

1979 S.C. Op. Atty. Gen. 64 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-47, 1979 WL 29053

Office of the Attorney General

State of South Carolina

Opinion No. 79-47

March 12, 1979

**\*1 SUBJECT: Property Tax—Constitutionality of Senate Bill 50.**

Senate Bill 50 would deny equal protection of the laws as guaranteed by the United States Constitution because it taxes persons and property within the same class differently.

TO: Honorable Rembert C. Dennis  
Chairman  
Senate Finance Committee  
South Carolina Senate  
Columbia, South Carolina

**QUESTION:**

Does Senate Bill 50 that proposes an amendment-to Article X of the South Carolina Constitution that would limit the tax upon dwellings qualifying for the homestead exemption deny equal protection of the laws and due process of law as mandated by the Constitution of the United States?

**APPLICABLE LAW:**

Article XIV, Section 1 of the United States Constitution.

**DISCUSSION:**

The language of the Bill is that:

‘The General Assembly may limit the tax levied upon a dwelling place which has qualified and been granted the exemption provided by subitem (i) of [Section 3 of Article X](#) to the tax levied for any year subsequent to 1981 or to the year in which additions are made or the year in which the dwelling place first qualifies for the exemption if such year be subsequent to that designated by the General Assembly; \* \* \*.’

The Constitution of the United States provides in part in Article XIV, Section 1 that:

‘No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction equal protection of the laws.’ (Emphasis added)

The underscored language controls the resolution of the question. The State is not prohibited from making reasonable classification of persons and property, however, all within the class must be treated equally.

‘A fundamental principle involved in classification is that it must meet the requirement that a law shall affect alike all persons in the same class and under similar conditions. If a classification in legislation meets the prerequisites indispensable to the

establishment of a class that it be reasonable and not arbitrary, and be based upon substantial distinctions with a proper relation to the objects classified and the purposes sought to be achieved, as long as the law operates alike on all members of the class, which includes all persons and property similarly situated, it is not subject to any objections that it is special or class legislation, and is not a violation of the federal guaranty of the equal protection of the laws.' 16 Am. Jur. 2d Constitutional Law, § 502, p. 878. See also [Holzwasser v. Brady](#), 262 S. C. 481, 205 S. E. 2d 701; [Newberry Mills, Inc. v. Dawkins](#), 259 S. C. 7, 190 S.E.2d 503; [Byrd v. Blue Ridge Rural Electrical Cooperative, Inc.](#), 215 F. 2d 542, cert. denied, 348 U.S. 915, 75 S.Ct. 295, 99 L. Ed. 717.

The proposed amendment treats members of the same class differently and thus offends the above. If it were assumed that 1982 was the year chosen by the General Assembly, then the tax on all dwellings qualified for the exemption would be frozen at the tax level for that year. For additions later made or dwellings later qualifying, the tax most probably would be different in proportion to the value of the dwellings. If the tax on the additions or newly qualified dwelling was greater or less in proportion to the value of those frozen at the assumed 1982 base there would be a lack of equality within the same class. Stated differently and hypothetically, let's assume two dwellings of equal value in 1992 of \$50,000 each, however, one qualified in 1982 and was taxed at \$200.00. The other qualified in 1992 and was taxed at \$400.00. Obviously, one dwelling is taxed at twice the rate of the other, however, both are of the same value and both belong to a class of persons or property. Another example is where both dwellings are of the same value in 1982 and have the same tax. A few years later, however, one appreciates in value while the other value does not change. Obviously there is different treatment of persons and property within the same class.

#### CONCLUSION:

**\*2** It is the opinion of this office that Senate Bill 50 would deny equal protection of the laws as guaranteed by the United States Constitution because it taxes persons and property within the same class differently. This opinion is predicated upon the assumption that values and taxes would change over the years.

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