-9-30(6), Code of
Laws of South Carolina, 1976.

DISCUSSION:

The office of the Delinquent Tax Collector for Orangeburg
County was created by Act 353, Acts of 1961. The general
law imposes the duty to collect delinquent taxes upon the
county sheriff. The 1961 Act provided in part that:

"All powers and duties now vested in the
Sheriff of Orangeburg County in the
collection of delinquent taxes, the
sales of property for taxes and the
putting in possession of purchasers of
such properties are hereby devolved upon
the delinquent tax collector."

The 1975 Act (Home Rule) provided in part that:

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"All operations, agencies and offices of county government, appropriations and laws related thereto in effect on the date the change in form becomes effective shall remain in full force and effect until otherwise implemented by ordinance of the council pursuant to this act. Provided, however, that county councils shall not enact ordinances in conflict with existing law relating to their respective counties and all such laws shall remain in full force and effect until repealed by the General Assembly, or until January 1, 1980, whatever time is sooner."

The office of the delinquent tax collector would thus continue until the special act was modified or repealed. Prior to the repeal of § 12-49-410, et seq. and in the event of the repeal of the 1961 Act, the duty to collect tax executions would have reverted to the county sheriff. The repeal of the general law under which the sheriff was the collector of tax executions, however, affords authority to the county governing body to now provide for the collector.

Section 4-9-30(6) confers the authority upon the county governing body:

"... to establish such agencies, departments, boards, commissions and positions in the county as may be necessary and ... to prescribe the functions thereof"

This power, however, is subject to the general laws of this state, § 4-9-30, Roton v. Sparks, 270 S.C. 637, 244 S.E.2d 214. It therefore appears that the governing body of the county could now create the office or designate the person to collect tax executions provided the ordinance does not conflict with the general law.¹

¹In example the procedure to collect the taxes is prescribed by general law, Chapter 51 of Title 12. See Article VIII, § 7 of the South Carolina Constitution for the limitations.

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CONCLUSION:

The office of Delinquent Tax Collector for Orangeburg County was established by Act 353, Acts of 1961. The office continues until the Act is repealed or modified. The governing body of Orangeburg County may now repeal or modify the provisions of Act 353, Acts of 1961 and create the office of tax collector, provided the ordinance is not in conflict with general laws of this state.

JLAJR/jws