

1978 S.C. Op. Atty. Gen. 201 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-175, 1978 WL 22643

Office of the Attorney General

State of South Carolina

Opinion No. 78-175

October 23, 1978

***1 SUBJECT: South Carolina Public Railways Commission—Property Tax Exemption; Assessment for Pro Rata Share of the Expense of the Public Service Commission.**

The railroad and necessary equipment owned by the South Carolina Public Railways Commission is exempt from taxation by § 58–19–150. The section, however, does not exempt the Commission from the payment of a pro rata share of the expense of the Public Service Commission.

TO: Mr. W. J. Betz
Executive Director
South Carolina Public Railways Commission

QUESTION:

The Commission has been billed by Berkeley County and Charleston County for property taxes and by Charleston County for the Commission's proportionate share of the costs of the Public Service Commission. Must the Commission pay such taxes or costs?

APPLICABLE LAW:

[Article IX, § 1 of the South Carolina Constitution](#); §§ 58–19–10, 58–19–150 and 58–3–100 of the 1976 Code of Laws.

DISCUSSION:

The South Carolina Public Railways Commission was created by Act of the General Assembly, now codified in Chapter 19 of Title 58 of the 1976 Code of Laws, [§ 58–19–10](#), et seq. Section 58–19–150 provides in part that:

‘* * * all railroads and necessary equipment so long as owned by the Commission * * * shall be exempt from all taxation in the State of South Carolina, except for inheritance, estate of transfer taxes; * * *.’

The Commission's ‘railroads and necessary equipment’ are thus exempt from ad valorem taxation. If the taxes levied by Berkeley and Charleston Counties are upon such property, the assessment should be abated, however, this cannot be determined from available information.

The question relating to the ‘assessment’ for the expense of the Public Service Commission, however, is more complex. [Article IX, § 1 of the South Carolina Constitution](#) provides:

‘The General Assembly shall provide for appropriate regulation of common carriers, publicly owned utilities, and privately owned utilities serving the public as and to the extent required by the public interest.’

The Commission acknowledges that it operates subject to the regulations of the Public Service Commission. [Section 58–3–100 of the 1976 Code](#) provides:

‘The expenses of the Public Service Commission shall be borne by the several companies subject to its jurisdiction according to their gross income from operations in this State, such gross income to be proportionate to the number of miles operated in this State by transportation and transmission companies, to be apportioned by the Comptroller General. The Comptroller General shall, on or before the first day of October in each and every year, assess upon each of such companies its just proportion of such expenses in proportion to its gross income from operation in this State in the current year ending on the thirtieth day of June preceding that on which the assessment is made. Such assessments shall be charged up against such companies, respectively, under the order and direction of the Comptroller General, shall be collected by the several county treasurers in the manner provided by law for the collection of taxes from such companies and shall be paid by the county treasurers as collected into the State Treasury in like manner as other taxes collected by them for the State.’

*2 If the charge is a tax on property or revenue, then the same cannot be levied for § 58–19–150, quoted in part above, also exempts from all State taxation the revenue derived from ‘all railroads and necessary equipment.’ It has been held that such charges are not taxes.

‘Where use of fees paid into special funds is limited to expenses of administration and supervision of public utilities paying fees, the levy is a ‘special assessment’ for specific purposes and lacks the essential element of a ‘tax.’’ [Memphis Natural Gas Co. v. McCanless](#), 194 S. W. 2d 476; see also 41 [Words and Phrases](#), Tax.

A similar question was presented to our court in 1887. At issue in the case of [Charlotte, C. & A. R. Co. v. Gibbes](#), 27 S. C. 285, 4 S. E. 49, was the right to charge the expense of the Railroad Commissioner to the companies regulated by the said Commissioner. The statute provided:

“The entire expenses of the railroad commissioner, including all salaries and expenses of every kind, shall be borne by the several corporations owning or operating railroads within this state, according to their gross income, proportioned to the number of miles in this state, to be apportioned by the comptroller general of the state, who, on or before the first day of October in each and every year, shall assess upon each of said corporations its just proportion of such expenses, in proportion to its said gross income for the current year ending on the thirtieth day of June next preceding that on which the said assessment is made; and the said assessment shall be charged up against the said corporations, respectively, under the order and direction of the comptroller general, and shall be collected by the several county treasurers, in the manner provided by law for the collection of taxes from such corporations, and shall be paid by the said county treasurers, as collected, into the treasury of the state, in like manner as other taxes collected by them for the state.”

The Court held:

‘It is a declaration, in substance, by the legislature that railroad companies may pursue their business upon condition that they shall pay each a proportion of the salary of the railroad commissioners, the proportion being fixed by a uniform rule applied to each. It is therefore more in the nature of a license fee. It is true that the amount collected is to go into the public treasury, and it is collected as a tax; but it is intended to reimburse the state for these salaries paid by the state to the commissioners, who are, to some extent, officials of said companies, or at least whose duties appertain to said companies, and not to the general public, and it therefore may be properly styled a ‘license tax,’ collected and appropriated for the proper regulation and benefit of the corporations paying it. And being assessed upon all railroad corporations alike, it is ‘uniform’, in accordance with the true meaning of the constitution.’

A license fee is, however, not a tax in the generally accepted meaning of the term. See 25 [Words and Phrases](#), License Fee. Our Court held in the case of [Powell v. Chapman](#), 260 S. C. 515, 197 S. E. 2d 287, that:

*3 'The question of whether a particular contribution, charge or burden is to be regarded as a tax depends on its real nature and not on its designation.'

The United States Supreme Court, in considering charges to fund the expenses of performing governmentally required acts, held:

'* * *. The sum demanded of him is not, therefore, strictly speaking, a tax or duty within the meaning of the constitution. The money thus raised, though paid into the treasury, is appropriated in advance to the uses of the statute, and does not go to the general support of the government.' [United States v. Butler](#), 56 S. Ct. 312, 297 U. S. 1.

The payment of a proportionate share of the expense of the Public Service Commission is thus not precluded by § 58–19–150.

CONCLUSION

The railroad and necessary equipment owned by the South Carolina Public Railways Commission is exempt from taxation by § 58–19–150.

The section, however, does not exempt the Commission from the payment of a pro rata share of the expense of the Public Service Commission.

Comment: It should be noted that the exemption from property taxation was repealed by [Article X, § 3 of the Constitution](#), as amended. The repeal was effective March 1, 1978, and the statute will not be available for 1978. It will be necessary for the 1979 year that the South Carolina Tax Commission make a determination whether the property, if governmentally owned, was used exclusively for public purposes.

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