

1972 S.C. Op. Atty. Gen. 44 (S.C.A.G.), 1972 S.C. Op. Atty. Gen. No. 3255, 1972 WL 20402

Office of the Attorney General

State of South Carolina

Opinion No. 3255

January 26, 1972

***1** 1. Section 9(d) of Act No. 1228, Acts of 1970, vests the power to levy a business license tax in the Greenwood County Finance Board.

2. Any tax levied by a county must be uniform in respect to persons within the jurisdiction of the county imposing the tax.

Greenwood County Attorney
Greenwood, South Carolina

Your letter of January 21, 1972, to Attorney General McLeod has been referred to this writer for a reply. You have requested the opinion of this office on two questions. First, you inquire whether the Greenwood County Finance Board can levy a county business license tax.

Article 10, Section 5 of the South Carolina Constitution gives the legislature the authority to delegate taxing power to the counties. This includes the power to levy a license tax. See *State v. Touchberry*, 121 S. C. 5, 113 S. E. 345 (1922). Section 1 of Act No. 1228, 56 Stat. 2624 (1970), provides that the previously existing Greenwood County Finance Board shall be the governing body of Greenwood County. Section 9(d) of said Act provides that the Board shall have the power to levy taxes and make appropriations for corporate purposes.

It is the opinion of this office that this legislation is a proper enabling act which vests the power to levy a business license tax in the Greenwood County Finance Board. Similar legislation has been enacted for Florence County. See Part III of Act No. 1277, 54 Stat. 3227 (1966).

The second question presented is whether the County Finance Board can levy a county business license tax and provide for a credit against the tax for persons living in the City of Greenwood for any business license tax levied by the City. You have suggested that the funds to be derived from this tax may be used for law enforcement in the area of the county outside the city.

Article 10, Section 5 of the Constitution expressly provides that any tax levied by a county must be uniform in respect to persons within the jurisdiction of the county imposing the tax. In the case of *Hay v. Leonard*, 212 S. C. 81, 46 S. E. 2d 653 (1948), a statute levying an annual license tax based on gross receipts for the privilege of engaging in business in the County of Charleston *except in the City of Charleston* was attacked as being violative of the uniformity requirement of Article 10, Section 5. The Court did not view the license tax as a county tax which exempted businesses within the City of Charleston. Instead it found that the statute levied a school district tax imposed in each school district of Charleston County, except the school district comprising the City of Charleston. The Court noted that although the tax was to be collected by the county treasurer, the proceeds were to be placed to the credit of the trustees of the school district in which they were collected, and that provision was made for prorating between school districts on the basis of gross receipts of any tax collected from businesses in more than one school district. This construction of the Act enabled the Court to state: 'The Act applies uniformly to all persons and property within the area in which it is applicable, and it necessarily follows that there has been no denial of equal protection of the laws * * *.'

***2** Because the Finance Board is the governing body of Greenwood County, any tax which it might levy would necessarily be a county tax. A county tax must be uniform in respect to persons within the jurisdiction of the county, and this includes persons

residing in the City. The territory of Greenwood County, without the City of Greenwood, does not form a separate taxing district and this distinguishes the present situation from the facts in the case of *Hay v. Leonard*.

It is the opinion of this office that a credit for city taxes would be paramount to an exemption for persons living in the City of Greenwood, and that such would not meet the uniformity requirements of Section 10, Article 5 of the South Carolina Constitution.

John C. von Lehe
Assistant Attorney General

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