

1973 WL 27032 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 14, 1973

*1 The General Assembly probably can enact constitutional legislation providing for an occupation tax on innkeepers within the Greenville Memorial Auditorium District to be used for improvements to the Auditorium.

Honorable E. P. Riley
Greenville County Attorney
P. O. Box 10084
Greenville, South Carolina 29603

Dear Mr. Riley:

This is in reply to your request for the opinion of this office on whether there is any constitutional objection to the enactment of legislation placing an innkeepers tax on all rooms rented within the Greenville Memorial Auditorium District in order to finance the enlargement of the Memorial Auditorium.

This writer has given thorough consideration to the various constitutional provisions and cases interpreting them which might have some bearing on the proposed legislation. In the case of [Ashmore v. Greater Greenville Sewer District](#), 211 S. C. 77, 44 S. E. 2d 88 (1947), the South Carolina Supreme Court stated that the legislature may constitutionally create by act a special district of designated territory of the state and authorize it to issue bonds and construct and operate a public auditorium. The court noted that the provisions of Article 10, Section 6, which provide the purposes for which county or township taxes may be levied, do not apply to special purpose districts.

Subsection IX of Article 3, Section 34 of the Constitution prohibits special laws where a general law can be made applicable. In view of the case law interpreting this section, it is unlikely that the proposed levy would violate this provision. In the case of [Mills Mill v. Hawkins](#), 232 S. C. 515, 103 S. E. 2d 14 (1957), the court noted that it had been generally held that legislation relating to the fiscal affairs of counties, including the issuance of bonds by counties or other political subdivisions, is not susceptible to constitutional objection under this provision.

Article 10, Section 1 of the Constitution provides that the General Assembly may provide for a graduated license tax on occupations and businesses. The proposed legislation will levy an occupation tax on all innkeepers in the district for the purpose of financing the enlargement of the Memorial Auditorium. If it may be assumed that innkeepers within the Auditorium District profit from the existence of the nearby auditorium, this fact will be beneficial to the constitutionality of the proposed legislation in the event that it is challenged on the basis of arbitrary classification.

The South Carolina Supreme Court has stated on numerous occasions that classification of taxpayers for license or occupation taxes is permissible if the classification has a rational basis and applies alike to all members of the same class. See [United States Fidelity and Guaranty Co. v. City of Newberry](#), 257 S. C. 433, 186 S. E. 2d 239 (1972); [Pickelsimer v. Pratt](#), 198 S. C. 225, 17 S. E. 2d 524 (1941) and [Hill v. City Council of Abbeville](#), 59 S. C. 396, 38 S. E. 11 (1901). An argument in favor of the proposed classification would, of course, be that innkeepers within the district benefit from the nearby auditorium. No case has been found on point with regard to such a classification and there does not appear to be any definitive authority on the precise question. It therefore cannot be said with certainty whether such a classification would be accepted by the courts, however, it is our opinion that the classification probably would be upheld.

Yours very truly,

***2** John C. von Lehe
Assistant Attorney General
South Carolina Tax Commission

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