

1978 WL 34697 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 13, 1978

*1 (1) Under Chapter 37 of Title 5 of the 1976 Code, the Municipal Improvement Act of 1973, where more than one person owns the property, only those owners whose names appear on the tax records are considered in determining whether the majority of the owners consent to the improvement.

(2) Under [Section 5-37-40 of the 1976 Code](#), where a person owns more than one parcel and consents to the improvement district, his consent counts only once for all parcels, rather than for each of the several parcels.

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QUESTION I

Under Chapter 37 of Title 5 of the 1976 Code of Laws, if one parcel of property is under multiple ownership, are the signatures of all such owners required or only the names that appear on the county tax records?

STATUTE INVOLVED

Chapter 37 of Title 5 of the 1976 Code of Laws.

DISCUSSION

The chapter provides for the creation of improvement districts within municipalities when certain conditions are met. The condition here involved is found in [Section 5-37-40](#) and provides:

‘* * * that the governing body shall, prior to the enactment of the ordinance creating the improvement district, obtain written consent for the creation of such improvement district from a majority in number of the owners of real property within the district and having an aggregate assessed value in excess of sixty-six per cent of the assessed value of all real property within such improvement district.’ (Emphasis added)

Section 5-37-20(6) defines as an owner certain persons, firms or corporations that must (a) have legal title to a present possessory interest equal to or greater than a life estate, (b) own at least a one-tenth undivided interest in a single parcel and (c) be listed upon the county tax records as an owner of real estate. No problem would exist when the names of all owners appear on the tax records because, clearly, under such circumstances all such owners must be considered. It is only when the names of some owners do not appear upon the tax records that the question would arise. The general rule is that all cotenants sign and that the signature of one will not bind others. 70 Am. Jur. 2d, [Special or Local Assessments](#), Section 119, page 937. The statute, however, modifies the general rule and only the owner's name appearing on the tax records it to be considered in ascertaining the ‘majority in number of the owners.’

Support for this conclusion is found in 70 Am. Jur. 2d, [Special or Local Assessments](#), Section 117, page 935, wherein there is provided:

‘* * *. The consent or right of petition of property owners is not a condition precedent to street improvements in the absence of statute, charter, or ordinance, since local assessments for improvements are not regarded as burdens, but as an equivalent or compensation for the enhanced value the property derives from the improvement.’

The case of [Stone v. Jefferson](#), 317 Mo. 1, 293 S. W. 780, 52 A.L.R. 879 was cited for the above and the A.L.R. annotation on page 884 states:

*2 ‘The few cases dealing with such right support the view of the reported case (Stone v. Jefferson) that, at most, it is but a statutory privilege, partaking in its nature of none of the essentials of an inherent right protected by constitutional guaranties.’

CONCLUSION

Under Chapter 37 of Title 5 of the 1976 Code where more than one person owns the property, only those owners whose names appear on the tax records are considered in determining whether the majority of the owners consent to the improvement.

QUESTION II

Under the same chapter if a person owns five separately listed parcels, is that person considered as one owner or five owners when determining the majority of the owners of the property?

STATUTE INVOLVED

Chapter 37, Title 5 of the 1976 Code of Laws.

DISCUSSION

The portion of [Section 5-37-40](#) quoted above is here applicable and requires ‘a majority in number of the owners of real property within the district * * *.’

We find no judicial construction of the chapter, however, it is our opinion that such a person is considered as one owner. The statute contains two safeguards; one being a majority of owners and the other being that such majority own in excess of sixty-six percent of the assessed value of the property.

CONCLUSION

Under [Section 5-37-40 of the 1976 Code](#) where a person owns more than one parcel and consents to the improvement district, his consent counts only once for all parcels, rather than for each of the several parcels.

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