

1973 S.C. Op. Atty. Gen. 61 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3477, 1973 WL 20941

Office of the Attorney General

State of South Carolina

Opinion No. 3477

February 23, 1973

***1 County taxes collected on property not situated within the county so collecting the taxes are within those provided for by Section 65–2654 of the Code.**

Charleston County Attorney

Reference is made to your letter of February 16, 1973, to Mr. McLeod and to the request therein for the opinion of this office concerning Section 65–2654. Briefly, H. L. Koester, Jr. is the owner of 1,002 acres of land of which 420.8 acres are in Charleston County and the remainder is in Dorchester County. The total acreage was taxed by Charleston County until the 1971 tax year when an error in the county boundary lines was discovered, and thereafter only the 420.8 acres were taxed in Charleston County. Mr. Koester, through his attorney, has made a demand to the county auditor pursuant to Section 65–2654 that the matter be submitted to the Office of the Comptroller General for consideration and your inquiry concerns this statute.

Sections 65–2653 and 65–2654 were enacted in 1881 as Section 262 of Act No. 677, 17 Statutes at Large 1028, and in part provided:

‘* * *; or if any taxes shall be illegally assessed and collected, when the same shall become known to the county auditor, he shall, on demand of the party interested, submit the matter to the Comptroller General; * * *.’

The 1881 Act also contained other provisions relating to the assessment and taxation of property, in example, the payment of taxes under protest and suit for the recovery thereof, Section 252, et seq., now codified as Section 65–2661, et seq., to annually correct the assessment rolls so as to charge property in the correct locality; Section 232, now codified as Section 65–1779, the location that real estate is to be taxed; Section 140, now codified as Section 65–1643, and the latter section provides in part that: ‘* * * all real estate shall be taxed in the county, city, ward and town where it is located * * *.’

The statutes, therefore, generally limit the right to tax real property to the county, city, ward, etc. in which the same is situate.

Here the county had no authority to impose the tax on that portion of the property that was not in Charleston County and the tax levied and paid thereon was ‘illegally assessed and collected’. (See [Meredith v. Elliott](#), 247 S. C. 335, 147 S. E. 2d 244.)

The matter should, therefore, be forwarded to the Comptroller General for his consideration.

Joe L. Allen, Jr.
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