

1977 S.C. Op. Atty. Gen. 237 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-310, 1977 WL 24650

Office of the Attorney General

State of South Carolina

Opinion No. 77-310

September 30, 1977

*1 TO: Honorable Robert C. Lake, Jr.
Senator
Newberry County

QUESTION

May the Town of Whitmire make it unlawful to operate any motor vehicles owned by residents thereof on the streets of such town without the attachment and display thereon of a sticker indicating that all municipal taxes due and payable thereon have been paid?

AUTHORITIES

Article VIII, Section 17 of South Carolina Constitution

Code of Laws of South Carolina Section 5-7-30 (1976)

Code of Laws of South Carolina Section 56-3-250 (1976)

Code of Laws of South Carolina Section 56-3-430 (1976)

Code of Laws of South Carolina Section 56-3-440 (1976)

Code of Laws of South Carolina Section 56-3-1220 (1976)

Code of Laws of South Carolina Section 56-3-1230 (1976)

[Lewis v. Gaddy, 254 S.C. 66, 173 S.E. 2d 376 \(1970\)](#)

[State ex rel. McLeod v. Ellisor, 259 S.C. 364, 365, 192 S.E. 2d 188, 189 \(1972\)](#)

[State ex rel. McLeod v. Mills, 256 S.C. 21, 180 S.E. 2d 638 \(1971\)](#) [State v. Mosely, 174 S.C. 187, 177 S.E. 156 \(1934\)](#) [Williams v. Wylie, 217 S.C. 247, 60 S.E. 2d 586 \(1950\)](#) 82 CJS 'Statutes' § 333

DISCUSSION

You have requested an opinion of this office as to whether a municipality may enact a penal ordinance requiring residents to attach a decal to their automobiles indicating that local automobile taxes have been paid.

A municipality is a subdivision of the State and possesses only those powers that are granted to it by the State in its charter or by legislative enactment. [Williams v. Wylie, 217 S.C. 247, 60 S.E. 2d 586 \(1950\)](#). Section 5-7-30 of the 1976 South Carolina

Code confers upon municipalities general governing powers. Included therein is the authority to levy and collect taxes on real and personal property and the authority to fix fines and penalties for the violation of municipal ordinances and regulations. Therefore, a municipality's authority to levy a personal property tax on automobiles is not questioned. Article VIII, Section 17 of the South Carolina Constitution states:

'The provisions of this Constitution and all laws concerning local government shall be liberally construed in their favor. Powers, duties, and responsibilities granted local government subdivisions by this Constitution and by law shall include those fairly implied and not prohibited by this Constitution.'

Therefore it would appear that since the proposed ordinance is intended as a method of enforcing the municipality's taxing powers, Whitmire has the necessary authority to so act.

In further support of this conclusion are Code of Laws of South Carolina Sections 56-3-430 and 56-3-440 (1976). It would appear that § 56-3-430 prohibits a municipality with a population between fifty-five thousand and seventy thousand from enacting an ordinance such as the one here under consideration. It is a generally recognized rule of statutory construction that where a statute forbids certain things, it is to be construed as excluding from its effect all those not expressly mentioned. 82 C.J.S. 'Statutes' § 333. Therefore, the withdrawal of authority from municipalities with populations between fifty-five thousand and seventy thousand to enact a statute of this type, must be interpreted as implicitly recognizing the authority of all municipalities not included therein to so act.

*2 Moreover, I am of the opinion that Code of Laws of South Carolina Section 56-3-1220 (1976) which states that 'No county or municipality shall issue a municipal or county license plate' has no application to the proposed ordinance. License plates are minutely described by statute and are intended as visible methods of identifying motor vehicles. See, Code of Laws of South Carolina Section 56-3-1230 (1976). In my opinion the sticker which Whitmire proposes to require is not a license plate as that term is used in Section 56-3-1220. To hold otherwise would be to find that the General Assembly has by implication repealed Section 56-3-440, which specifically authorizes the ordinance here under discussion for municipalities with a population of over seventy thousand, with the enactment of Section 56-3-1220. It is a well established principle of statutory interpretation that '[R]epeal of a statute by implication is not favored and an act should not be construed as impliedly repealing a prior act unless no other reasonable construction can be applied.' [State ex rel. McLeod v. Ellisor](#), 259 S.C. 364, 365, 192 S.E. 2d 188, 187 (1972); [State ex rel. McLeod v. Mills](#), 256 S.C. 21, 180 S.E. 2d 638 (1971); [Lewis v. Gaddy](#), 254 S.C. 66, 173 S.E. 2d 376 (1970).

Finally I do not believe that the existence of Code of Laws of South Carolina, Section 56-3-250 (1976) dealing with what are commonly known as 406 forms, preempts the proposed ordinance. Section 56-3-250 requires a signed statement certifying that all county and municipal taxes legally due on the automobile have been paid accompany an application for vehicle registration with the Highway Department. Section 56-3-440 infers that the legislature did not intend for 56-3-250 to preclude municipalities from implementing other reasonable methods to insure the collection of automobile taxes. In addition, where a state statute does not manifest an intent to limit the police powers of municipalities, a municipality may enact an ordinance pursuant to the powers granted to it so long as it does not conflict with an existing state statute. [State v. Mosely](#), 174, S.C. 187, 177 S.E. 156 (1934). Here the intent to preclude local enforcement is not present and the proposed ordinance would complement Section 56-3-250 rather than conflict with it.

CONCLUSION

The Town of Whitmire may enact an ordinance making it unlawful to operate any motor vehicles owned by residents thereof on the streets of such town without the attachment and display thereon of a sticker indicating that all municipal taxes due and payable thereon have been paid.

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