

1981 S.C. Op. Atty. Gen. 68 (S.C.A.G.), 1981 S.C. Op. Atty. Gen. No. 81-45, 1981 WL 96571

Office of the Attorney General

State of South Carolina

Opinion No. 81-45

May 5, 1981

**\*1 SUBJECT: Property Tax—Exemption—Manufacturers Making Replacements.**

A statute which exempts from county and municipal ad valorem taxes all machinery and equipment of manufacturers that replace machinery or equipment which is obsolete, worn or otherwise economically impracticable of operation is constitutional when enacted by a two-thirds vote of both houses.

TO: Honorable Horace C. Smith

Senator

Spartanburg County

**QUESTION:**

Would a statute, if enacted by a two-thirds vote of both houses, be constitutional if it granted an exemption from county and municipal ad valorem taxes for a five-year period on all machinery and equipment of manufacturers of the value of \$50,000 or more, where such items replace machinery or equipment that is obsolete, worn or otherwise economically impracticable of operation?

**APPLICABLE LAW:**

[Article X, Section 3 of the South Carolina Constitution.](#)

**DISCUSSION:**

It is well settled in South Carolina that the General Assembly is vested with the supreme legislative power unless limited by the State or Federal Constitutions.

‘The supreme legislative power of the State is vested in the General Assembly; the provisions of our State Constitution are not a grant but a limitation of legislative power, so that the General Assembly may enact any law not expressly, or by clear implication, prohibited by the State or Federal Constitutions.’ [Parker v. Bates](#), 206 S. C. 52, 56 S. E. 2d 723.

In determining the power of the General Assembly to exempt property, our Supreme Court in [Chester County v. White](#), 70 S. C. 433, 50 S. E. 28, stated the following:

‘\* \* \* whenever the right of the legislature to exempt property from taxation is disputed, the question is, whether such exemption is expressly or impliedly forbidden by the Constitution.’

Thus, the question requires a determination of whether the exemption for replacing machinery or equipment is prohibited by explicit or implied language of the Constitution. It is the opinion of this office that the Constitution provides no prohibition for the exemption under consideration.

Article X, Section 3 provides in part as follows:

‘In addition to the exemptions listed in the section, the General Assembly may provide for exemptions from the property tax, by general laws applicable uniformly to property throughout the State and in all political subdivisions, but only with the approval of two-thirds of the members of each House.’

This language limits the General Assembly to providing exemptions which are ‘in addition to the exemptions listed in [Section 3].’ The exemption for replacing machinery and equipment is not an exemption already addressed in Section 3 and thus is in addition to the exemptions listed in Section 3.

Article X, Section 3(g) does not prohibit the exemption under consideration since Section 3(g) deals with additions to existing plants and establishment of new plants and specifically says, ‘such additions shall include additional machinery and equipment installed \* \* \*.’ The exemption under consideration deals with replacement and not with additions. Replacement means the act of replacing something, and to replace means to place again or to restore to a former condition. See Words and Phrases, ‘Replace; Replacement’, Volume 37. Additional means something that is added to or put onto a thing already in existence. See Words and Phrases, ‘Additional’, Volume 2. This distinction is consistent with this office's position as established in 1966–1967 OAG No. 2234, page 35, concerning the rebuilding of a manufacturing enterprise not being within the definition of an addition. Since additional equipment is different from replacement equipment, the General Assembly may enact the legislation under consideration as such an exemption is in addition to exemptions listed in Section 3 and thus is within the power of the General Assembly to enact.

#### CONCLUSION:

\*2 A statute which exempts from county and municipal ad valorem taxes all machinery and equipment of manufacturers that replace machinery or equipment which is obsolete, worn or otherwise economically impracticable of operation is constitutional when enacted by a two-thirds vote of both houses.

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