

1979 S.C. Op. Atty. Gen. 74 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-56, 1979 WL 29062

Office of the Attorney General

State of South Carolina

Opinion No. 79-56

March 19, 1979

***1 SUBJECT: Sales and Income Taxes—County or Municipal Levy For Benefit of the Other.**

It would be unconstitutional for the General Assembly to require a county or municipality to levy and collect a tax solely for the benefit of the other.

TO: Honorable James M. Waddell, Jr.

Chairman

Alternate Sources of Revenue for County and Municipal Governments Study Committee

QUESTION:

The Alternate Sources of Revenue for County and Municipal Governments Study Committee has received a copy of an opinion of the Supreme Court of Georgia issued February 8, 1979, that declared unconstitutional an act that directed a county tax be given in part to municipalities. The question is whether similar legislation in this State would be unconstitutional.

APPLICABLE LAW:

[Article X, Sections 5, 6 and 7\(b\) of the South Carolina Constitution.](#)

DISCUSSION:

We do not have information relative to the specific legislation being considered by the Committee. While our Constitution is a limitation on the right of the General Assembly to tax, the Georgia Court held their Constitution to be a grant of power to tax. The issue there considered was stated by the Court to be as follows:

‘The central issue on this appeal is whether the Georgia Constitution is violated by the Act’s scheme of allowing counties to tax and distribute a portion of the tax proceeds to cities.’

If this is the purpose of the legislation being considered by the committee there are serious constitutional problems. Our Constitution in [Article X, Section 6](#) authorized the General Assembly to ‘vest the power of assessing and collecting taxes in the political subdivisions of the State’. [Article X, Section 5](#), however, limits the tax to a public purpose. [Article X, Section 7\(b\)](#) requires that ‘each political subdivision of the State * * * prepare and maintain annual budgets which provide sufficient income to meet its estimated expenses for each year.’

It is a settled principle of law that one political entity cannot be taxed for the sole benefit of the other.

‘A tax cannot lawfully be imposed on any one political subdivision or organized community for the sole benefit of another * * *.’ 84 C.J.S. *Taxation*, § 17, p.70. See also [Reeves v. Buncombe County](#), 204 N.C. 45, 167 S.E. 452.

The rule is otherwise stated in 85 C.J.S. *Taxation*, § 1057, p. 647, as follows:

'It is a sound principle of taxation which prescribes that the benefits of taxation should be directly received by those directly concerned in bearing the burdens of taxation, so that a legislature cannot divert taxes raised by one taxing district to the sole use and benefit of another district, and, in general, state, county, and district tax moneys must be expended respectively for state, county, and district purposes, except in so far as the constitution may provide for an exception to that rule. * * *.'

The language in 71 Am.Jur.2d, State and Local Taxation, § 66, p. 392, is that:

*2 'It is not sufficient that a tax be levied for a public use; it must be levied for the use of the public of the district taxed. Otherwise stated, local taxation must be for a local as well as a public purpose.'

If the committee contemplates the levy of a county tax that is to be distributed to municipalities or vice versa, constitutional problems are involved. This is what was considered by the Georgia Supreme Court and similar legislation in this State would also fall.

CONCLUSION:

It would be unconstitutional for the General Assembly to require a county or municipality to levy and collect a tax solely for the benefit of the other.

Joe L. Allen, Jr.
Deputy Attorney General

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