

✓  
As stated in Opinion No. 84-46 relative to an election of officers by a public body which occurred in executive session,

[a]ccording to the provisions of Section 30-4-70(a)(5) an election held in executive session would not be effective until such action has been ratified in public session. This would be in keeping with the general law that only those matters considered openly, on the record, would be valid, absent statutory authority to the contrary. *See*, 73 C.J.S., *Public Administrative Law and Procedure*, § 17.

To "ratify" is to recognize or confirm "that which has been done without authority, or done insufficiently." *Davies v. Lahann*, 145 F.2d 656, 659 (10th Cir. 1944). In *Op. Atty. Gen. No. 77-279*, . . . , this Office concluded that "[s]uch ratification should come through a motion to confirm the action taken in executive session . . . ." Of course, upon such motion, the matter should also be voted upon in public session in the manner described above. *See*, Section 30-4-70(a)(5).

We believe the better practice, and one more in keeping with the spirit and intent of the Freedom of Information Act, is to ratify, in public, action taken in executive session immediately upon return to public session . . .

The same statute and principles would apply to the hypothetical situation. Any formal action taken during an executive session would not be valid or effective until such action is ratified in a public session.

OPINION NO. 85-117

October 16, 1985

**Where property is listed on the tax duplicate and the tax paid thereon, a subsequent and innocent purchaser cannot be charged with the tax on additions of omitted improvements. The tax due on the omitted improvements is the liability of the owner of the property on the tax date for each year of omission.**

TO: Florence County Auditor  
Florence County Treasurer

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

**QUESTION:** A three acre tract and two buildings were listed on the tax rolls for 1984. Notice of the taxes thereon was issued sometime late in 1984 and paid in November 1984. The two buildings had not been included on the duplicate, however, for the tax years 1982 and 1983. The buildings were thereafter added to the current tax duplicate for those years. The property had been sold on January 18, 1984 to an innocent

purchaser for value. Is the purchaser liable for the taxes on the omitted improvements?

#### DISCUSSION:

Section 12-39-220 provides that real property omitted from the tax duplicate in prior tax years is to be added to the current year's duplicate. The owner of the property on the tax date for each year is liable for payment of the taxes that may be due. See § 12-37-900, *Atkinson Dredging Co. v. Thomas*, 266 S.C. 361, 223 S.E.2d 592. Additionally, there is a lien upon the property to secure the payment of the taxes, § 12-49-10. When the property is sold to an innocent purchaser, the lien does not, however, follow the property. Here, the title had been checked and the public records reflected that the taxes were paid on the property for the 1982 and 1983 tax years and that no others were due and payable. In a related matter, our court held in *Arrow Automotive Industries, Inc. v. Brady*, 280 S.C. 79, 310 S.E.2d 661 that:

“... a reassessment of property pursuant to S.C. Code Ann. § 12-3-140(22) is ineffective as to subsequent purchasers of the property unless the assessment is certified to the county auditor prior to the conveyance.

‘... Any other rule would make title searching hazardous. A title searcher must live by the record.’

Our ruling does not foreclose the right of the county to pursue the collection of the tax item from appellant's grantor.”

In that case, the Tax Commission had certified an additional assessment upon the property for years prior to the sale of the property. The court held that the tax was not the liability of the innocent purchaser and that there was no lien upon the property for such taxes. This factually is what transpired with the property here involved. The purchaser is not liable for the tax and there is no lien on the property to secure its payment. The collection must be made from the owner of the property on December 31, 1981, and December 31, 1982.<sup>1</sup>

#### CONCLUSION:

Where property is listed on the tax duplicate and the tax paid thereon, a subsequent and innocent purchaser cannot be charged with the tax on additions of omitted improvements. The tax due on the omitted improvement is the liability of the owner of the property on the tax date for each year of omission.

<sup>1</sup> The opinion does not treat those circumstances when all of the property was omitted. The purchaser, upon a check, should be able to ascertain this fact and be charged with knowledge that a tax is due. Under such circumstances, the purchaser would probably acquire the property with knowledge and the unpaid taxes of the lien of the property.