

1973 S.C. Op. Atty. Gen. 220 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3571, 1973 WL 21028

Office of the Attorney General

State of South Carolina

Opinion No. 3571

July 13, 1973

***1 Without proper legislative authority a county council cannot separate a part of the county into a district and impose taxes therein.**

Member
House of Representatives
Columbia, S. C.

Reference is made to your request for the opinion of this office of whether taxes may be levied on a geographical portion of Lexington County for services rendered to the residents therein, the tax not being levied on the remainder of the County. You advise that the County Council of Lexington County proposes to create a district and to impose taxes on the property within the district for services rendered therein. The Council was created by Act No. 1067, Acts of 1972, and its duties and powers are set out in Section 13 of the Act.

Under the Constitution of 1895, all taxes must be uniform and equal within the taxing district. *Article X, Section 1* and *Article X, Section 5*, and under the provisions of *Article X, Section 5*, the taxes must be levied and collected for a ‘corporate purpose.’ Any tax therefore levied and collected by the County Council must be equal and uniform to the County as a whole and must be levied and collected for a corporate purpose.

In the case of [*Boatwright v. McElmurray*, 247 S. C. 199, 146 S. E. 2d 716](#), the Court considered statutes that consolidated school districts in Aiken, Edgefield and Saluda Counties and provided for unequal taxes in the consolidated school district. While the issue of inequality in taxation was not presented, the Court by dictum commented thereon as follows:

‘If the provisions of the act for unequal taxation had been challenged, serious constitutional questions would have arisen, both under Art. X, Sec. 5, Constitution of 1895, requiring uniformity of taxation, and under the equal protection clause of Art. I, Sec. 5.’

It is well settled that the General Assembly has the authorhy to carve out a district from the territory of the State for the accomplishment of some public purpose and further to provide taxes therefor. [*Ashmore v. Greater Greenville Sewer District*, 211 S. C. 77, 44 S. E. 2d 88](#).

There also appears authority to the effect that the General Assembly may delegate the authority to create a special district and to provide for the tax, however, any statute delegating such authority is subject to strict construction. *48 Am. Jur., Special or Local Assessments, Sec. 115*. We find no statute in which the General Assembly has delegated such authority to the Lexington County Council.

It is therefore the opinion of this office that the Council be without the authority to create such a district and that any tax levied by the Council must be equal and uniform throughout the County and further the tax must be levied for a ‘corporate purpose.’

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South Carolina Tax Commission

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