

1976 WL 30651 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 6, 1976

*1 The County Commission of Spartanburg County is without authority to limit or extend the exemption afforded by Section 65-1570.

Roy McBee Smith, Esq.
Spartanburg County Attorney

QUESTION

The Spartanburg County Commission proposes an ordinance to create a service district comprised of the land area of Spartanburg County that is without the limits of incorporated municipalities. A tax is to be levied upon the property within the area to fund added police protection for persons and property within the area. The Commission found that the exemption afforded manufacturers by Section 65-1570 did not include this tax levy and by Section 4 of the ordinance provided:

‘The levy and collection of the tax referred to in Section 3 hereof shall not be subject to the exemption for industries pursuant to Section 65-1570, Code of Laws of South Carolina 1962, as amended; provided, however, that the provision of this Section shall not apply as to industrial exemptions presently granted. Provided further, that new industries constructed in Spartanburg County during the year 1976 but not first taxable until the year 1977 shall be entitled only to the initial 5 year exemption for new industries.’

The question is whether this finding and provision is a valid exercise of authority conferred upon the Commission.

DISCUSSION

For purposes of this specific question an assumption is made that the Commission has the authority to create the district and to levy the tax

We consider only the issue of whether the exemption conferred by Section 65-1570 can be restricted or enlarged by action of the Commission. The authority conferred by Article 10, Section 5(149) and Section 6 do not include the power to the Commission to exempt property from taxation. That authority is conferred upon the General Assembly by Article 10, Section 1 of the Constitution, and then only for the purposes therein stated. The ‘Home Rule Bill’, S. 18, provides no power for the governing body of a county to exempt property from taxation and we further have not found any statutory grant to the Commission of the power to exempt property from taxation. (See also Act 1035, Acts of 1968, as amended.)

In considering the power of Lancaster County to dispose of property, our Court, in the case of [Williams v. Wylie](#), 217 S. C. 247, 60 S. E. 2d 586, stated:

‘A reasonable doubt as to the existence of a particular power must be resolved against the Board. * * *. A County, in a sense, is a municipal corporation and sometimes is classed as such they are both subdivisions of the State and have only such powers as are granted to them by the State in their charters, or by legislative enactment.’

The finding and provision in the proposed ordinance is therefore without authority conferred upon the Commission.

Section 65-1570 provides in part for the exemption from 'all county taxes, except for school purposes.' The term 'county taxes' is defined as 'the general county levy, library levy, metropolitan sewer district levy, any water district levy, or any other levy.' Whether the proposed service area tax is included within the exemption is dependent upon a construction of the above definition. A 'special district tax' is not within the usual definition of a 'county tax.' [Bowaters Carolina Corporation v. Smith, 257 S. C. 563, 186 S. E. 2d 761](#) (school district taxes).

*2 Here, however, the statutory language apparently includes such district tax levies and the general term 'or any other levy' by the rule of ejusdem generis may include this service area tax as it is similar to a special purpose district. Commenting upon Article 7 of the Constitution, as amended, relating thereto, the Court stated:

'Section 7 does not destroy the function of the special purpose district in a county. On the contrary, it in effect empowers county governments to create special purpose districts by giving them the power to tax on the basis of governmental services provided.'

[Knight v. Salisbury, 262 S. C. 565, 206 S. E. 2d 875.](#)

CONCLUSION

Whether the exemption extends to the tax levy for the special service district proposed by the Commission is dependent upon the language of Section 65-1570 and the County Commission is without authority to enlarge or limit the exemption.

Joe L. Allen, Jr.
Deputy Attorney General

1976 WL 30651 (S.C.A.G.)