

1972 WL 26135 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 26, 1972

*1 (1) There is no constitutional or statutory provision that precludes a municipality from having a fiscal year different from that of the county or State.

(2) The procedure for a municipality to collect delinquent taxes is found in Chapter 22 of Title 65 which is adopted by reference by Section 47-168.

The Honorable B. D. Martin
Mayor
Town of Harleyville
Harleyville, South Carolina 29448

Dear Mayor Martin:

Reference is made to your request to Mr. McLeod for the opinion of this office of (a) whether the Town of Harleyville may adopt a fiscal year that is different from that of Dorchester County and the State of South Carolina; (b) the procedure to be ?? the Town in collecting delinquent taxes; and (c) the effect of municipal taxes upon automobile registration by the South Carolina Highway Department.

With reference to the first question, this office can find no constitutional or statutory provision that precludes the fiscal year of the Town being different than that of the county and State. The population of the Town is over 700 inhabitants and Section 47-102 that is applicable to the incorporation of towns of less than 1000 inhabitants provides in part:

‘The commissioners shall certify the result of such election under oath to the Secretary of State, and if the result is in favor of incorporation, the Secretary of State shall issue to the intendent and wardens-elect a certificate of incorporation of such town, and the town shall have all the privileges, powers and immunities and shall be subject to the limitations provided by law.’

While the above does not treat the question of the fiscal year, it nonetheless provides for the incorporation of such town whenever the results of the favorable election are certified and such municipalities can therefore be incorporated at any time during the year. Many municipalities in this State have fiscal years that differ from that of the State and it is therefore the opinion of this office that a fiscal year different from that of the county and State may be adopted by the Town of Harleyville.

Section 47-161 authorizes the Town to levy a property tax and provides:

‘Each such town council may by ordinance impose an annual tax upon all real and personal property within the corporate limits of the town, but such tax shall not exceed forty mills on every one dollar of assessed valuation of such property.’

The phrase ‘annual tax’ should be construed to mean that an ad valorem tax can be imposed once each year, however, the basis (valuation) of the tax must be that as made for State taxes.

‘The General Assembly shall provide for the assessment of all property for taxation; and State, county, township, school, municipal and all other taxes shall be levied on the same assessment which shall be that made for State taxes; and the taxes for the subdivisions of the State shall be levied and collected by the respective fiscal authorities thereof.’ Article 10, Section 13, 1962 Code of Laws of South Carolina.

*2 Such has been provided by the General Assembly in Section 65-1503 and Section 65-1504 that provide:
'Taxes for township, school, municipal and all other purposes provided for or allowed by law shall be levied on the same assessment, which shall be that made for State taxes.' Section 65-1503, 1962 Code of Laws of South Carolina.

'All persons charged with the assessment or collection of taxes for municipal purposes may copy from the county auditor's books the assessment of valuation thereon found and may use it as the basis for the assessment of taxes for municipal purposes. But nothing contained in this section shall prevent municipal authorities from ?? assessing and collecting taxes upon property not upon ?? the auditor's books.' Section 65-1504, 1962 Code of of the Laws of South Carolina.

It is thus apparent that the Town can have a fiscal and tax year different from the county and State and that, however, for ?? valorem tax purposes the Town is joined to the county's tax year, notwithstanding the fact that the municipality may have a different tax year.

The procedure to follow for the collection of delinquent property taxes is found in Section 47-168 and for your convenience, the same is published in its entirety.

'Any council of a town of less than one thousand inhabitants may provide for the payment of a penalty not exceeding fifteen per cent of the taxes so levied for nonpayment of such taxes when due, payable when the taxes become delinquent. The taxes so levied and also the penalties shall constitute a lien upon the property upon which the tax is levied until paid, paramount to all other liens except the lien for county and state taxes. No such town may by ordinance extend such lien for a longer term than three years after the tax shall have become due and payable. For the purpose of collecting such taxes and penalties the council may enforce payment against the property of defaulters to the name extent, substantially in the same manner, as is provided by law for the collection of State and county taxes and penalties, except that executions to enforce the payment of the taxes and penalties shall be issued under the seal of the corporation by the clerk thereof and directed to the chief of police or any other officer designated by the city or town council for that purpose and except, further, that all sales under any by virtue of any such execution shall take place in front of the town hall or other public place designated by ordinance in such town.' Section 47-168, 1962 Code of Laws of South Carolina.

Such provisions are found in Chapter 22, of Title 65 and are quite voluminous and in detail. It is suggested that the officer that will ??

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