1975 S.C. Op. Atty. Gen. 172 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4095, 1975 WL 22391

Office of the Attorney General

State of South Carolina
Opinion No. 4095
August 22, 1975

***1 The constitutionality of an act exempting property in Richland County is presumed, and only the court can authoritatively declare the statute invalid.**

Member
House of Representatives

R–341 became law without the Governor's signature. The act in question exempts certain property from taxation and amends existing property tax exemptions that were created by statute. Article 10, Section 1 of the Constitution provides in part that:
'The General Assembly shall provide by law for a uniform and equal rate of assessment and taxation * * * of all property * * * excepting such property as may be exempted by law for municipal, educational, literary, scientific, religious and charitable purposes; * * *.'

Clearly, the General Assembly has the authority to exempt property from taxation for the enumerated purposes unless there is some other constitutional provision that limits the authority.

Article 8, Section 7 of the Constitution provides as follows:
'The General Assembly shall provide by general law for the structure, organization, powers duties, functions, and the responsibilities of counties, including the power to tax different areas at different rates of taxation related to the nature and level of government services provided. Alternate forms of government, not to exceed five, shall be established. *No laws for a specific county shall be enacted and no county shall be exempted from the general laws or laws applicable to the selected alternative form of government*.' (Emphasis added)

We have no judicial decision of whether the above Section limits the authority conferred by Article 10, Section 1, however, as the question relates to Article 3, Section 34(9) that proscribes special legislation when a general law could be applicable, the Court has stated:
'The plaintiffs contend that it is a special law where a general law may be made applicable, in violation of Article III, section 34, of the Constitution.

'But like counties, the individual districts are each separate taxing districts under Article X, section 5, and a law that is special only in the sense that it imposes a lawful tax limited in application and incidence to persons or property within a certain school district does not contravene the provisions of that section of the Constitution. State v. Touchberry, supra; Anderson v. Page, 208 S. C. 146, 37 S. E. 2d 289; Moseley v. Welch, 209 S. C. 19, 39 S. E. 2nd 133; Murph v. Landrum, 76 S. C. 21, 28, 56 S. E. 850; Nettles v. Cantwell, 112 S. C. 24, 99 S. E. 756.' *Hay v. Leonard*, 212 S. C. 81, 46 S. E. 2d 653.

The constitutional question here presented is before the court in a Chester County case involving an act that repealed a property tax exemption. Until this issue is settled by the court, we must rely upon the following settled rules of construction the constitutionality of an act of the General Assembly.

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.

***2** '* * *. The final responsibility of passing upon the constitutionality of a statute rests upon the courts, and they alone are by 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*.

The Supreme Court of South Carolina, in a decision rendered August 5, 1975, commented on the underscored language of Article 8, Section 7, as follows:

'The concluding sentence of Section 7 provides that 'No laws for a specific county shall be enacted and no county shall be exempted from the general laws or laws applicable to the selected alternative form of government.' Read alone, this prohibition against the enactment of laws for a specific county could be given such a broad interpretation that it would prohibit the enactment of a law establishing a state park or a branch of a state college in a designated county. The prohibition against laws for a specific county cannot be given an interpretation which might result if the words were taken by themselves and out of context. The prohibition was not intended to create an area in which no laws can be enacted. Rather, the prohibition only means that no law may be passed relating to a specific county which relates to those powers, duties, functions and responsibilities, which under the mandated systems of government, are set aside for counties.' *Kleckley v. Pulliam*, Opinion No. 20075.

It should be noted that the acts that initially created the tax exemption were applicable to only one county, Richland. If Article 8, Section 7 limits the right of the General Assembly to amend or repeal these acts, then some doubt exists as to how the same could ever be done, as the act would always relate to property in but one county.

The act referred to herein is construed as not applying to any exemption provided for in the Constitution as the General Assembly has no authority to restrict or enlarge such exemptions. *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.

Based upon the above, we advise that the constitutionality of the act must be presumed until declared otherwise by a court of competent jurisdiction.

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