

1973 S.C. Op. Atty. Gen. 259 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3595, 1973 WL 21050

Office of the Attorney General

State of South Carolina

Opinion No. 3595

August 9, 1973

**\*1 Act No. 767, Acts of 1973, controls the exemption of manufacturing establishments situate in Edgefield County for property tax purposes.**

Edgefield County Auditor

Reference is made to your letter of August 7, 1973, to Mr. McLeod. You request the opinion of this office concerning the constitutionality of two Acts of the General Assembly bearing ratification numbers R-118 and R-767. The first Act, R-118, amended Section 65-1552 relating to the exemption of 'manufacturing establishments' in Edgefield County and was effective March 7, 1973. The Act bearing ratification number R-767 amends the above Act and was effective July 11, 1973. It provides: 'All new manufacturing establishments and all additions or improvements in an amount of twenty-five thousand dollars or more in any given calendar year to existing manufacturing establishments located in Edgefield County with a capital of not less than twenty-five thousand dollars actually invested in the county and employing an average of at least fifteen employees for at least six months of each year shall be exempt from the payment of county and all other taxes, except school taxes and hospital taxes, for a period of five years from the date of the establishment thereof.'

Your inquiry is to the constitutionality of these Acts because of the amendment to Article VIII of the Constitution. The applicable portion of the amended article provides:

'Section 1. The powers possessed by all counties, cities, towns, and other political subdivisions at the effective date of this Constitution shall continue until changed in a manner provided by law. 'Section 7. \* \* \*. No laws for a specific county shall be enacted and no county shall be exempted from the general laws or laws applicable to the selected alternative form of government.'

The question is therefore whether the Acts are invalid because of the above provisions. The constitutionality of the Acts must be presumed.

'It is likewise settled that every presumption must be adjudged in favor of such legislative action and it must not be declared invalid unless the conflict with the Constitution is irrevocable.' *Byrd v. Blue Ridge Rural Electrical Cooperative, Inc.*, 215 F. 2d 542 (1954), cert. denied 348 U. S. 915, 75 S. Ct. 295, 99 L. Ed. 717 (1955).

The Court in that case also recognized the accepted principle that the power of the General Assembly to prescribe the property subject to taxation implies the power to prescribe what property is to be exempt from taxation.

The Constitution, in Article 8, Section 8 and in Article 10, Section 1, gives the General Assembly the right to exempt the property of manufactories and our courts have consistently recognized that legislation affecting taxation in a single taxing district does not offend the prohibition against special legislation. (Article 3, Section 34).

'Each county in this State is a separate taxing district and a statute providing for the levy of taxes on the property within a county for corporate purposes, while special in the sense that it imposes a tax limited in application to the property within such county does not contravene the enactment of a special law where a general law can be made applicable.' *Mosely v. Welch*, 209 S.C. 19, 39 S.E. 2d 133; *Doran v. Robertson* 27 S. E. 2d 714.

\*2 The fact that each county has revenue and tax requirements that may be exclusive to the needs of the county has long been recognized. The provisions of Article 10, Section 1 and Article 8, Section 8 of the Constitution have not been repealed or amended and must also be given effect.

Because of the above, this office advises that the July 11, 1973 Act, Number 767, controls the tax exemption of manufacturing establishments situate in Edgefield County for property tax purposes. It should, however, be noted that the effect of the provision in Section 7 of Article VIII of the Constitution, as amended, has not been considered by our court and whether the Acts are invalid by reason thereof can only be determined by the judiciary.

Had the General Assembly adopted the proposed amendments to the Constitution relating to taxation, there would be no question but that this legislation would be invalid. Section 'C' of the proposed amendments to the area of taxation provides: 'In addition to the exemptions listed in Section B of this Article, the General Assembly may provide for exemptions from the property tax, but only by general laws applicable uniformly to property throughout the State and in all political subdivisions.'

It may be argued that the above provision and that found in Section 7 of Article VIII show intent to treat these two subjects separately, notwithstanding the same results.

We enclose a copy of an opinion of this office to Honorable Thomas M. Marchant, III, of August 13, 1973, that may be helpful.

Joe L. Allen, Jr.  
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South Carolina Tax Commission

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