

1982 S.C. Op. Atty. Gen. 24 (S.C.A.G.), 1982 S.C. Op. Atty. Gen. No. 82-19, 1982 WL 154989

Office of the Attorney General

State of South Carolina

Opinion No. 82-19

March 18, 1982

***1 SUBJECT: Taxation, Municipal Ordinance, License Tax**

Municipalities have been granted the specific authority to levy business license on gross income pursuant to § 5-7-30. However, a municipal license tax ordinance would be invalid in part, if it is construed to levy a license tax upon wholesalers who neither maintained a warehouse or mercantile business within the Town.

TO: Honorable William W. Doar, Jr.
Senator
Georgetown and Charleston Counties

QUESTION:

Is Section 16 of the Ordinances of the Town of Kingstree constitutional?

STATUTE:

[Section 5-7-30 of the South Carolina Code](#) of Laws, (1976).

DISCUSSION:

Municipalities have only powers expressly granted by the Legislature or necessarily implied from those so granted, [Blake v. Walker](#), 23 S. C. 515. [Section 5-7-30](#) gives municipal corporations specific powers. The exercise of these powers is subject, however, to limitations, [McCoy v. York](#), 193 S. C. 390, 8 S. E. 2d 905.

[Section 5-7-30](#) reads in pertinent part:

‘All municipalities of the State shall, in addition to the powers conferred to their specific form of government, have authority to enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of such powers in relation to roads, streets, markets, law enforcement, health and order in such municipalities or respecting any subject as shall appear to them necessary and proper for the security, general welfare and convenience of such municipalities or for preserving health, peace, order and good government therein, including the authority to levy and collect taxes on real and personal property and as otherwise authorized herein, make assessments and establish uniform service charges relating thereto; the authority to abate nuisances; grant franchises for the use of public streets and make charges therefor; engage in the recreation function; levy a business license tax on gross income, provided, however, that a wholesaler delivering goods to retailers in any municipality shall not be subject to the business license tax unless he maintains within the corporate limits of the municipality a mercantile establishment for the distribution of wholesale goods or a warehouse; * * *.’

These powers must be exercised in strict conformity with the terms of the grant, and cannot be enlarged or extended by construction or intendment beyond the clear import of the language employed in the Section, [White v. Rock Hill](#), 34 S. C. 242, 13 S. E. 416.

Pursuant to § 5-7-30, § 16 of the Ordinances of the Town of Kingstree was enacted, which provides:

‘Where any person, firm or corporation conducting a business beyond the limits of the Town of Kingstree makes deliveries to or for purchasers within the Town and for using the streets of the Town in delivering such goods and merchandise within the Town limits, shall be charged for business done within the Town a license as is charged for the conduct of the same business were it is located inside the Town.’

*2 If this ordinance is construed to impose a license tax on a wholesaler delivering goods to retailers in Kingstree, regardless of whether or not such wholesaler maintained a warehouse or mercantile establishment within the Town's corporate limits, the ordinance would be invalid as to such, since the tax would be in direct contravention of § 5-7-30 which specifically sets forth a criteria for taxing wholesalers. Hence, for the ordinance to be constitutional as to wholesalers, it cannot be held to impose a license tax on wholesalers who neither have a mercantile establishment nor warehouse within the corporate limits of Kingstree.

As to a municipality being able to levy a business license tax on retailers who have no business location within the Town, see 1976-1977 OAG, No. 77-296, p. 225. The opinion provides that even though the retailer has no location within the Town, it can be subjected to a business license tax for that business conducted within the Town. Attached for your benefit is a copy of Opinion No. 77-296.

CONCLUSION:

Municipalities have been granted the specific authority to levy business license on gross income pursuant to § 5-7-30. However, a municipal license tax ordinance would be invalid in part, if it is construed to levy a license tax upon wholesalers who neither maintained a warehouse or mercantile business within the Town.

Harry T. Cooper, Jr.
Assistant Attorney General

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