1977 S.C. Op. Atty. Gen. 27 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-19, 1977 WL 24362

Office of the Attorney General

State of South Carolina
Opinion No. 77-19
January 17, 1977

***1** Roy McBee Smith, Esquire
Spartanburg County Attorney
Post Office Box 5306
Spartanburg, South Carolina 29301

Dear Mr. Smith:
You have requested an opinion from this Office as to whether or not the Spartanburg County Council can assess residential property owners a uniform service charge without regard to the quantity of garbage collected for the purpose of supporting a sanitary landfill operation and, at the same time, assess industries a service charge for the same purpose but based upon the quantity of solid waste either collected for or delivered to the landfill site. In my opinion, the Council can so differentiate between residential property owners and industries.

Section 14–3703(5), CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended (Cum. Supp.), empowers a county governing body:
[t]o assess property and levy ad valorem property taxes and uniform service charges, ... [Emphasis added.]

The authorities appear to agree that the uniformity requirement is met if the service charge is the same within the respective classifications of users even though it varies among the classifications, if the variance is a reasonable one.
A special charge, tax, or assessment may be made by a municipal corporation, reasonably commensurate to the cost of removal of garbage and refuse. A charge for removal of garbage from shops, stores, or business places may be different from the charge for such removal from dwellings. Likewise, a charge for garbage collection and disposal imposed per unit on owners and operators of apartment houses may differ from charges imposed per unit for condominiums and cooperative apartments. 7 McQUILLIN § 24.250 at 95 (Cum. Supp. at 10).

See also: 567 Island Corp. v. North Bay Village, 236 So. 2d 467 (differences in types of structures and in service requirements); Pinellas Apartments Ass'n., Inc. v. St. Petersburg, 294 So. 2d 676 (difference in charge between bulk containers and garbage cans held reasonable classification); cf., Newberry Mills, Inc. v. Dawkins, 259 S. C. 7, 190 S. E. 2d 503 (1972).

You have also requested an opinion as to whether or not such a service charge, if unpaid, can constitute a lien upon the property the same as taxes. In my opinion, it cannot constitute a lien.
Special assessments are generally secured by a lien on the property benefited by the improvement by virtue of statute or municipal charter, and the constitutionality of such laws has been upheld. But the municipality as such has no lien for special assessments levied upon property within its corporate limits. Taxes are not a lien unless expressly made so by statute; and special assessments stand on the same footing. Municipal corporations have no power to create liens by ordinance or otherwise unless such power has been expressly conferred upon them. 14 McQUILLIN § 38.161 at 385.

Inasmuch as South Carolina counties have not had conferred upon them by the provisions of Act No. 283 of 1975, the 'home rule' legislation, or any other legislation the power to create liens by ordinance [cf., & 47–37, CODE OF LAWS OF SOUTH

CAROLINA, 1962, as amended (Cum. Supp.)], my opinion is that they are without that power and that the holding of Weatherly v. Medlin, 139 S. E. 635 (1927), is unaffected by the passage of the 'home rule' legislation. Cf., Distin v. Bolding, 126 S. E. 2d 649; Beatty v. Wittekamp, 172 S. E. 122.

With kind regards,

***2** Karen LeCraft Henderson
Assistant Attorney General

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