

1975 WL 29793 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 9, 1975

\*1 Honorable James P. Harrelson  
State Senator  
State House  
Columbia, South Carolina 29211

Dear Senator Harrelson:

Mr. Goolsby has referred your recent inquiry concerning various taxation questions concerning Edisto Beach to me for reply. In reference to the specific questions you have posed, I have conferred with Mr. Joe Allen, Senior Assistant Attorney General, assigned to the South Carolina Tax Commission.

You have inquired if Colleton County should use the assessment and millage for Charleston County for the purposes of assessment of taxes for Edisto Beach; or, if you should assess the Charleston millage and assessment for the three months of January, February, and March during which time Edisto Beach was still a part of Charleston and then assess the millage and assessment taxes of Colleton for the remaining nine months. It would be inequitable and illegal for Colleton County to assess taxes in the amount authorized for Charleston County.

The act transferring the area does not provide for the distribution of the taxes although the same does require the apportionment of the indebtedness of Charleston County to be transferred and assumed by Colleton County. The assessment of the persons and property within the area for 1975 could not have been completed by either county individually as Edisto Beach was not a part of either county for the entire year. For the assessment to be complete for 1975, the actions of the officials of the two counties must be considered as one and if such is not done the persons and properties will escape taxation for the year. The intent of the General Assembly, therefore, must have been to transfer and join the actions of the officials of Charleston to those that are required to be performed by the officials of Colleton County.

The Constitution and Statutes require the apportionment and transfer of a part of Charleston County's indebtedness to Colleton County. The Ohio Court of Appeals in the case of [Appeal of Lemon TP. Trustees, Bulter County](#), 60 Ohio [Appl.](#), 19 N.E.2d 277, held that a similar provision to express legislative intent to apportion taxes. This appears to us to be both reasonable and equitable. It would not be logical to conclude that the General Assembly intended the other property owners of Colleton County to assume the burden of this indebtedness without some contribution from the property owners in the area. It is equally logical to conclude that the General Assembly did not intend that either Charleston County or Colleton County receive and retain the total taxes for 1975 and thereby be unjustly enriched.

It would therefore be the opinion of this office that the taxes to be paid by the property owners in this area for the year 1975 should be apportioned between the two counties. If the counties cannot reach an agreement as to what would be an equitable percentage and in the absence of a legislative directive, the only alternative would be the institution of a declaratory action to determine the tax liability of the residents of Edisto Beach.

\*2 In addition you have inquired which county would enforce the lien on back taxes. South Carolina Code of Laws, 1962, Section 65-2002 establishes a procedure for collecting taxes when the owner of the chattel resides in another county. Pursuant to this section the county treasurer would forward a certified statement of the name of the person, the value of the property, the amount of the taxes and penalties, and the fact that they are delinquent to the county treasurer in

which the person now resides. Taxes on real property would constitute a debt; therefore delinquent taxes for Charleston County should be collected by an action at law.

Very truly yours,

Treva G. Ashworth  
Assistant Attorney General

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