

1974 S.C. Op. Atty. Gen. 227 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3825, 1974 WL 21330

Office of the Attorney General

State of South Carolina

Opinion No. 3825

July 29, 1974

***1 In determining whether a manufacturing plant is constructed, effect must be given to the whole plant and not to a single element thereof such as the building.**

Charleston County Attorney

Reference is made to your letter of July 18, 1974, and to the petition of Cummins Engine Company, Inc., for tax exemption from certain property taxes. Cummins Engine Company, Inc., hereafter referred to as Cummins, seeks the exemption formerly granted Avco Lycoming Corporation, or in the alternative, for the exemption provided for in Act 829, Acts of 1970, and you ask the opinion of this office concerning the same.

An opinion was issued April 16, 1973 stating that the exemption granted Avco Lycoming had been abandoned, waived or forfeited and that there was no exemption to pass with the property when purchased by Cummins. A copy of this opinion is appended for review.

We next consider whether the property is exempt under Act 829, Acts of 1970, which provides in part that:

‘Section 65–1542. Exemption from county taxes (but not from school taxes or public service district taxes) is granted to manufacturing plants constructed in Charleston County, as follows:

(1) If the actual cost of the construction of such manufacturing plant, exclusive of the cost of the land, is more than one million dollars and not more than three million dollars, the exemption shall be for a period of three years from the date of the commencement of such construction.

(2) If the actual cost of the construction of such manufacturing plant, exclusive of the cost of the land, is more than three million dollars, the exemption shall be for a period of five years from the date of the commencement of such construction.’

Under settled rules of construction, this statute is the subject of a strict construction. *Arkwright Mills v. Murph*, 219 S. C. 438, 65 S. E. 2d 665; *Textile Hall Corp. v. Hill*, 215 S. C. 262, 54 S. E. 2d 809.

Such a rule, however, does not preclude a reasonable construction of the Act.

‘A statute as a whole must receive a practical, reasonable and fair interpretation consonant with the purpose, design and policy of the lawmakers.’ *Caughman v. Columbia Y.M.C.A.*, 212 S. C. 337, 47 S. E. 2d 788.

‘Language relating to exemption of property from taxation should be given a reasonable interpretation, neither too broad nor too narrow, in order to ascertain the true intent as to its scope, and then should be strictly applied and enforced so that the limits there defined shall not be unduly enlarged or extended.’ *51 Am. Jur. Taxation, Section 548, page 531, et seq.*

The purpose of the exemption is to benefit Charleston County by the construction of the manufacturing plant and the attendant employment available to its citizens.

This benefit has long been recognized in this State because the exemptions have been declared to be for a municipal purpose. In the case of *Duke Power Co. v. Bell*, 156 S. C. 299, 152 S. E. 865, it was stated that:

*2 'The theory of the transaction is that a public benefit will accrue to the town and its inhabitants by the introduction of the business enterprise, equivalent to an exemption from taxes for a certain time, and on this ground it is offered. Suppose the offer is not accepted and the manufacturer does not build in the town. The plaintiff's tax, for example, would be just the same in either case.'

In this case Avco Lycoming discontinued manufacturing at this location and all the machinery, etc., was removed from the land and buildings. The employment of many persons was terminated and the property (land and buildings) remained unused and vacant for some time until purchased by Cummins. Cummins paid eight million dollars for the land and buildings and estimates additional expenditures of approximately twenty-nine million dollars to complete the manufacturing plant.

The principal question, therefore, is whether Cummins is to be denied the exemption because the previously constructed buildings constitute a part of the manufacturing plant.

Generally, the word construct means to build or erect something new.

The word 'build,' however, in a constitutional provision that provided that 'the General Assembly shall not have power to authorize any county or township to levy a tax or issue bonds for any purpose, except for educational purposes, to build and repair public roads, buildings and bridges, etc.' was held to include authority to acquire existing bridges. The Court in that case, *Verner v. Muller*, 89 S. C. 545, 72 S. E. 393, stated that 'The word 'build' may be employed in the sense of obtain, secure, or acquire, as well as its ordinary meaning.'

It was also held in the case of *Vogt Bros. Mach. So. v. Sea*, 204 So. 76, (1918 Kentucky Ct. of Appeals) that a manufacturing plant established under facts quite similar to those here involved was a 'new' manufacturing enterprise.

We must look to the whole plant and not to any one of its elements to determine whether a 'manufacturing plant' has been constructed. All property necessary for the plant's operation constitutes the plant and such therefore includes more than the preexisting buildings. (Vol. 32 A, Words & Phrases, Plant). The preexisting building is not determinative of whether the plant was constructed because the building by itself is not a 'manufacturing plant.' When viewed in this perspective, little doubt can exist but that the manufacturing plant herein considered is being constructed.

It is therefore the opinion of this office that the exemption provided in the 1970 Act is available to the manufacturing plant of Cummins.

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