1974 WL 27870 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
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***1** The constitutionality of a statute that would classify property by county is suspect because of the provisions of Article VIII of the Constitution.

Honorable Samuel Brooks Mendenhall
Senator
District No. 6, Off. No. 2
Post Office Box 342
Rock Hill, South Carolina 29730

Dear Senator Mendenhall:
Reference is made to your request for the opinion of this office of whether the General Assembly could by statute constitutionally divide property in York County into classes for the purposes of ad valorem taxation.

We begin with the premise that our Constitution does not prohibit a reasonable division or classification of property for tax purposes by the General Assembly.
'We find nothing in our Constitution that prohibits the General Assembly of this State from classifying property according to its use so long as such classification is reasonable and not arbitrary, and the tax imposed is uniform on the same class of property.' Holzwasser v. Brady—South Carolina Supreme Court Opinion No. 19830 (1974)—Newberry Mills, Inc. v. Dawkins, 259 S. C. 7, 190 S. E. 2d 503.

The constitutional requirements for uniformity and equality are met when all property within the class and the county is taxed alike.
'Manifestly, this provision (Art. 10, Section 1 of the 1895 South Carolina Constitution) does not mean that all counties shall have the same tax levy, but rather that uniformity of taxation must be co-extensive with the territory to which the tax applies.' Smith v. Robertson, 210 S. C. 99, 41 S. E. 2d 631.

The constitutional requirements for due process and equal protection of the laws do not preclude such classification.
'It was long ago decided that this constitutional guaranty 'does not require territorial uniformity.' Ocampo v. United States, 234 U. S. 91, 34 S. Ct. 712, 715, 58 L. Ed. 1231. 'The Fourteenth Amendment does not prohibit legislation merely because it is special, or limited in its application to a particular geographical or political subdivision of the state.' Ft. Smith Light & Traction Co. v. Board of Improvement of Paving District No. 16 of City of Ft. Smith, 274 U. S. 387, 47 S. Ct. 595, 597, 71 L. Ed. 1112. 'In the absence of restrictions contained in state constitutions the legislature may determine within broad limits whether particular laws shall extend to the whole state or be limited in their operation to particular portions of the state. All that the Federal Constitution requires is that they shall be general in their application within the territory in which they operate.' 12 Am. Jur., Constitutional Law, Section 488, page 167. It is only necessary that there be a reasonable basis for the limitation or differentiation and that all persons similarly situated in the same territory are treated alike. 16 C. J. S., Constitutional Law, Section 506. In State v. Berlin, 21 S. C. 292, the Court quoted with approval the following: 'To make a statute a public law of general obligation, it is not necessary that it should be equally applicable to all parts of the state; all that is required is, that it shall apply equally to all persons within the territorial limits described in the act." Mosely v. Welch, 218 S. C. 242, 62 S. E. 2d 313, 16 Am. Jur. 2d, Constitutional Law, Section 510, page 893.

***2** Under any circumstances, however, the classification must be reasonable and not arbitrary.

Such legislation would not therefore be invalid unless prohibited by the amended provisions of Article VIII of the Constitution.

Section 1 and Section 7 provide as follows:
'Section 1. The powers possessed by all counties, cities, towns, and other political subdivisions at the effective date of this Constitution shall continue until changed in a manner provided by law.

'Section 7. The General Assembly shall provide 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 governmental 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.'

These provisions are the subject of much debate and we have no clear expression as to the precise limitation found in Section 7 that provides that 'no laws for a specific county shall be enacted.' Whether this applies only to the alternative forms of government or to any law is not settled. Laws relating to similar matters did not contravene Article 3, Section 34 that prohibited the enactment of a special law when a general law could be made applicable.
'Each county in this State is a separate taxing district and a statute providing for the levy of taxes on the property within a county for corporate purposes, while special in the sense that it imposes a tax limited in application to the property within such county, does not contravene Section 34, Article 3 of the Constitution, prohibiting the enactment of a special law where a general law can be made applicable.' Moseley v. Melch, 209 S. C. 19, 39 S. E. 2d 133.

The case of Knight, et al. v. Salisbury, et al., Opinion No. 19842 of the Supreme Court of June 17, 1974 is however, the latest expression on Article VIII, The Court there held a statute creating a recreation district in Dorchester County to be invalid and it was there stated that:
'The State Constitution, which until March 7, 1973, did not deny the plenary powers of the General Assembly in this area, has now been charged. Those plenary powers are now curtailed by the prohibition of special laws for a specific county. * * *. Thus, the preexisting power to enact special laws under Section 11 of Article VII must give way as being in conflict with Article VIII. * * *.'

'Therefore, the special acts creating the Lower Dorchester Recreation District and authorizing the issuance of general obligation bonds contravene Article III, Section 34, Subdivision IX; which prohibits the enactment of a special law 'where a general law can be made applicable."

While not conclusive of the issue, the quoted language of the Court reflects that the purpose of the amendment was to give 'home rule' to the counties and under such the constitutionality of the proposed legislation is suspect.

***3** The answer to your question is better presented in a case now pending before the Supreme Court. The constitutionality of a statute that authorized Charlestion County to tax improvements to realty on a proportion of the tax year as determined by the month of completion to the year is at issue in the case of Thorne, et al. v. Seabrook. The lower court held the statute to be constitutional and should that order be affirmed it is probable that the statute herein considered would be constitutional.

Additionally, it should be noted that amendments to Article 10, that deal with taxation, are now being considered by the General Assembly and the language of any such amendment will probably also directly affect the right to enact the legislation here considered.

As evident by the above, an authoritative expression of the overall effect of Article VIII, as amended, on the question presented is best reserved until the decision in the Thorne case is issued and any amendments to Article 10 are voted upon.

With best wishes, I am
Yours very truly,

Joe L. Allen, Jr.
Assistant Attorney General

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