

1978 S.C. Op. Atty. Gen. 147 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-114, 1978 WL 22583

Office of the Attorney General

State of South Carolina

Opinion No. 78-114

June 14, 1978

***1 SUBJECT: Collection Of Delinquent Property Taxes**

(1) Florence County may not, in our opinion, adopt the alternate procedure in Chapter 51 of Title 12 of the 1976 Code and provide for a penalty different from the penalty provided in § 12-51-30.

(2) It is our considered opinion that the county may not provide for a collection fee of \$8.00 in lieu of the 5% collection charge provided for by [§ 12-51-40\(c\) of the 1976 Code](#) of Laws.

(3) Considering the general rule that retroactive legislation is not favored and that penalties have been previously enacted and assessed for delinquent taxes under general law, we express doubt that an ordinance could be adopted that would exact a penalty for taxes delinquent upon the adoption of the alternate procedure.

TO: Peter D. Hyman, Esq.
Florence County Attorney

QUESTIONS:

(1) If Florence County adopts the alternate procedure for the collection of delinquent taxes provided in Chapter 51 of Title 12 of the South Carolina Code of Laws, can it provide for a lower penalty than provided under this procedure?

(2) Under the alternate procedure provided in Chapter 51 of Title 12 of the South Carolina Code of Laws, can Florence County provide for a collection fee of \$8.00 in lieu of the 5% collection charge under this procedure?

(3) Would the penalties under the alternate procedure provided in Chapter 51 of Title 12 of the South Carolina Code of Laws apply to taxes that became delinquent prior to the adoption of this alternate procedure?

STATUTE:

Act No. 378, 1971 Acts, codified as Chapter 51 of Title 12 of the 1976 Code of Laws.

DISCUSSION ON QUESTION 1:

The alternate procedure for the enforced collection of taxes is found in Chapter 51 of Title 12 of the South Carolina Code of Laws, 1976. The penalty provided for under the alternate procedure is found in [§ 12-51-30 of the 1976 Code](#). It states: 'On January fifteenth next following the year in which the taxes became due, the Treasurer shall add a penalty of fifteen percent to all property taxes remaining unpaid.'

[Section 12-51-150 of the Code](#) provides that the alternate collection procedure shall be in addition to other laws. Its specific language is as follows:

'Election to utilize the remedy provided by this chapter for enforcement of collection and disposition of delinquent taxes, penalties and costs shall not prevent a governing authority from also using any remedy or supplementing any provision of this chapter, by reliance upon and use of any statute which is not in conflict with the provisions of this chapter * *
.*' (Emphasis added)

We shall endeavor to read the act providing for the procedure and construe it to ascertain and give effect to the intention of the General Assembly. [Arkwright Mills v. Murph](#), 219 S. C. 438, 65 S. E. 2d 665, and other cases at 17 South Carolina Digest, Statutes, § 181. The underlined part of the above expresses an intention of the General Assembly that the alternate procedure shall be adopted and implemented in whole and not in part. Further indication of this is found in § 12-51-160 which states:

*2 'Upon adoption of the provisions of this chapter by a political subdivision for its tax collection purposes any question arising because of a difference between the provisions of this chapter and of an existing statute shall be resolved by reference to the provisions of this chapter which shall in such event take precedence.'

We have, however, considered § 12-51-20 which states:

'Any county or other political subdivisions of the State may by resolution, ordinance or law, as applicable, elect to exercise any of the powers granted by this chapter as herein prescribed.'

Reading this section alone may cause one to conclude that separate parts of the procedure may be adopted, however, from a reading of the entire act, we do not believe such was intended. In the original act, § 1 stated:

'The provisions of this act provide an additional method and alternate procedure for the collection, handling and distribution of delinquent property taxes, penalties and costs due to counties and other political subdivisions of the State. The provisions of this act are intended to be in addition to, and not the exclusion of, any methods and procedures now authorized, as provided by law, for collecting, handling, and distributing delinquent property taxes, penalties and costs upon the voluntary election of a governing authority as is provided herein.'

The provisions of this act shall not be construed to repeal existing property tax laws, but shall be deemed and taken to be an alternative remedy for the prompt enforcement and collection of delinquent property taxes, penalties and costs.'

The entire paragraph relates to a procedure or remedy which, in our opinion, relates to the entire procedure.

In [Webster v. Williams](#), 183 S. C. 368, 191 S. E. 51, the court considered the constitutionality of a statute providing for a special penalty that was different from the general state-wide penalty. Ruling against the constitutionality of the specific statute, it said:

'If there is anything in the situation of Orangeburg county to differentiate the tax problem there from that prevailing in other counties of the state (assuming, without deciding, that this could affect the principle now under discussion), the record fails to disclose it. We are dealing with legislation that very clearly on its face extends by additional charges the consequences of the failure to pay taxes in Orangeburg county.'

We have, then, a subject which is in fact covered by the general law of the state, and as to which the Legislature has here undertaken to make a special and different provision, by a separate enactment, for Orangeburg county only.'

Here we have language of the court condemning the use of a special penalty where a general one is provided.

CONCLUSION:

Florence County may not, in our opinion, adopt the alternate procedure in Chapter 51 of Title 12 of the 1976 Code and provide for a penalty different from the penalty provided in [§ 12-51-30](#).

DISCUSSION ON QUESTION 2:

*3 The discussion relative to question one is applicable in the resolution of question two above.

CONCLUSION:

It is our considered opinion that the county may not provide for a collection fee of \$8.00 in lieu of the 5% collection charge provided for by [§ 12-51-40\(c\) of the 1976 Code](#) of Laws.

DISCUSSION ON QUESTION 3:

It is a general rule that retroactive legislation is not favored and that statutes will be construed as operating prospectively unless a contrary intention is clearly manifest. [Jefferson Standard Life Ins. Co. v. King](#), 165 S. C. 219, 163 S. E. 653, and other cases in 17 South Carolina Digest, *Statutes*, § 263. From 72 Am. Jur., *State and Local Taxation*, § 863, we quote: 'As a rule, a statute imposing interest charges or penalties upon delinquency in payment of taxes does not apply to taxes delinquent at the time the act takes effect, for such a statute will not be deemed retroactive unless the intent that it shall so operate is manifest. As supporting that rule, the principle is sometimes referred to that statutes prescribing penalties are not to be extended by mere implication. * * *.'

The penalty provision of the alternate procedure, [§ 12-51-30](#), states that the penalty shall apply 'on January fifteenth next following the year in which the taxes became due'. This was originally § 3 of Act 378 of 1971 and § 1 thereof states: 'The provisions of this act shall not be construed to repeal existing property tax laws * * *.'

It has been held that a penalty may be exacted for taxes which have already become delinquent at the time of enactment of the statute ([League v. Texas](#), 184 U. S. 156, 46 L. Ed. 478, 22 S. Ct. 475), however, the alternate procedure does not, in our opinion, clearly express authority for such penalties and may negate such.

CONCLUSION:

Considering the general rule that retroactive legislation is not favored and that penalties have been previously enacted and assessed for delinquent taxes under general law, we express doubt that an ordinance could be adopted that would exact a penalty for taxes delinquent upon the adoption of the alternate procedure.

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