

1980 WL 120851 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 29, 1980

**\*1 SUBJECT: Property Tax—Application for Withholding of State Funds To a County.**

The Tax Commission must determine if a county's failure to equally and uniformly tax property was willful before making application to withhold funds as provided by § 12-43-260.

**APPLICABLE LAW: Article I, Section 8 and Article V, Section 7 of the South Carolina Constitution and §§ 12-43-260 and 15-1-70 of the 1976 Code of Laws.**

Honorable Robert C. Wasson  
Chairman  
South Carolina Tax Commission

QUESTION:

Is it necessary for the Commission to make an initial determination that a county willfully failed to comply with Article 3 of Chapter 43 of Title 12 of the 1976 Code of Laws before applying to the court to withhold State appropriated funds?

DISCUSSION:

[Section 12-43-260](#) provides a penalty to a county that fails to comply with the statutory and constitutional mandate for uniform and equitable taxation of property. The penalty is the retention of twenty percent (20%) of State appropriated funds, however, is imposed only for willful failure. The Commission requests the opinion of this office of its responsibility to make a determination of willfulness. The applicable language of [§ 12-43-260](#) is that:

‘The Commission shall make application to the circuit court for a determination as to whether or not such county meets the requirements of this article.’

Article I, Section 8 separates the governmental powers of the State into the legislative, executive and judicial branches, therefore, the court must act within the powers conferred to the judicial branch. The circuit court has original jurisdiction in civil and criminal cases. [Article V, Section 7](#).

Advisory opinions are not rendered by a court and it would thus be necessary for the Commission to initiate action to withdraw the funds. The same would be a special proceeding as defined by [§ 15-1-70](#) and the petition therefor should contain allegations of willful noncompliance. The Commission must therefore determine the willfulness before the same could be alleged in the petition.

CONCLUSION:

The South Carolina Tax Commission must determine if a county's failure to equally and uniformly tax property was willful before making application to withhold funds as provided by [§ 12-43-260](#).

Joe L. Allen, Jr.  
Deputy Attorney General

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