1980 WL 121166 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
April 14, 1980

***1** Honorable T. Moffatt Burriss
Member
House of Representatives
519-D Blatt Building
Columbia, South Carolina 29211

Dear Representative Burris:
You have requested an opinion from this Office as to whether or not a South Carolina municipality is authorized to levy a business license tax upon real estate agencies whose only business within the corporate limits consists of advertising and showing real property located therein and upon contractors whose only contracting business within the corporate limits consists of a 'one-shot' contract.

Section 5-7-30, CODE OF LAWS OF SOUTH CAROLINA, 1976, as amended, empowers a municipality to:
. . . levy a business license tax on gross income, ...

In Crosswell and Co. Inc. v. Town of Bishopville, 172 S.C. 26, 172 S.E. 698 (1933), the South Carolina Supreme Court held that the bi-weekly delivery of groceries into Bishopville by a Sumter grocer having no other business contact within Bishopville constituted doing business therein and subjected him to the Bishopville business license tax. See also, American Bakeries Co. v. City of Sumter, 173 S.C. 94, 174 S.E. 919 (1934); Triplett v. City of Chester, 209 S.C. 455, 40 S.E.2d 684 (1946). These cases, along with the power granted by Section 5-7-30 of the Code, provide sufficient authority for a municipality to levy a business license tax upon real estate agencies who advertise, show and sometimes sell real property located within the corporate limits of that municipality but whose headquarters are not within the corporate limits. In the case of contractors who contract within the corporate limits of a municipality on a 'one-shot' basis, the South Carolina Supreme Court in Pee Dee Co. v. City of Camden, 165 S.C. 86, 162 S.E. 771 (1931), held that a single delivery of a load of chairs into a municipality was not sufficient to authorize the imposition of a business license tax upon the non-resident manufacturer. Nevertheless, the Supreme Court emphasized the incidental or insignificant nature of the business conducted within the municipality, noting:
While, as suggested, a single act might, under some conditions, constitute the carrying on of a 'business' . . ., we find nothing in the circumstances of the case at bar to bring it within such class. Admittedly, only one load of chairs was delivered, and there is no suggestion that plaintiff intended to make any further deliveries. 165 S.C. at 93. [Emphasis added.]

Accordingly, if the contractors in fact contract within the corporate limits of a municipality only once, then, perhaps, a business license tax cannot be imposed upon them. If, however, contractors contract within the corporate limits of a municipality more than once, even though it may occur only once each tax year, or, unlike Pee Dee Chair, Co., if there is evidence to suggest that the contract is not an 'isolated incidental or casual one' [165 S.C. at 93], then, in my opinion, a business license tax can be imposed upon them. In any event, any strong reliance upon the Pee Dee Chair Co. decision in this case would, I think, be misplaced because of the critical difference in the nature of the respective business, i.e., an incidental delivery of purchased goods and the construction of a building. See generally, 9 McQUILLIN MUNICIPAL CORPORATIONS §§ 26.48 et seq. (3rd ed. 1964).

***2** In our conversation you indicated that you also questioned the authority of a municipality to require permits of not only the general contractor who is responsible for constructing a building but also the various subcontractors involved in the project,

such as the electricians and the plumbing subcontractors. You also questioned the authority of the municipality to require the payment of a fee for each permit with the fee being based on the cost of the work for which the permit is requested. In association with such, you indicated that typically fees for building permits are based on the overall cost of a building while costs for fees for the permits required of the various subcontractors are based on the costs of that particular job, such as the cost of the electrical work in a building. You indicated that it appears that such a system results in double 'taxing' in most instances.

Pursuant to Section 5-7-30, Code of Laws of South Carolina, 1976, as amended, municipalities in this State are granted the police power. There is no question that pursuant to the police power a municipality may regulate certain activities affecting the public health, safety, and welfare. It has been determined that the requirement by a municipality that a building permit be obtained prior to any construction is an exercise of the municipal police power. McQUILLIN, MUNICIPAL CORPORATIONS, § 26.200 (1978). As to your specific question concerning whether a municipality may require permits not only of the general contractor of a particular project but also of the various subcontractors involved in the project, such as the electrical subcontractors and the plumbing subcontractors, the requirement of such additional permits may also be considered to be an exercise of the police power. Ibid., § 26.202 (1978). See also, 58 Am.Jur.2d, Occupations, Trades, and Professions, § 8 at pp. 896-897.

As to your question concerning the authority of a municipality to require that a fee be paid not only for the building permit but also for those additional permits required of the various subcontractors, it is generally held that municipalities are authorized to require the payment of a fee for the issuance of permits with the fee being in consideration of the services of the municipality in processing the permit. Such fees should be reasonable and limited in amount to the expense it is intended to cover. McQUILLIN, MUNICIPAL CORPORATIONS, § 26.201 (1978). In considering the amount and basis for the fee, it has been stated:
. . . in assessing a regulatory municipal license fee or fixing the amount thereof, the municipal council or other legislative authority is accorded a wide discretion, that will not be interfered with unless it is plainly unreasonable. If the basis of the fee is reasonable, the courts will not inquire into the question of whether the basis is the most logical. As the principle has been variously expressed, a license fee set by a municipality is prima facie reasonable . . .. 51 Am.Jr.2d, Licenses and Permits, § 114 at p. 111.

***3** Thus, as to your questioning the propriety of the fee system whereby the fee for the building permit is based on the overall construction costs while fees for the subcontractors are based on the cost of the work of the subcontractors involved in a particular project, with reference to the above, generally such would appear to be proper. However, examination of fee systems for permits required by municipalities would necessarily have to be done on an individual basis to determine whether such a fee system is reasonable and proper.

With kind regards.
Sincerely,

Charles H. Richardson
Assistant Attorney General

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