

1977 S.C. Op. Atty. Gen. 130 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-158, 1977 WL 24500

Office of the Attorney General

State of South Carolina

Opinion No. 77-158

May 18, 1977

*1 House Bill 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.

TO: Honorable John Wesley Matthews, Jr.
Member
House of Representatives
District 94

QUESTION

Does a Bill designated on the House Calendar as H2879 conflict with the provisions of the Constitution of South Carolina?

APPLICABLE LAW

Article 10, Sections 1, 3 and 5 of the Constitution.

DISCUSSION

The Bill creates the Orangeburg County School Tax Revenue Equalization Fund with the revenue provided by a countywide two-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 taxes 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 pursuance 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.’

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.

*2 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.

CONCLUSION

The Bill, H2879, 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.

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