

1977 WL 37341 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 18, 1977

*1 Mr. L. L. Rice
Beaufort County Treasurer
Post Office Box 409
Beaufort, South Carolina 29902

Dear Mr. Rice:

In response to your request for an opinion from this Office as to whether or not Beaufort County uses the optional method of collecting, handling and disbursing delinquent property taxes provided for by Act No. 378 of 1971 [57 STAT. 499 (1971)], the answer depends on whether or not the Beaufort County governing body has, by resolution or ordinance, elected to exercise the powers granted therein. I suggest that you contact Mr. Ladson Howell, the Beaufort County Attorney, to see if such an ordinance or resolution has been enacted. If not, it appears to me that the provisions of Sections 65-2071 *et seq.*, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended (Cum.Supp.) and the statutes carried forward thereby would apply.

With kind regards,

Karen LeCraft Henderson
Assistant Attorney General

ATTACHMENT

OPINION NO. 77-158

May 18, 1977
Member, House of Representatives

House Bill 2879, diverting tax proceeds, is constitutionally defective; however, a county tax that is levied equally and uniformly throughout the county upon all taxable property may be collected and allocated to the various school districts, provided the basis of the allocation is reasonable.

You have asked whether a Bill designated on the House Calendar as H 2879 conflicts with the provisions of the Constitution of South Carolina?

The Bill creates the Orangeburg County School Tax Revenue Equalization Fund with the revenue provided by a county wide tow-mill levy and by diversion to the fund of school district and county school taxes levied upon industrial property. Industrial property is defined as the property of manufacturing establishments and utilities when valued by the South Carolina Tax Commission.

Insofar as the diversion of the tax levied and collected for or on behalf of the school districts, the Bill is constitutionally defective. Article 10, Section 3 of the Constitution provides that:

‘No tax shall be levied except in pursuant of a law which shall distinctly state the object of the same; to which object the tax shall be applied.’

The Bill would divert a portion of the taxes collected by the various district to other purposes, that of a use by another school district. This diversion is likewise unlawful and the general rule is found in 85 C.J.S., Taxation, Section 1057, that provides:

'It is a sound principle of taxation which prescribes that the benefits of taxation should be directly received by those directly concerned in bearing the burdens of taxation, so that a legislature cannot divert taxes raised by one taxing district to the sole use and benefit of another district; and, in general, state, county, and district tax moneys must be expended respectively for state, county, and district purposes, except in so far as the constitution may provide for an exception to that rule.'

*2 We find no exception in the Constitution that authorizes the diversion, and while not directly on point, the following cases lend support to the above-quoted rule. *State v. Bates*, 198 S. C. 430, 18 S. E. 2d 346, *State v. Osborne*, 195 S. C. 295, 11 S. E. 2d 260, and *State v. Osborne*, 193 S. C. 158, 7 S. E. 2d 526.

Unless the tax levy in all of the school districts is the same, the Bill would further conflict with the provisions of Article 10, Sections 1 and 5, which require uniformity and equality in taxation.

The Bill is therefore defective for the above-stated reasons.

That part of the Bill that levies and allocates the countywide taxes, if separately enacted, would not conflict with the provisions of the Constitution. Those parts levy and distribute the tax equally and uniformly within the county, which is permissible. *Stackhouse v. Floyd*, 248 S. C. 183, 149 S. E. 2d 437.

Additionally, under the analogy of the opinion of our Court in the case of *Moye v. Caughman*, 265 S. C. 140, 217 S. E. 2d 36, these provisions are probably not in conflict with the limitations of Article 8, Section 7, as amended.

The Bill, H 2879, is constitutionally defective, however, a county tax that is levied equally and uniformly throughout the county upon all taxable property may be collected and allocated to the various school districts, provided the basis of the allocation is reasonable.

Joe L. Allen, Jr.
Deputy Attorney General

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