

1975 WL 29087 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 19, 1975

\*1 The constitutionality of an Act exempting property from taxation must presumed until declared otherwise by a court of competent jurisdiction.

TO: C. J. Manos, Esq.  
Attorney for the Charleston  
County Tax Exempt Board

### QUESTION

Is a 1975 act of the General Assembly, No. H. 2879, R-383, unconstitutional? The act provides as follows:  
'Notwithstanding any other provision of law all property, real and personal, owned by the First Baptist Church at Folly Beach in Charleston County and used exclusively for the convenience of any activities or work of such church shall be exempt from all county taxes that are outstanding and unpaid for the year 1971.'

### LAWS INVOLVED

Equal protection, equality and uniformity requirements of the Constitution.

### DISCUSSIONS

Your inquiry is on behalf of the Charleston County Tax Exempt Board that is required to pass upon all applications for property tax exemptions in the County. The Church involved apparently did not make application for the exemption for the 1971 tax year and, because of such, the property was taxed. The Act involved would cure this failure and allow the exemption. You advise, however, that there are several other churches in the County that also failed to apply for the exemption for the 1971 tax year and your inquiry is thus whether the legislation is unconstitutionally discriminatory. It should be noted that the property of a church is exempt from taxation by Article 10, Section 4 of the Constitution, however, there is a limitation as to real property; only that occupied by the church is exempt. This office has earlier advised that the requirement to apply for the exemption does not offend the constitutionally granted exemption.

In considering the constitutionality of the Act, resort must be had to settled rules of construction. All acts are presumed constitutional and, when possible, will be so construed. For cases, see 6 S.C.D., Constitutional Law, Key 48. Additionally, only a court of competent jurisdiction may authoritatively declare an act of the General Assembly unconstitutional.

'\* \* \*. The final responsibility of passing upon the constitutionality of a statute rests upon the courts, and they alone are by the organic law empowered authoritatively to declare or adjudge a statute to be in accord or in conflict with the constitution, so that the statute, if valid, stands, or, if contrary to organic law, will, by the operation of the constitution, be rendered invalid from its enactment.' 16 Am. Jur. 2d, Constitutional Law, Sec. 104, p. 287.

There is authority for the position that the exemption must apply equally to all within a class. 84 C.J.S., Taxation, Sec. 221, however, the United States Supreme Court, in the case of Carmichael v. Southern Coal & Coke Co., 301 U. S. 495, 81 L. Ed. 1245, 57 S. Ct. 868, 109 A.L.R. 1327, stated:

'It is inherent in the exercise of the power to tax that a state be free to select the subjects of taxation and to grant exemptions. Neither due process nor equal protection imposes upon a state any rigid rule of equality of taxation. \* \* \*. This Court has repeatedly held that inequalities which result from a singling out of one particular class for taxation or exemption, infringe no constitutional limitation. \* \* \*. Like considerations govern exemptions from the operation of a tax imposed on the members of a class. A legislature is not bound to tax every member of a class or none. It may make distinctions of degree having a rational basis, and when subjected to judicial scrutiny they must be presumed to rest on that basis if there is any conceivable state of facts which would support it.'

### CONCLUSION

\*2 Whether there are sufficient facts for the distinction made in the Act is unknown, however, the constitutionality of the Act must be presumed until declared otherwise by a court of competent jurisdiction. Should, however, the exemption extend to any real property not occupied by the church, that part would clearly violate the provisions of Article 10, Section 4. The Supreme Court has considered this question and held the same to be void. Strong v. Sumter, 185 S. C. 203, 193 S. E. 649, Wofford College Trustees v. Spartanburg, 201 S. C. 315, 23 S. E. 2d 9.

Joe L. Allen, Jr.  
Assistant Attorney General

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