

1973 S.C. Op. Atty. Gen. 131 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3519, 1973 WL 20979

Office of the Attorney General

State of South Carolina

Opinion No. 3519

May 2, 1973

***1 A bill that gives property owners of one county appellate rights to the courts from findings of a state agency which are denied property owners of other counties would be unconstitutional.**

Senator

Senatorial District No. 16

Charleston, South Carolina

You request the opinion of this office concerning Senate Bill S. 374 and to the possibility that the same may be special legislation and thus prohibited by the provisions of Article 3, Section 34, of the Constitution. The Bill provides that a property owner in Charleston County could appeal the finding of the Tax Commission of the valuation of his property to the Court of Common Pleas for Charleston County for a trial de novo or elect to appeal from the finding of the Charleston County Board of Assessment Appeals to the Tax Commission or to go directly to the Court of Common Pleas of Charleston County for a trial de novo of the valuation and assessment of the property.

Article 3, Section 34, prohibits the General Assembly from enacting local or special laws where a general law can be made applicable. As a general rule, it is held that each county of the State is a separate taxing district and that statutes that affect only citizens or property within the county do not affront the constitutional prohibition against special enactment.

‘Each county of the state is a separate taxing district, and revenue measures may be applied therein which affect only citizens or property within the territory of county under the Constitution authorizing special enactments for operation of municipal governments.’ *Anderson v. Page*, 208 S. C. 146, 37 S. E. 2d 289, *Doran v. Robertson*, 203 S. C. 434, 27 S. E. 2d 714.

The court has, however, held unconstitutional as special legislation statutes that gave Chesterfield County procedures different from that of other counties in the collection of taxes, delinquent taxes, redemption of property sold, etc. *Douglas v. Watson*, 186 S. C. 34, 195 S. E. 116.

The General Assembly created the South Carolina Tax Commission by Section 65–51 and imposed upon it the duty ‘to effectively carry into execution the equitable assessment of property for taxation,’ and conferred by Section 65–64 certain powers upon the Commission. The Bill here involved provides for an additional trial or determination by the court for property owners of Charleston County from the findings or actions of the Tax Commission to the exclusion of a similar opportunity for property owners from the other forty-five counties. The constitutionality of the Bill is thus highly suspect.

The Fourteenth Amendment to the United States Constitution requires equality as respects legal proceedings.

‘Equal protection of the laws of a state is extended to persons within its jurisdiction, within the meaning of the Fourteenth Amendment to the Federal Constitution, when its courts are open to them on the same condition as to others in like circumstances, with like rules of evidence and modes of procedure, for the security of their persons and property, the prevention and redress of wrongs, and the enforcement of contracts. The Supreme Court at an early date recognized the rule that an act of the legislature which in terms would give to one individual certain rights and the benefit of certain modes of procedure, and would deny to another similarly situated the same rights, could be challenged successfully on the ground of unjust discrimination and denial of the equal protection of the laws.’ 16 Am. Jur., *Constitutional Law*, Section 533, page 923.

*2 The Bill, bearing Calendar Number S. 374, would therefore, in the opinion of this office, probably be unconstitutional in that it gives rights to the property owners of Charleston County that are denied property owners in the other forty-five counties of the State. The opinion herein expressed is further fortified by the amendment to Article VIII of the Constitution that was ratified March 7, 1973.

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