

1979 WL 42864 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 15, 1979

***1 TO: Honorable William A. Watts**

SUBJECT: Property Tax—Proper Officer to Set Millage

The county auditor would apportion taxes to the property within the county and in so doing would establish the millage rate therefor.

Berkeley County Auditor

QUESTION:

After the budget for the county has been prepared, who is to determine the millage for county taxes and apportion the taxes to the taxable property?

APPLICABLE LAW:

§ 4-9-30, et seq., and § 12-36-180.

DISCUSSION:

It is a fundamental rule of statutory construction that all statutes relating to the same subject are to be construed together.

‘Different statutes in pari-materia, though enacted at different times, and not referring to each other, must be construed together as one system and as explanatory of each other.’ [Fishburne v. Fishburne](#), 171 S.C. 408, 172 S.E. 426. (For other cases see [17 S.C.D., Statutes](#), Key 223.2)

[Section 4-9-30 of the 1976 Code](#) confers upon the governing bodies of the counties various powers, however, the same are ‘subject to the general law of this State’. The section further empowers the governing body ‘to assess property and levy ad valorem taxes’. (Subsection 5)

In addition to the above, Section 4-9-140 provides in part that:

‘The fiscal year of the county government shall begin on the first day of July of each year and shall end on the thirtieth day of June next following, and the fiscal year shall constitute the budget year of the county government. * * *.’ (Emphasis added)

‘County council shall adopt annually and prior to the beginning of the fiscal year operating and capital budgets for the operation of county government and shall in such budgets identify the sources of anticipated revenue including taxes necessary to meet the financial requirements of the budgets adopted. Council shall further provide for the levy and collection of taxes necessary to meet all budget requirements except as provided for by other revenue sources.’

It is significant to here note that at the time the budget is to be adopted, June 30th of each year, the information necessary to determine the millage is not known, in example, the taxable values of the property. Special emphasis must therefore be given the term 'anticipated revenue' because without such information the rate cannot be fixed. As early as April 1873, our court held: 'In order to ascertain the rate or per centum to be applied to the value of taxable property, two things are necessary—first, to ascertain of fix the aggregate amount of money intended to be raised by the tax; second, to ascertain the aggregate assessed value of the taxable property of the State.' [Morton, Bliss & Co. v. Comptroller General](#), 4 S.C. 430.

The General Assembly has provided the procedure to be followed in such cases and the same is found in Section 12-39-180 that provides:

'Each county auditor, after receiving from the Comptroller General and from such other officers and authorities as shall be legally empowered to determine the rate or amount of taxes to be levied for the various purposes authorized by law statements of the rates and sums to be levied for the current year, shall forthwith proceed to determine the sums to be levied upon each tract and lot of real property and upon the amount of personal property, moneys and credits listed in his county in the name of each person, which shall be assessed equally on all real and personal property subject to such taxes and set down in one or more columns in such manner and form as the Comptroller General shall prescribe. * * *.' (Emphasis added)

*2 Our court in the case of [Town of Myrtle Beach v. Holliday](#), 203 S.C. 25, 26 S.E.2d 12, quoted this section and stated: 'It will therefore be seen that an assessment of the taxes cannot be made until the County Auditor receives instructions from the Comptroller General, and of course such instructions cannot be given until the state appropriation bills and the county supply bill for the year have become acts of the Legislature.'

The language of the statute, Section 12-39-180, is that when the auditor receives the 'rate of amount of taxes'. Because the taxable values of the property are not known the only information that can be furnished is the amount of taxes to be raised. Under such circumstances it would be necessary that the auditor apportion the tax to the property and in so doing it would logically follow that the millage rate would be set by the auditor.

Further support for the above is found in Section 12-39-140 that provides the time when the county tax books are to be prepared which is on or before September thirtieth. This is obviously after the budget is prepared and adopted. Applying the rule of construction as first stated, it is apparent that the governing body adopts the budget and identifies the source of anticipated revenue. The actual millage is set, however, by the county auditor in accordance with Section 12-39-180, a general law.

CONCLUSION:

The county auditor would apportion taxes to the property within the county and in so doing would establish the millage rate therefor.

Joe L. Allen, Jr.
Deputy Attorney General

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