

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. *87-41 pg 123*

April 29, 1987

SUBJECT: Taxation and Revenue - Disbursements of proceeds of tax sale to various taxing entities.

SYLLABUS: The Treasurer of Chester County should disburse from the proceeds of the sale of property for nonpayment of taxes the amounts due therefrom to the respective entities that levied the tax.

TO: Honorable Paul E. Short, Jr.
Member, House of Representatives

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

QUESTION: Should the Treasurer of Chester County disburse to the various entities that levy a tax on property situate therein that part of the proceeds from the sale of the property for nonpayment of the taxes?

APPLICABLE LAW: Article X, §§ 5 and 6, of the South Carolina Constitution; § 12-51-80 of the South Carolina Code of Laws, 1976, As Amended; Act 307, Acts of 1949 and Act 1779, Acts of 1972.

DISCUSSION:

Specific reference is made to the Three Mile Fire District and to the school district within Chester County. The Three Mile Fire District presumably is that district created by Act 1779, Acts of 1972, that comprises an area within a three mile radius of the center of the County of Chester. It is further assumed that the tax levied by the district is not a county tax as the term is understood. Owen Industrial Products, Inc. v. Sharpe, 274 S.C. 193, 262 S.E.2d 33 and Michelin Tire Corp. v. Spartanburg County Treasurer, 281 S.C. 31, 314 S.E.2d 8. See also § 4-9-80.

The taxes levied by the various school districts are likewise not county taxes. The school districts and the county are separate and distinct entities.

"The county and the consolidated school district are separate and distinct

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corporate entities of coincidental and coextensive areas." Tindall v. Byars, 217 S.C. 1, 59 S.E.2d 337. See also § 4-9-70.

The taxes levied for Chester County, the Fire District and the school district are therefore separate and distinct levies. By Act 307, Acts of 1949, the Treasurer of Chester County was directed to place all funds from the sale of property for nonpayment of taxes in the Chester County Contingent Fund. The inquiry is whether this now applies by reason of Act 166, Acts of 1985, The Uniform Tax Collection Act. That Act provided in part that:

"The General Assembly finds that the procedure used to collect property taxes varies among counties. Different due dates, different penalties, and other variances exist that should be made uniform. The intent and purpose of this Act is to provide a procedure to be used exclusively for the collection of property taxes by counties." (See footnote § 12-51-40.)

The provisions of the 1985 Act are thus controlling. The General Assembly by clear language has directed that the Act be the exclusive procedure for the collection of taxes. The Act directs the County Treasurers to disburse the proceeds of the sale of property to the "respective political subdivisions for which the taxes were levied". See § 12-51-80.

The Chester County Treasurer must therefore disburse the proceeds of the sale of the property to the extent that the tax, penalties or interest may apply to the respective entities that levied the tax.

Further support for this conclusion is found in Article X, §§ 5 and 6 of our Constitution. Section 5 requires that the tax levy state the public purpose for which the same is to be expended. Section 6 is that the levy and assessment be equal and uniform within the entity levying the same. A tax levied for one entity cannot be diverted to another entity.

"It is a sound principle of taxation which prescribes that the benefits of taxation should be directly received by those directly concerned in bearing the

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burdens of taxation, so that a legislature cannot divert taxes raised by one taxing district to the sole use and benefit of another district; and, in general, state, county, and district tax moneys must be expended respectively for state, county, and district purposes, except in so far as the constitution may provide for an exception to that rule.
* * *." 85 C.J.S., Taxation, § 1057

CONCLUSION:

The Treasurer of Chester County should disburse from the proceeds of the sale of property for nonpayment of taxes the amounts due therefrom to the respective entities that levied the tax.

JLAJr:wcg