

1981 S.C. Op. Atty. Gen. 14 (S.C.A.G.), 1981 S.C. Op. Atty. Gen. No. 81-7, 1981 WL 96534

Office of the Attorney General

State of South Carolina

Opinion No. 81-7

January 27, 1981

***1 SUBJECT: Taxation—Authority of County to Impose Fee for Dishonored Check**

The governing body of Greenville County is without authority to impose a penalty or fee when a check submitted to pay a tax is returned unpaid.

TO: Joseph H. Earle, Jr., Esq.
Greenville County Attorney

QUESTION:

May the governing body of Greenville County impose a fee or penalty when payment is tendered by check that is not honored?

APPLICABLE LAW:

[§§ 12–45–90](#) and [34–11–60](#), 1976 Code of Laws

DISCUSSION:

[Section 12–45–90](#) provides in part that:

‘Taxes shall be payable in the following kinds of funds and no other: Silver coin, United States currency, United States postal money orders and checks subject to collection. * * *.’

The tax is thus not paid until the check is paid.

‘When a taxpayer uses a check in the payment of taxes, he constitutes the treasurer his agent in the handling of the check, and the law does not regard the taxes as paid until the check is paid, even though a receipt in full for the taxes has been issued.’

[American Surety Co. v. Mills](#), 191 S.C. 362, 4 S.E.2d 308.

It is doubtful that the provisions of [§ 34–11–60\(a\)](#) are applicable because of the above provisions.

The powers of the county governing body are those provided by the General Assembly, Article VIII, Section 7. We do not find any authority conferred by the General Assembly that permits the imposition of a penalty or fee because the check is not paid. The authority to tax rests with the General Assembly and thus the power of the county to collect the tax is governed by general law.

CONCLUSION:

The governing body of Greenville County is without authority to impose a penalty or fee when a check submitted to pay a tax is returned unpaid.

Joe L. Allen, Jr.
Deputy Attorney General

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