

1973 S.C. Op. Atty. Gen. 136 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3521, 1973 WL 20981

Office of the Attorney General

State of South Carolina

Opinion No. 3521

May 7, 1973

***1** A proposed tax to be imposed by legislative act in the Greenville Memorial Auditorium District upon all taxable property located therein is uniform in its burden and in the distribution of its benefits.

TO: Senator

Sanatorial District No. 2.

You have advised us that the Greenville Legislative Delegation has been requested to offer legislation which would authorize the construction of a coliseum within the Greenville Memorial Auditorium District.

In 1940, the General Assembly created a Board of Trustees who were to provide for the construction of an auditorium for the use of the people in the Greater Greenville Sewer District in Greenville County. 41 STAT. Act No. 1210 Section 1 at 2510 (1940). The act creating the Board of Trustees authorized the Board of County Commissioners in Greenville County to issue bonds for the erection of the auditorium provided a majority of the electors in the district favored the issuance of those bonds. Ibid. Section 6 at 2511. And in the event bonds were issued by the County Commissioners, the full faith, credit, and taxing power of the sewer district was pledged for their payment. Ibid. Section 9 at 2512. Some years later, in 1945, an act was passed by the General Assembly which validated an election conducted on August 27, 1940, that approved the creation of the sewer district and issuance of \$300,000.00 in bonds by the district for use in building the auditorium. 44 STAT. Act No. 332 at 956 (1945). The act establishing the sewer district was amended by Act No. 333 of 1945 so as to provide, among other things, for the maintenance of the auditorium. 44 STAT. Act No. 333 at 958 (1945). In 1948, the name of the district was changed to the Greenville Auditorium District; 45 STAT. Act No. 1010 at 2689 (1948); and in 1949, a statute was adopted that authorized the County Commissioners to issue \$1,000,000.00 in bonds of the auditorium district upon the approval of the district's electorate. 46 STAT. Act No. 534 Section 2 at 1259 (1949). Once again the full faith, credit, and taxing power of the district was pledged for the payment of the bonds. Ibid. Section 9 at 1262. The election for which the 1949 Act provided was validated by the General Assembly in 1950. 46 STAT. Act No. 1234 at 3126 (1950). Thereafter, in 1953, a statute was enacted which authorized the Greenville County Auditor to levy for the year 1953 only a tax which was not to exceed three-fourths of one mill upon all of the taxable property in the district. 48 STAT. Act No. 464 Section 1 at 956 (1953). The State Constitution was amended in 1955 to limit the bonded indebtedness of the auditorium district in Greenville County to eight per cent of the assessed value of all taxable property within the district. S.C. Const. art. X Section 5(88) (1895); see also, 48 STAT. Act No. 850 at 2175 (1954); 49 STAT. Act No. 9 at 8 (1955). The County Commissioners were again authorized to issue additional bonds in 1956. This time, however, an election was not held; but the full faith, credit, and taxing power of the district was pledged to the payment of the new bond issue, which was not to exceed \$450,000.00, 49 STAT. Act No. 1013 at 2500 (1956). The full faith, credit, and taxing power of the auditorium district was further pledged in 1962 for the payment of a bond issue in an amount not to exceed \$100,000.00 [52 STAT. Act No. 1104 at 2720 (1962)] and in 1964 for the payment of a bond issue in an amount not to exceed \$300,000.00. 53 STAT. Act No. 1236 at 2859 (1964). By Act No. 691, the area of the Greenville Memorial Auditorium District was redefined and was made to coincide with that portion of the Greenville County Sewer Authority that lies within Greenville County and to include three designated tax districts. 56 STAT. Act No. 691 Section 1 at 1310 (1969).¹ The old district, of course, was contained within the area of the new district. Significantly, Act No. 691 provided that no tax was to be imposed on any of the area not previously a part of the auditorium district for the payment of any bonded indebtedness that existed prior to the alteration of the district's boundaries. Ibid. Section 2 at 1310.² Finally, in 1971 a statute was enacted which, inter alia, authorized the County Council of Greenville County to issue general obligation bonds of the Greenville Memorial Auditorium

District not to exceed \$1,500,000.00 [57 STAT. Act No. 762 Section 5 at 1485 (1971)]; and the full faith, credit, and taxing power of the district was pledged for their payment. Ibid. Section 5 at 1486.

*2 We understand that after the area of the auditorium district was redefined the County Council imposed a tax of one-half mill solely upon the expended portion of the district. The revenue derived therefrom is used only for operation and maintenance expenses.

You maintain that, under the present proposal for the construction of the new facility, the expanded portion of the district will be required to 'assume a greater portion of the indebtedness and [will] be taxed disproportionately to the original district until the outstanding bonds [of the original district] have been paid, at which time it is proposed that the tax levy would be equalized throughout the district as it affects the new facility.' See, Letter from J. Verne Smith addressed to Daniel R. McLeod, May 2, 1973. But according to the other information which you have furnished us the County Council has recommended to the legislative delegation that 'the tax levy for the old Greenville Memorial Auditorium District remain [at] three mills and that the tax levy for the new Greenville Memorial Auditorium District be equalized to three mills (which would be an increase of two and one-half mills for new District). Two and one-half mills would be used for bond retirement and one-half mill would be used for maintenance for the Greenville Memorial Auditorium District' [sic].' See, Letter from Cecil D. Buchanan addressed to Jack S. Garrett, Jr., April 18, 1973.

Equality and uniformity of assessment and taxation is required by our State Constitution. See, S.C. CONST. art. 10 Section 1, art. 10 Section 5. The principle of uniformity in taxation applies even in the absence of a constitutional provision providing therefor. 84 C.J.S. Taxation Section 21 at 75.

[U]niformity of taxation must be coextensive with the territory to which the tax applies. And this was so held in the case of Nettles v. Cantwell, 112 S.C. 24, 99 S.E. 765; the Court stating: 'That there is compliance with the requirements of the Constitution, in this respect, whenever the tax is uniform in the particular subdivision of the State upon which it is imposed.' . . . Smith v. Robertson, 210 S.C. 99, at 119, 41 S.E. 2d 631.

Moreover, the constitutional provision that taxes be uniform on the same class of subjects may be violated by a discriminatory method of distribution of the proceeds of taxation. Parker v. Bates, 216 S.C. 52, 56 S.E. 2d 723; 84 C.J.S. Taxation Section 23 at 111. 51 Am. Jur. Taxation Section 165 at 219–220.

As we see the matter, the imposition of a three-mill tax levy throughout the auditorium district upon all taxable property located therein will bring about equality and uniformity in assessment and taxation. Uniformity of taxation coextensive with the territory to which the three-mill tax will apply will be achieved once that tax is imposed. Compliance with the requirements of the Constitution will be had. That a portion of the revenue produced by the tax will be used to satisfy a prior indebtedness and that a portion thereof will be used to satisfy a new indebtedness does not, in our judgment, render the proposal unconstitutional. Neither does the situation involved here present a case where there is 'an unfair distribution of the benefits of taxation.' Parker v. Bates, supra 216 S.C. at 67. All who are taxed within the auditorium district would have the benefit of the new and old facility as long as each facility shall exist. The use of either is denied no one within the district.

*3 It is our conclusion that the proposed legislation would not bring about disproportionate taxation, as you contend, and would not, therefore, violate any provision of the State Constitution that taxes be uniform in respect to persons and property within the jurisdiction of the body imposing the same.

Furthermore, inasmuch as the creation of a special purpose district and the issuance of bonds by it do not necessitate the holding of an election [Ashmore v. Greater Greenville Sewer District, 211 S.C. 77, 44 S.E. 2d 88], neither would the expansion of the district nor the authorization for the expanded district to issue bonds require an election.

C. Tolbert Goolsby, Jr.

Deputy Attorney General

Footnotes

- 1 A referendum or popular election on the question of the expansion of the District's area was not held, there being at that time no statute requiring such action. Cf. 52 STAT. Act No. 627 at 1572 (1960) relating to the addition of contiguous areas to water and sewer districts of Greenville County and requiring, in part, the petition of a majority of the freeholders in the prospective area requesting that they be taken into the district before any such area shall be taken in. N.B. 56 STAT. Act No. 1414 at 3060 (1970) which amends Act No. 627 of 1960, in part, By substituting the language 'any special service district' for water and sewer districts.'
- 2 The legislature, however, may constitutionally provide that a newly annexed area is not to be taxed to pay any part of the debts previously incurred by the municipality. U.S. v. Memphis, 97 U.S. 284, 24 L.Ed. 937; 56 Am Jur. 2d Municipal Corporations, etc. Section 95 at 150. Presumably, this section will be repeated expressly, if not implicitly, by the new legislation when the County Council is authorized to impose a three mill tax levy upon the entire district including the new portion.

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