

1980 S.C. Op. Atty. Gen. 135 (S.C.A.G.), 1980 S.C. Op. Atty. Gen. No. 80-86, 1980 WL 81968

Office of the Attorney General

State of South Carolina

Opinion No. 80-86

August 5, 1980

***1 SUBJECT: School Taxes—Treasurer's Responsibility to Collect**

A county may not impose a charge or fee to collect school taxes without legislative authority therefor.

TO: Ms. Deborah C. Westbrook
Assistant County Attorney
Greenville County

QUESTION:

Can Greenville County by ordinance impose a charge upon the school district to collect school district taxes?

APPLICABLE LAW:

Act 349, Acts of 1973; Chapter 73 of Title 59 and [§ 12-39-150, 1976 South Carolina Code](#) of Laws.

DISCUSSION:

School districts are declared to be tax districts by § 59-73-20. [Section 12-39-150](#) requires the tax duplicate to be prepared by the county auditor and the duplicate is the treasurer's authority to collect the tax. Additionally, the act granting the school board authority to impose the tax provides in part that:

'The Auditor of Greenville County shall levy upon all of the taxable property * * * the number of mills * * * which a majority of the board of trustees of the school district may determine to be necessary * * *. The Tax Collector of Greenville County shall collect the tax in like manner as all other taxes are collected * * *.' [Act 349, Acts of 1973](#).

We find no statutory authority for the county to impose a charge for the levy made by the auditor or the collection by the tax collector.

Historically, such has been done throughout the state without a specific charge therefor and absent a clear legislative direction the same should not be made.

The general rule is stated in 56 Am. Jur. 2d, [Municipal Corporations, Etc.](#), § 193, as follows:

'The view generally prevailing in this country is that the powers of municipal corporations and of counties are derived solely from the state, through the legislature, and that such powers may be enlarged, abridged, or entirely withdrawn by the legislature at its pleasure, except where the people of the state, by home rule provisions of the constitution, vest such local governmental bodies with some degree of local sovereignty, independent of the legislature. * * *.'

As stated, we do not know of any authority that extends the power of the county to charge a fee for a duty otherwise imposed by law.

CONCLUSION:

A county may not impose a charge or fee to collect school taxes without legislative authority therefor.

Joe L. Allen, Jr.
Deputy Attorney General

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