

1830 *February*

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. _____

September 13, 1985

SUBJECT: Taxation & Revenue - Taxation Of Motor Vehicles By A Municipality.

SYLLABUS I: A city must use the millage rate prescribed by State law for the taxation of motor vehicles.

SYLLABUS II: Section 12-37-2640 is presumed constitutional unless and until declared otherwise by a court of competent jurisdiction.

SYLLABUS III: A city may not provide for a millage rate upon motor vehicles that differs from that provided by state law.

TO: Mr. Emil W. Wald *EW*
Attorney for City of Rock Hill

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

QUESTION I: Does § 12-37-2640 prevent the Rock Hill City council from reducing the millage applicable to automobiles collected during 1986 from 102 mills to 68 mills?

QUESTION II: Does § 12-37-2640 contravene South Carolina Constitution Article X, § 5 [1] which requires uniformity with respect to taxation on property?

QUESTION III: If the Statute requires the imposition of 1985 tax millage to auto taxes collected in 1986 and if the Statute does not violate Article X, § 5 [1], may City Council by virtue of its broad home rule powers nevertheless set 1986 auto taxes at the new lower rate applicable to all other property?

APPLICABLE LAW: Article X, Section 6, South Carolina Constitution, §§ 4-9-30, 12-37-2610 and 12-37-2640, South Carolina Code of Laws, 1976.

DISCUSSION:

QUESTION I: The South Constitution, in Article X vests the exclusive power of taxation within the General Assembly,

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Carroll v. York, 109 S.C. 1, 95 S.E.2d 121. The General Assembly may delegate or vest that power in its political subdivisions, Article X, § 6. The power of a city to levy and collect a property tax is conferred by § 5-7-30 and must not be:

"inconsistent with the Constitution and general law of this State ...".

The authority of the city to tax motor vehicles and the rate thereof is prescribed by State law. The city's ordinance for the tax must be consistent with the state statute and not in conflict with the same. Section 12-37-2640 sets forth the millage rate and that is the millage the city must use.

CONCLUSION:

A city must use the millage rate prescribed by state law for the taxation of motor vehicles.

QUESTION II: The constitutional provision here considered is Article X, § 6. That part involved in this question is that:

"Property tax levies shall be uniform in respect to persons and property within the jurisdiction of the body imposing such taxes ..."

It is doubtful that the city may raise the issue of the constitutionality of the statute. Hibernian Society v. Thomas, 319 S.E. 2d 339 (1984 Ct. of Appeals). Nonetheless, settled rules of construction are here controlling. There is a presumption of constitutionality and any reasonable construction for constitutionality will be made. For cases so holding, see 6 S.C.D., Constitutional Law, Key 48, et seq.

It should be noted that counties have a fiscal year of July 1 through June 30. Section 4-9-140. Cities and towns may have different fiscal and budget years. It is understood that the City of Rock Hill's year is January 1 through December 31. A tax year has, however, had a fairly uniform meaning in this state and is from January 1 through December 31. The tax year for motor vehicles however:

"begins with the last day of the month in which a license required by Section 56-3-110 is issued and ends on the last day of the month in which the license

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expires or is due to expire." Section
12-37-2610.

The tax year for motor vehicles is thus different from the tax year for other property. The millage rate for taxing entities with a fiscal year other than a calendar year would in most cases differ during a calendar tax year. In order to secure equality and uniformity for motor vehicles, the General Assembly thus provided that vehicles with tax years from January through December would be taxed upon the preceding year's millage that was applied to other property. It should be noted that in the absence of the provision, the same millage rate would not apply to vehicles licensed from January through June and those licensed from July through December. It is a generally accepted fact that the millage of most taxing entities in the State changes from fiscal year to fiscal year. The settled rule is that the statute is presumed constitutional unless ordered otherwise by a court of competent jurisdiction.

CONCLUSION:

Section 12-37-2640 is presumed constitutional unless and until declared otherwise by a court of competent jurisdiction.

QUESTION III: See Question I for discussion.

CONCLUSION:

A city may not provide for a millage rate upon motor vehicles that differs from that provided by state law.

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