

1972 S.C. Op. Att. Gen. 20 (S.C.A.G.), 1972 S.C. Op. Att. Gen. No. 3239, 1972 WL 20387

Office of the Attorney General

State of South Carolina

Opinion No. 3239

January 3, 1972

**\*1 All property of a defaulting taxpayer is subject to execution and sale for nonpayment of ad valorem real and personal property taxes, and a first lien for such taxes exists upon the property that generates the same.**

Lee County Attorney

Your letter of December 28, 1971, to Mr. McLeod has been handed this writer for attention and reply. You request the opinion of this office concerning ‘We have a resident of Lee County who operated a store for a number of years. He sold the store and goods and there was a county tax (property) on the stock of goods, which is still outstanding. He has other property and I see no reason why this other property cannot be levied upon to satisfy the tax due and owing on the stock of goods which has been sold.’

Section 65–2702 provides for a lien upon the stock of goods as of December 31 preceding the tax year and the stock of goods was therefore purchased and sold with the lien thereon. Notwithstanding such, Section 65–2701 provides that the taxes are a debt of the defaulting taxpayer; Section 65–2701.1 creates a lien on subsequently acquired personal property and Section 65–2703 provides for the property that is subject to distress and sale for delinquent taxes. Additionally, our Supreme Court, in the case of *Valentine v. Robinson*, 188 S. C. 194, 198 S. E. 194, held:

‘It is a common assumption that a tax execution is issued against the property; such is not the case; it is issued against the defaulting taxpayer. The assessed taxes are a debt due to the State by the owner of the property. Section 2569, Civil Code, 1932, declares that: ‘All taxes, assessments and penalties legally assessed shall be considered and held as a debt payable to the State by a party against whom the same shall be charged.’

‘And the taxes may be made out of any property and taxpayer has. It is thus seen that the execution must issue against the true owner of the property.’

It is therefore the opinion of this office that other property of the defaulting taxpayer is subject to execution and sale for the delinquent taxes.

Joe L. Allen

Assistant Attorney General

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