

1980 S.C. Op. Atty. Gen. 122 (S.C.A.G.), 1980 S.C. Op. Atty. Gen. No. 80-72, 1980 WL 81954

Office of the Attorney General

State of South Carolina

Opinion No. 80-72

June 24, 1980

***1 SUBJECT: County Funds—Revenue For Use of Landfill Held Without Appropriation**

Fees or charges by Chester County for the use of its landfill should not be retained from year to year so as to constitute surplus funds for investment purposes.

TO: Paul E. Short, Jr., Esq.
Chester County Attorney

QUESTION:

Chester County by ordinance established a landfill under authority of § 44–55–1210 with fees or charges for the use thereof also prescribed. May the collected fees or charges be retained from year to year so as to constitute surplus funds for investment purposes?

APPLICABLE LAW:

Article X, Section 7 and Article VILL, Section 7 of the South Carolina Constitution; §§ 4–9–30(5) and 4–9–140 of the 1976 Code of Laws.

DISCUSSION:

For purposes of this opinion it is assumed that the revenue from the operation of the landfill is substantial. The county is required by Article X, Section 7 to ‘prepare and maintain annual budgets which provide for sufficient income to meet its estimated expenses for each year’. Section 4–9–30(5) authorizes the county governing body to ‘levy ad valorem property taxes and uniform service charges’. Section 4–9–140 provides in part that the county council is to adopt budgets for the operation of the county.

We find no authority that permits the collection of a charge, fee or tax without a need therefor. The powers and duties of the governing body are provided by the General Assembly. Article VIII, Section 7. The General Assembly has provided power to tax or levy fees or charges and to make appropriations for ‘functions and operations of a county’.

‘Taxes and license fees and other revenue collected by a city are primarily for the purpose of paying the general expenses of operation of the city government * * *.’ 56 Am.Jur.2d, Municipal Corporations, Etc., § 582.

The above is fortified by the fact that the county ordinance does not provide for the retention of the funds, therefore, the same are county funds held for appropriation.

CONCLUSION:

Fees or charges by Chester County for the use of its landfill should not be retained from year to year so as to constitute surplus funds for investment purposes.

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