

1982 S.C. Op. Atty. Gen. 60 (S.C.A.G.), 1982 S.C. Op. Atty. Gen. No. 82-56, 1982 WL 155025

Office of the Attorney General

State of South Carolina

Opinion No. 82-56

August 18, 1982

***1 SUBJECT: Taxation—County License Tax**

A county, under the authority conferred upon it by § 4–9–30(12), may impose a license tax upon a municipality which owns a water system extending into unincorporated areas of the county.

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

QUESTION:

May a county, under the authority conferred upon it by § 4–9–30(12), levy a license tax upon a municipality which owns a water system extending into unincorporated areas of the county?

STATUTES:

§§ 4–9–30(12) and 58–3–10, et seq., [South Carolina Code](#) of Laws, 1976.

DISCUSSION:

County governments have been granted the power to levy a license tax pursuant to § 4–9–30(12), which provides in part that the county may:

‘* * * levy uniform license taxes upon persons and businesses engaged in or intending to engage in any business, occupation or profession, in whole or in part, within the county but outside the corporate limits of any municipality except those * * * persons and businesses acting in the capacity of telephone, telegraph, gas and electric utilities, suppliers or any other utility regulated by the Public Service Commission * * * provided, however, if the person or business taxed pays a license tax to another county or to a municipality, the gross income for the purpose of computing the tax shall be reduced by the amount of gross income taxed in the other county or municipality; * * *.’

The term business has been defined by the [American Heritage Dictionary](#), p. 180 (New College Edition, 1978) as follows: ‘[C]ommercial, industrial, or professional dealings; the buying and selling of commodities or services.’

Thus, the operation of a water system would necessarily appear by definition to constitute engaging in business and thus within the activity subject to a license tax under this section. Additionally, such an operation would not be regulated by the Public Service Commission. (See § 58–3–10, et seq.)

[Section 4–9–30](#) further provides that the authority granted thereunder is to be construed ‘within the authority granted by the Constitution and subject to the general law of this State’. [Section 3 of Article X of the State Constitution](#) exempts property of municipalities from ad valorem taxation. In [City of Greenville v. Query](#), 166 S.C. 281, 164 S.E. 844, 845 (1930), the court stated:

‘A study of article 10 of our Constitution, entitled ‘Finance and Taxation,’ convinces us that the framers of that instrument in this article were dealing solely with ad valorem taxes on property. * * *.’ (Cites omitted)

The court went on to state that:

‘In South Carolina, taxes generally may be grouped into two classes; ad valorem taxes on property and taxes on privileges, excises, licenses, franchises, and other classifications of like kind.’

Thus, in City of Greenville, supra, where gasoline was imported into the State and stored by a municipality for use solely for municipal purposes, a tax imposed upon the storage of such gasoline was held not to be in violation of Article X of the state Constitution. The court reasoned Article X exempted from taxation all property of municipalities used exclusively for public purposes. The tax in question was not upon property, but was an excise tax.

*2 This decision is in conformity with the general rules espoused by other jurisdictions and summarized at [159 A.L.R. 358, 366](#), which states:

‘* * * generally it is assumed, in the absence of expression of clear intent to the contrary in the taxing statutes, that property of municipal corporations and other subdivisions of the state is exempt from property taxes, such exemption does not, according to many courts, exist with reference to excise and privilege taxes, and as to such taxes municipal corporations are liable unless there is an express exemption in the tax statute. Moreover, when there is an express constitutional or statutory provision for the exemption of municipal corporations from taxation such provision will be construed to apply only to ad valorem taxes on specific property, and not exempt such bodies from license and excise taxes. * * *.’

Although there are a minority of jurisdictions that do not follow this rule, South Carolina does not appear to be one given the case of City of Greenville v. Query, supra.

Article X of the Constitution has been amended since the City of Greenville decision. But, the specific exemption afforded municipalities has not been extended beyond ad valorem taxes on property. Therefore, the question becomes whether the license tax levied at [§ 4-9-30\(12\)](#) is a property tax or an excise tax.

In Arthur v. Johnston, 185 S.C. 324, 194 S.E. 151, 153, the court noted the term ‘ad valorem tax’ is as well defined and fixed as any other used in political economy or legislation, and simply means ‘a tax or duty upon the value of the article or thing subject to taxation’. Whereas, a license tax was defined in Hay v. Leonard, 212 S.C. 81, 46 S.E.2d 653, not to be a tax on property itself, but to be on a privilege. The tax imposed at [§ 4-9-30\(12\)](#), thus is not a property tax but an excise tax on a privilege, and thus not within the exemption afforded municipalities by [§ 3 of Article X of the State Constitution](#).

Note, however, a tax statute must operate alike on all persons and property similarly situated or circumstanced, F. S. Royster Bueno Co. v. Virginia, 253 U.S. 412, 64 L.Ed. 989, 40 S.Ct. 560. Thus, the mere administration of such a statute can be deemed to cause a denial of equal protection, Thurston County v. Teniho Stone Quarries, 44 Wash. 351, 87 P. 634. Hence, once a county imposes a tax on a municipality pursuant to [§ 4-9-30\(12\)](#), equal protection would require that all persons and businesses similarly circumstanced also be taxed.

CONCLUSION:

A county, under the authority conferred upon it by [§ 4-9-30\(12\)](#), may impose a license tax upon a municipality which owns a water system extending into unincorporated areas of the county.

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