

1977 S.C. Op. Atty. Gen. 135 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-170, 1977 WL 24512

Office of the Attorney General

State of South Carolina

Opinion No. 77-170

June 1, 1977

***1** Charges by Southern Bell Telephone and Telegraph Company to the Medical University of South Carolina for a pro-rata share of the license tax imposed on such company by the City of Charleston are for services rendered the University. The charges are not to be considered taxes levied by the City of Charleston upon the University.

TO: Mr. Robert H. Fox
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Medical University of South Carolina

QUESTION

Southern Bell Telephone and Telegraph Company has billed the Medical University of South Carolina for a pro-rata share of the license tax imposed on such company by the City of Charleston. The question is whether this charge is proper and whether the Medical University should pay the same.

STATUTES INVOLVED

Article 8, Section 9 of the Constitution and Sections 47–32 and 58–1 of the South Carolina Code of Laws.

DISCUSSION

The constitutional provisions above referred to vest in the General Assembly the duty to provide for 'the structure and organization, powers, duties, functions and responsibilities of municipalities.' The 'powers' so conferred are found in Section 47–32 of the South Carolina Code of Laws for 1962 and provides with reference to this subject that all municipalities shall have the authority to:

'* * * levy a business license tax on gross income * * *.'

For purposes of this opinion it is assumed that the levy is that as authorized by the quoted language and the same is clearly a tax. [Hay v. Leonard](#), 212 S. C. 81, 46 S. E. 2d 653.

While we do not have for review a copy of the City's ordinance imposing the tax, the legal incidence or liability for the tax must under the above provisions be that of the Telephone Company. The tax is not passed on to the University unless done by the regulation of the South Carolina Public Service Commission that provides in part that:

'When any municipality or political subdivision collects or receives from the Company any payment * * * by reason of any license * * * tax, so much of the aggregate amount of such payment and value of services exceeds the amounts produced by the schedule which follows will be billed pro rata to customers receiving local service within the municipality or political subdivision * * *.'

The powers of the South Carolina Public Service Commission are found in Section 58–1 that provides in part:

'The Public Service Commission is hereby vested with power and jurisdiction to supervise and regulate the rates * * * of every public utility in this State * * *.'

The regulation must therefore be considered with reference to this statutory provision, and because of such is more properly construed as providing the rate that the Telephone Company may charge for the services rendered. It is not to be interpreted as shifting the legal incidence of the tax to the University as the regulation merely provides an additional amount that is charged for services rendered the University.

CONCLUSION

*2 The charge is that for services rendered the University which should be paid.

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