

1976 WL 30604 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 14, 1976

\*1 Under the authority of Section 47-253 of the Code a municipality may affix the date when ad valorem taxes are to be due, after which penalties may be imposed and may provide for a date when the same shall be deemed to be delinquent, requiring enforced collection.

Mr. Brady T. Morgan

#### QUESTION

Can a penalty of two per cent (2%) per month be imposed by the Town of Jonesville for nonpayment of taxes, such to begin on the eight month of the year for which the taxes are assessed?

#### STATUTES

Sections 47-161, 47-241, 47-168, 47-253 and 47-259 of the South Carolina Code of Laws, 1962.

#### DISCUSSION

Enabling legislation is found in Sections 47-161 and 47-241 of the South Carolina Code of Laws for municipal ad valorem taxes. Section 47-168 relating to municipalities with a population of less than 1,000 inhabitants, and Section 47-253, relating to municipalities with a population of over 1,000 inhabitants, provide for the payment of a penalty not to exceed fifteen per cent of the taxes, such to be levied when the taxes become 'due, payable when the taxes become delinquent.' Section 47-259 states that a municipality may enforce the payment of its taxes, penalties and executions according to its fiscal year.

A municipality can only exercise that authority which is given to it by the General Assembly. [Watson v. Orangeburg](#), 229 S. C. 367, 93 S. E. 2d 20. It would appear that the statutes provide that the penalty may be charged if the taxes are not paid when 'due' and that the enforcement of such payment can be made when such taxes become 'delinquent' which, as used in the statute, might refer to two separate and distinguishable times. The right of a municipality to collect penalties has been recognized in the cases of [Rothrock v. Oakman](#), 195 S. C. 123, 10 S. E. 2d 345, and [State v. Cheraw and D. R. Co.](#), 54 S. C. 564, 32 S. E. 691. This office does not have information concerning the fiscal year of the Town of Jonesville, but without such information would conclude that the municipality, by ordinance properly enacted, could provide for the date when taxes are due and could provide for the date when the taxes are deemed to be delinquent.

#### CONCLUSION

It is the conclusion of this office that a municipality may fix the date when its ad valorem taxes are to be due, after which penalties may be imposed, and provide for a date when the same shall be deemed to be delinquent, requiring enforced collection.

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