

1975 S.C. Op. Atty. Gen. 51 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 3978, 1975 WL 22276

Office of the Attorney General

State of South Carolina

Opinion No. 3978

February 26, 1975

***1 The Town of Donalds may tax property under the provision of Section 47–161 of the Code.**

Attorneys at Law
Greenwood, South Carolina

Your letter of February 20, 1975 to Mr. McLeod has been handed this writer for attention and reply. You advise that the Town of Donalds was chartered by legislative act in 1884 that gave the Town the right to impose a property tax equal to a 15 cents per \$100 of the tax value of property. The Town now proposes to increase the taxes to the 40 mills limitation provided for in Section 47–161. You request the opinion of this office of whether the Town can levy the taxes provided for in that Section in the light of the limitations found in the 1884 Act.

The General Assembly, in 1896, Act No. 36, 22 Statutes at Large 67, provided for the incorporation of municipalities under the Act and gave such corporations the authority to ‘impose by ordinance * * * an annual tax * * * on all real estate * * * and on all personal property * * *.’ By Act No. 292, Acts of 1897, 22 Statutes at Large 464, the powers granted by the 1896 Act were conferred on all municipal corporations. The pertinent language of the Act is as follows: ‘* * * And all municipal corporations of this State having a population of not less than two hundred inhabitants and not more than one thousand inhabitants are hereby endowed with the powers enumerated in an Act of the General Assembly approved 2nd March, 1896, and numbered 37.’

In the case of *Hill v. City Council*, 59 S. C. 396, 38 S. E. 11, the Court adopted the Order of the Trial Judge that held the provisions of the above Act applicable to all corporations of the State whether incorporated before or after the Constitution of 1895. The language of the Trial Judge is as follows:

‘I think, and so hold, the words ‘that all municipal corporations of this state,’ as used in section 1 of the ‘Act relating to the power of certain corporations,’ refer to and include municipal corporations existing under special charters, as well as those incorporated under the general act of 1896, supra.’

The language of the 1896 Act is now codified in Section 47–152 of the Code and this office is informed that the population of the Town of Donalds is within that set forth in the Act. It is therefore the opinion of this office that the Town Council of the Town of Donalds has the power to levy the tax provided for in Section 47–161. Whether the General Assembly could authorize a higher rate of taxation is in doubt in the light of the provisions of Article 8 of the Constitution, as amended. Such legislation would probably be considered special and thus prohibited by that Article.

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