

1973 S.C. Op. Atty. Gen. 115 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3507, 1973 WL 20968

Office of the Attorney General

State of South Carolina

Opinion No. 3507

April 4, 1973

***1 Taxes that are paid under protest cannot be apportioned and distributed or expended by the County Treasurer until the merit of the protest is resolved.**

Spartanburg County Attorney

Reference is made to your letter of March 30, 1973, and to the provisions of Section 65–2661. You request the advice of this office of whether the treasurer of Spartanburg County can allocate taxes, penalty or interest paid under protest prior to an adjudication or abandonment of the protest.

Prior to 1971, all moneys paid under protest were required to be transmitted to the State treasurer and in 1971 the Act was amended so as to provide that taxes paid under protest to the county treasurer would be retained by the said treasurer.

It should be noted that the Act (1971) pledges the full faith and credit of the county as security for repayment and, because of such, it could be argued that it was the legislative intent that the funds be deposited into the county treasury and expended by the county prior to the adjudication. There is, however, no settled authority found by this office that specifically requires the retention or the expenditure of such funds. Our statutes provide that the collection of the taxes cannot be enjoined, Section 65–2656, however, there is authority that the taxes so paid are impressed with a trust, *Dexter Horton Building Co. v. King County*, 116 P. 2d 507, 10 Wash. 2d 186, 84 C. J. S., Taxation, Section 638, note 72, and that taxes collected from an illegal levy cannot be used for the purposes levied. *People ex rel Nelson v. Beau*, 403 Ill. 232, 85 N. E. 2d 829, 85 C. J. S., Taxation, Section 1057, note 61.

The well-settled administrative practice followed in this State is that funds paid under protest are not available for general expenditure and are impressed with a trust and set aside by an accounting entry until the legality of the tax collection is resolved. The construction and administrative procedure being of many years duration is entitled to great weight and should not be disregarded except for cogent reason. *Etiwan Fertilizer Co. v. South Carolina Tax Commission*, 217 S. C. 354, 60 S. E. 2d 682.

Because of the long-standing administrative practice, it is therefore the opinion of this office that the funds paid the County Treasurer of Spartanburg County are not subject to apportionment, distribution or expenditure until the merit of the protest is resolved or abandoned.

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South Carolina Tax Commission

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