

1978 WL 34867 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 21, 1978

*1 Honorable Allen R. Carter
Senator
District No. 16
1810 Clearbrook Street
North Charleston, South Carolina

Dear Senator Carter:

You have requested an opinion from this Office as to the constitutionality of a proposed amendment to H. 3630, a bill which, if enacted, would add [Section 12-3-145 to the Code of Laws of South Carolina](#). The proposed amendment appears as the proviso hereinbelow emphasized:

It shall be the duty of the [South Carolina Tax] Commission to determine if any real or personal property qualifies for exemption from local property taxes under Section 12-37-220 in accordance with the Constitution and general laws of the State. This determination shall be made on an annual basis and the county auditor so advised by June first of each year by the [C]ommission; provided, that in counties having a permanent commission or similar body to study tax-exempt organizations such determination shall be made by the county commission. [Emphasis added.]

In the opinion of this Office, the proposed amendment would violate Article VIII, Section 7 of the South Carolina Constitution, 1895, as amended, and, perhaps, Article X, Section 3 and Article III, Section 34 subdivision ix thereof.

[Article VIII, Section 7 of the State Constitution](#) provides in part:

No laws for a specific county shall be enacted and no county shall be exempted from the general laws . . . [Emphasis added.]

There are two counties which have the tax-exempt commission referred to in the proposed amendment: Charleston County, whose tax-exempt commission was established in 1969 [56 STAT. 857 (1969)], and Spartanburg County, whose tax-exempt commission was created in 1971 [57 STAT. 90 (1971)]. By the proposed amendment, these two counties would be released from and, thus, 'exempted from,' the pertinent language of H. 3630 which, if enacted, would clearly constitute a 'general law.' Initially, the South Carolina Supreme Court interpreted the 'no laws for a specific county' language of [Article VIII, Section 7](#) in a restrictive way [see, e.g., [Knight v. Salisbury](#), 206 S.E.2d 875 (1974)] and, although it seems to have taken a more liberal view of that language in subsequent decisions [see, e.g., [Moye v. Caughman](#), 217 S.E.2d 36 (1975); [Kleckley v. Pulliam](#), 217 S.E.2d 217 (1975); [Duncan v. The County of York](#), 228 S.E.2d 92 (1976)], that liberalization would not, in our opinion, necessarily carry over to the 'no county shall be exempted from the general laws' language, especially since the reasons which compelled the Court to relax its restrictive interpretation in [Moye](#), [Kleckley](#) and [Duncan](#) are not present here. Consequently, our opinion is that the proposed amendment would violate [Article VIII, Section 7 of the State Constitution](#) because it would exempt Charleston County and Spartanburg County from the general provisions of H. 3630.

Secondly, the proposed amendment might conflict with the following language of [Article X, Section 3 of the State Constitution](#):

*2 . . . the General Assembly may provide for exemptions from the property tax, by general laws applicable uniformly to property throughout the State and in all political subdivisions, . . .

Section 2 of H. 3630 would in fact provide for exemptions from the property tax by amending [Section 12-37-220 of the Code](#) and those exemptions would be applicable uniformly to property throughout the State and in all political subdivisions; the proposed amendment could impair that uniformity of applicability, however, because either or both of the two county tax-exempt commissions would be empowered to make determinations with regard to their respective counties which could vary from those made by the South Carolina Tax Commission with regard to all other counties. Moreover, because the appellate process provided for in Charleston County and Spartanburg County is elective in nature (on the part of both the taxpayer and the government in Spartanburg County and on the part of the taxpayer in Charleston County), there is no guarantee that the Tax Commission would have the opportunity to remedy any impairment of the required uniformity brought about by either or both of the two counties.

For these reasons, the proposed amendment might be violative of the above-cited language of [Article X, Section 3 of the State Constitution](#).

Thirdly, Article III, Section 34, subdivision ix of the State Constitution prohibits a special law where a general law can be made applicable. Here, a general law is not only applicable but is mandated by [Article X, Section 3](#) and [Article VIII, Section 7 of the Constitution](#). This being so, any exception to the general law such as the proposed amendment, whether contained within or without the general law, might be constitutionally suspect with regard to the proscription of Article III, Section 34, subdivision ix. Cf., S.C. CONST., Art. X, § 34, subdivision x.

Finally, you might also note that a possible equal protection question is presented by the proposed amendment [see generally, 16 AM.JUR.2d Constitutional Law § 488 at 849] but, because of the views hereinabove expressed, especially with respect to the requirements of [Article X, Section 3](#), it is not necessary to reach that question.

Best wishes,

C. Tolbert Goolsby, Jr.
Deputy Attorney General

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