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THE STATE OF SOUTH CAROLINA

OFFICE OF THE ATTORNEY GENERAL

COLUMBIA

OPINION NO. 86-112 p 325 November 13, 1986

SUBJECT: Taxation and Revenue - County Road Tax

SYLLABUS: Following the settled rule that the constitutionality of a statute is presumed, it is the opinion of this office that Clarendon County has the statutory authority to levy and collect the road tax provided for by Section 57-19-10.

TO: W. C. Coffey, Jr., Esquire
City Attorney of Manning

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

QUESTION: Section 57-19-10 authorizes a county to levy upon the taxable property within the county a tax that does not exceed one mill. The tax so collected is to constitute a part of the county road fund. The tax is to be expended in the same manner as the commutations tax. Section 57-19-220 provides that the commutations road tax is to be kept separate and apart from general county funds and exclusively applied to repairing the highway and bridges of the county. The section further provides that a county may use any balance on hand on January first of each year for other county purposes. You advise that none of the revenue is to be used to repair roads within the city limits of Manning. You ask of the legality of the tax.

APPLICABLE LAW: Sections 57-19-10 and 57-19-220, South Carolina Code of Laws, 1976.

DISCUSSION:

In considering the question, some settled rules are applicable. The constitutionality of the statute is presumed.

> ". . . And our decisions uniformly hold that every Act is presumed to be constitutional until the contrary is made

> plainly to appear, and that all doubts on the subject are to be resolved in favor of its validity. . . ." Floyd v. Parker Water & Sewer Sub-District, 203 S.C. 276, 17 S.E.2d. 223.

In Parker v. Bates, 216 S.C. 52, 56 S.E.2d 723, our Court held that:

> "Equality of the burden of taxation is, we agree, a fundamental requirement of the Constitution. Art. X. And further we recognize the existence of the principle that the rule of equality and uniformity may be violated by a discriminatory method of distribution of the proceeds of taxation. . . ."

It is necessary, however, to note that exact equality and uniformity are not attainable. In Newton v. Hanlon, 248 S.C. 251, 149 S.E.2d 606, the Court stated that:

> ". . . But there never has been and probably never can be a perfectly equitable distribution of the tax burden; and statutes or regulations for the apportionment of assessments for local improvements are not to be stricken down merely because they fail to attain the unattainable. All that is required of them by constitutional law is that they apportion the burden of assessments with approximate equality, upon a reasonable basis of classification, and with due regard to the benefits to the individual property owners and the requirements of the public health, safety or welfare. . . . "

An example of the above is the requirement to pay taxes for the operation of schools, not withstanding that the property owner may not have any children in school. Such persons benefit by the education afforded to others. Another is that all persons within a town are required to pay a tax for sewage services even though some may not have the same.

Additionally, it is not double taxation for the county to impose the tax and the city to impose a like tax for maintenance of the municipal streets. See 71 Am.Jur.2d, State and Local Taxation, Section 35; 84 C.J.S., Taxation, Section 43; 2 A.L.R. 746 and 123 A.L.R. 1462. The following is quoted from 2 A.L.R. 751:

> "In Shoshone Highway Dist. v. Anderson (Idaho) supra, the rule was stated as follows: 'Where . . . the legislature of the state, exercising its power over the subject of taxation, passes an act which provides for the creation of a municipality such as a highway district, and authorizes such district to tax the property of said district for the purpose of raising funds for the construction and maintenance of highways within such district, and such district organizes as such, and includes an incorporated city, town, or village, which city, town, or village has, by reason of its incorporation as such, power also to levy a tax within such city, town, or village, the taxation made by the highway district under the authority of the legislature is not a double taxation upon the property within the city, town, or village. The construction of highways leading to a city, town, or village from a country district is not only a benefit to the country outside of such city, town, or village, but is a like benefit to such city, town, or village, and such taxation, being one based upon benefits, is not prohibited by any constitutional provision.'"

CONCLUSION:

Based upon the above and following the settled rule that the constitutionality of a statute is presumed, it is the

opinion of this office that Clarendon County has the statutory authority to levy and collect the road tax provided for by Section 57-19-10.[1]

JLAJr:wcg

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[1]Should the Town wish to contest the constitutionality of the statute, your attention is directed to the cases of Richland County Recreation District v. City of Columbia, 348 S.E.2d 363 (1986) and Hibernian Society v. Thomas, 282 S.C. 465, 319 S.E.2d 339. In Hibernian, the Court stated:

> "The power to 'sue and be sued' given to almost all political subdivisions does not extend to a challenge of acts of the creator of those subdivisions."