

1973 S.C. Op. Atty. Gen. 187 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3550, 1973 WL 21007

Office of the Attorney General

State of South Carolina

Opinion No. 3550

June 25, 1973

**\*1 Poll taxes cannot be collected for 1973 or any year prior thereto because of the repeal of the statutes imposing the same.**

Comptroller General  
State of South Carolina

Reference is made to your request for the opinion of this office concerning Senate Bill No. 443 bearing ratification No. 633. This Act repeals Chapter 4 of Title 65 of the 1962 Code, the Chapter that levied the annual tax on polls. The Act was effective upon approval by the Governor who signed the same on June 22 of this year and Section 2 provides that no refund shall be made concerning poll taxes paid prior to the effective date of the Act. You request the opinion of this office of whether poll taxes entered on the tax rolls for the 1973 tax year can be collected and whether any poll taxes due and unpaid for prior tax years can be collected.

The general rule concerning the effect of a repealing Act is found in the case of *Duke Power Co. v. South Carolina Tax Commission*, 81 F.2d 513, cert. denied, 298 U. S. 669, 56 S. Ct. 834, 80 L. Ed. 1392 and is as follows:

‘The general rule, of course, is that the repeal of a statute has the effect of blotting it out as completely as if it had never existed and of putting an end to all proceedings under it. 59 C. J. 1189, 1190, and cases there cited. But it is equally well settled that a repealing act ought not be construed, if any other construction is possible, as intended to affect rights which has vested under the act repealed or as requiring the abatement of actions instituted for the enforcement of such rights.’

Our Supreme Court, in the case of *Columbia Rwy. Gas and Electric Co. v. Carter, et al.*, 127 S. C. 473, 121 S. E. 377, affirmed the Order of the Honorable S. W. G. Shipp, Judge of the Court of Common Pleas of Richland County, wherein Judge Shipp held: ‘Could the Tax Commission (after March 1, 1922) proceed under the Act of 1904, notwithstanding its specific repeal on that date by Section 14 of the act of 1922? I am constrained to answer this question in the negative.’

There is also other authority quoted in the Order to the effect that a repeal without a savings clause or provision of a statute imposing a license tax or fee takes away the right to collect an unpaid tax which is due, even though a suit to collect the tax is pending. The Supreme Court, in affirming Judge Shipp's Order, followed the accepted rule that where substantial doubt exists as to the construction and interpretation of legislative action with respect to the enactment and enforcement of tax statutes, the doubt must be resolved against the Government.

It is therefore the opinion of this office that no further taxes on polls can be collected under Chapter 4 of Title 65 of the South Carolina Code of Laws whether for 1973 or any prior year.

(Note: The constitutional provision for the poll tax was repealed February 21, 1973; See Bill R-74).

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South Carolina Tax Commission

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