

1980 S.C. Op. Atty. Gen. 150 (S.C.A.G.), 1980 S.C. Op. Atty. Gen. No. 80-98, 1980 WL 81980

Office of the Attorney General

State of South Carolina

Opinion No. 80-98

October 3, 1980

***1 SUBJECT: Business License—Applicability To Auctioneers**

A municipality may levy a license tax on auctioneers for the privilege of doing business within the corporate limits of the municipality.

To: Honorable Edgar L. Powell
Mayor of Ridge Spring
South Carolina

QUESTION:

Can a municipality levy a license tax on auctioneers for the privilege of doing business within the corporate limits of the municipality in light of § 40-6-190?

APPLICABLE LAW:

[Sections 5-7-30](#) and [40-6-190](#), 1976 Code of Laws.

DISCUSSION:

[Section 5-7-30](#) provides in part as follows:

‘All municipalities of the State shall, * * * have authority to enact regulations, resolutions and ordinances * * *, including the authority to * * * levy a business license tax on gross income; * * *.’

However, this authority is limited in [§ 5-7-30](#) to not being inconsistent with the Constitution and the general laws of this State.

[Section 40-6-190](#) reads in pertinent part as follows:

‘Notwithstanding * * * any other provision of law, municipal corporations may not enact ordinances to provide for the licensing of auctioneers.’

Although this issue is certainly not free from doubt since there have been no judicial determinations, it is the opinion of this office that auctioneers are subject to a business license tax. This statute is intended to preclude any municipality from imposing additional requirements on the regulation of auctioneers under municipalities' police powers. [Section 40-6-190](#) is not addressed to the power of municipalities to exercise their revenue-raising powers. In [Hay v. Leonard](#), 212 S. C. 81, 46 S. E. 2d 653, the Supreme Court stated that a license tax is a tax in the ordinary acceptance of that term. Thus, the purpose of the business license tax is to raise revenue and is not to regulate auctioneers.

The view that § 40-6-190 is intended to be a prohibition on only regulatory ordinances is supported by §§ 40-6-30 and 40-6-40 which establish an Auctioneers' Commission with the power to issue, suspend and revoke licenses and to promulgate rules and regulations. Such provisions are intended to regulate auctioneers rather than prohibit a revenue-raising business license tax.

CONCLUSION:

A municipality may levy a license tax on auctioneers for the privilege of doing business within the corporate limits of the municipality.

Ray N. Stevens
Staff Attorney

1980 S.C. Op. Atty. Gen. 150 (S.C.A.G.), 1980 S.C. Op. Atty. Gen. No. 80-98, 1980 WL 81980

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.