

1977 S.C. Op. Atty. Gen. 249 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-319, 1977 WL 24658

Office of the Attorney General

State of South Carolina

Opinion No. 77-319

October 12, 1977

*1 1) The governing body of Laurens County is without authority to void or negate the valuations of the property as ascertained by the assessor for the 1977 tax year and may not therefore revoke the same and substitute the 1976 tax base.

2) The governing body is now without authority to alter the ratio upon which the assessed values of property were ascertained for the 1977 tax year and reflected upon the tax duplicate.

TO: Honorable David S. Taylor

Senator

District II, Seat 5

Box 46

Laurens, South Carolina

STATEMENT

Real property in Laurens County for ad valorem tax purposes, has been reassessed or appraised in accordance with the provisions of Act 208, Acts of 1975, as amended by Act 618, Acts of 1976. The valuations so determined have been furnished by the assessor and are the bases for the taxation of such real property for the 1977 tax year.

QUESTIONS

Does the governing body of Laurens County have the authority to set aside such valuations for the 1977 tax year and revert to the basis used in 1976 to tax such property for the 1977 year?

Should the County governing body be without that authority, may the governing body change the ratios applied to the property's fair market value to set the property's assessed value for the 1977 tax year?

APPLICABLE LAW

Article VIII, Section 7, Article III, Section 29 of the Constitution, Sections 4-9-30, 12-43-210, 12-37-90, 4-9-30, 12-43-220 and 12-39-150 of the 1976 code of Laws.

DISCUSSION

The Constitution, in Article VIII, Section 7, provides that the General Assembly:

'* * * shall provide by general law for the * * * duties, functions and responsibilities of counties. * * *. No laws for a specific county shall be enacted and no county shall be exempted from the general laws or laws applicable to the selected, alternative form of government.'

Pursuant to that constitutional mandate the General Assembly in 1975 adopted legislation, generally referred to as the Home Rule Act, which has been codified in the 1976 Code of Laws. Section 4–9–30 of that Code provides in part that:

‘* * * each county government within the authority granted by the Constitution and subject to the general law of this State shall have the following enumerated powers which shall be exercised by the respective governing bodies thereof:

‘(5) to assess property and levy ad valorem taxes * * *.’ (Emphasis added)

The power to assess property is however limited by the State's general laws and constitutional provisions applicable thereto. The State law is found in Act 208, Acts of 1975, as amended by Act 618, Acts of 1976. These Acts have likewise been codified in the 1976 Code of Laws and Section 12–43–210 provides that:

‘All property shall be uniformly and equitably assessed throughout the State. The South Carolina Tax Commission (commission) shall promulgate rules and regulations to insure such equalization which shall be adhered to by all assessing officials in the State.’

*2 It is thus seen that the overview of property taxation in this State is under the Tax Commission and the governing body would be without authority to negate the Commission's responsibility in this area. Additionally, Section 12–37–90 provides in part that:

‘All counties shall have a full-time assessor, whose responsibility is appraising and listing all real property * * *.

‘The assessor shall be responsible for the operation of his office and shall:

‘(c) When values change, reappraise and reassess any or all real property so as to reflect its proper valuation in light of changed conditions, * * * and furnish a list of these assessments to the county auditor;

‘(h) Be the sole person responsible for the valuation of real property except that required by law to be appraised and assessed by the commission, and the values set by the assessor shall be altered only by the assessor or by legally constituted appellate boards, the commission or the court.’ (Emphasis added)

These sections were enacted in 1976 and constitute the latest expression of the General Assembly regarding such matters. The effect thereof is to qualify or negate the term ‘to assess property’ as found in Section 4–9–30 of the 1976 Code quoted above.

‘In a case of conflict between statutes, the last legislative expression ordinarily governs.’ [South Carolina Electric & Gas Co. v. South Carolina Public Service Authority](#), 215 S. C. 193, 54 S. E. 2d 777.

In addition to the above, the people of the State have by the Constitution directed that the property be taxed upon actual value. Article III, Section 29 of the Constitution provides that:

‘All taxes upon property, real and personal, shall be laid upon the actual value of the property taxed, as the same shall be ascertained by an assessment made for the purpose of laying such tax.’

We are advised by the Tax Commission that the values upon which the property is to be taxed for 1977 reasonably represents fair market value and that the tax base used in 1976 does not represent such values.

CONCLUSION

The governing body is without authority to void or negate the valuations of the property as ascertained by the assessor for the 1977 tax year and may not therefore revoke the same and substitute the 1976 tax base.

QUESTION 2

DISCUSSION

Having so concluded, it is necessary to consider the second question concerning ratios. The latest expression from the General Assembly on this matter is found in Act 618, Acts of 1976. The applicable provision is codified in Section 12-43-220 of the 1976 Code and provides:

‘Notwithstanding any other provision of this article, on June 3, 1975, if it is found that there is a variation between the ratios being used and those stated in this section, the county may provide for a gradual transition to the ratios as herein provided for over a period not to exceed seven years; provided, however, that all property within a particular classification shall be assessed at the same ratio; provided, further, however, that all property enumerated in subsection (a) shall be assessed at the ratio provided in such subsection unless the governing body of any county shall affirmatively declare that it shall not be immediately assessed at such ratio, in which event it shall be assessed in the manner provided for in the following sentence. The property enumerated in subsections (b), (c), (d), (e), (f) and (g) shall be increased or decreased to the ratios set forth in this article by a change in the ratio of not less than one-half of one percent per year nor more than one percent per year. Provided, however, that notwithstanding the provisions of this section, a county may, at its discretion, immediately implement the assessment ratios contained in subsections (b), (c), (d), (e), and (f) * * *.’

*3 It is presumed that the election was made and that the assessed values were determined thereunder.

The general rule relating to the power of a council to reconsider its action is stated in 56 Am. Jur. 2d, Municipal Corp., etc., Sec. 352, page 379 as follows:

‘It is a general rule, subject to certain qualifications hereinafter noted, that a municipal council has the right to reconsider its action and adopt an ordinance or measure that has previously been defeated, or rescind one that has previously been adopted, at any time before the rights of third parties have vested.’ (Emphasis added)

The taxes of all property in the county are now fixed and determined by the duplicate required by Section 12-39-150 of the 1976 Code. That section provides in part that the duplicate is the treasurer's ‘warrant for the collection of taxes; assessments and penalties charged thereon.’ Because the tax liability is fixed, it is extremely doubtful that the tax burden for some classes of property could now be increased, while others are reduced. Such would be the result of a change in ratios and the change would affect vested rights, that of an alteration of the tax burden.

Additionally, the General Assembly has provided in Section 12-39-150 the manner in which a correction can be made in the tax duplicate. No provision exists in that section authorizing a change to reflect the use of a different ratio than that on which the property was first assessed.

CONCLUSION

It is the opinion of this office that the governing body is now without authority to alter the ratio upon which the assessed values of property were ascertained for the 1977 tax year and reflected upon the tax duplicate.

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