

1981 S.C. Op. Atty. Gen. 57 (S.C.A.G.), 1981 S.C. Op. Atty. Gen. No. 81-36, 1981 WL 96562

Office of the Attorney General

State of South Carolina

Opinion No. 81-36

April 13, 1981

***1 SUBJECT: Property Tax—When Municipal Tax Payable and Authority to Levy a Penalty for Late Payment**

(1) A city has authority to collect property taxes at the beginning of its fiscal year.

(2) A city may impose a penalty for late payment of property taxes provided the same does not exceed two hundred dollars (\$200.00).

TO: Honorable Michael S. Gullledge
Member
House of Representatives
District No. 11—Abbeville County

QUESTIONS:

Property taxes due the City of Abbeville are payable at the beginning of the City's fiscal year in November. A fee or penalty of seven percent (7%) is levied for late payment. The questions are whether the payment of the tax in November and the levy of the penalty are proper.

APPLICABLE LAW:

[§§ 5–7–10, 5–7–30, 12–45–70, 12–51–10, et seq., Code of Laws of South Carolina, 1976; Article X, §§ 4 and 7 of the South Carolina Constitution.](#)

DISCUSSION:

The law applicable to both questions is unclear. Doubt thus exists concerning the opinion and legislative or judicial action is needed to remove the doubt. We conclude, however, that both actions are proper.

The City's fiscal year begins November 1st and the tax collected is that to fund the revenue needs for that fiscal year. There can be but one assessment of property for ad valorem taxation. [Article X, § 4 of the Constitution](#) provides:

‘The General Assembly shall provide for the assessment of all property for taxation, whether for state, county, school, municipal or any other political subdivision. All taxes shall be levied on that assessment.’

The tax assessments used are therefore those reflected upon the duplicate prepared by the county auditor's office pursuant to § 12–39–150. That duplicate is prepared on or before September 30th of each year.

A municipality is required by [Article X, § 7\(b\)](#) to ‘prepare and maintain annual budgets which provide for income sufficient to meet its estimated expenses for each year’. It is thus necessary for the City to adopt a budget prior to the beginning of the fiscal year and to provide for the necessary tax levy.

[Section 5–7–30 of the 1976 Code](#) grants authority to a municipality to enact ordinances not inconsistent with the Constitution and general law regarding:

‘* * * any subject as shall appear to them necessary and proper for the security, general welfare and convenience of municipalities * * *, including the authority to levy and collect taxes on real and personal property * * *.’

[Section 5–7–10](#) requires that such powers be liberally construed.

The only statutory provision relative to time payment for taxes is that found in § 12–34–70. It provides in part that:

‘All taxes shall be due and payable between the fifteenth day of September and the thirty-first day of December after their assessment in each year.’

A municipality, prior to the Home Rule Act, was specifically given authority to collect taxes by its fiscal year (see § 47–259 of the 1962 Code). This provision, however, was repealed by the 1975 act, Act 283.

*2 It is doubtful that [§ 12–45–70](#) here controls to fix the time period in which the City’s tax is payable. Taxes collected between November 1st and December 31st should be applied to the budget needs of the City for the fiscal year that began on November 1st of the same calendar year. Those taxes should not be used to fund budget needs for the preceding fiscal year in that the provisions of [Article X, § 7](#) would not have been satisfied.

Following the legislative mandate that the powers of a municipality be liberally construed, it is the opinion of this office that a city has authority to collect property taxes at the beginning of its fiscal year.

The statutes that provided for penalties for late payment of municipal taxes were also repealed by Act 283, Acts of 1975. Presently the only state law that is applicable is that found in Chapter 51 of Title 12. It is an alternate procedure for the collection of delinquent taxes and provides specific penalties for late payment. A municipality may by ordinance adopt this procedure.

[Section 5–7–30](#), however, authorizes a municipality to:

‘* * * fix fines and penalties for the violation of municipal ordinances and regulations not exceeding two hundred dollars or imprisonment not exceeding thirty days.’

It is necessary that taxes be levied by ordinance by § 5–7–260. The authority to levy a penalty may be delegated. It has been held that the delegation of the power to levy and collect a tax includes the power to levy a penalty. 84 C.J.S., [Taxation](#), citing [In Re Curtis Estate, 335 Pa. 414, 6 A.2d 283](#).

We do not know whether the seven percent (7%) penalty would exceed the two hundred dollar (\$200.00) limitation imposed by [§ 5–7–30](#) for any property owner within the city. We assume for purposes of this opinion that it does not.

We again apply the legislative mandate of liberal construction of the powers of a municipality as delegated by [§ 5–7–30](#). Under such, it is the opinion of this office that the City may impose a penalty for late payment of property taxes provided the same does not exceed two hundred dollars (\$200.00).

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