ALAN WILSON
ATTORNEY GENERAL

August 25, 2011

The Honorable Murrell Smith
Representative, District No. 67
P.O. Box 580
Sumter, South Carolina 29151

Dear Representative Smith:

You have requested an opinion regarding ad valorem property taxes in Sumter County. Specifically, you indicate that Sumter County might have failed to reassess certain property within the county, and you question whether such failure complies with state law. In addition, you indicate that certain fees included on Sumter County property tax bills are imposed for services that were previously funded by property taxes, and you question whether such fees can be imposed where they result in an overall cost to real property owners that exceeds the "millage cap" set forth in section 6-1-320(A) of the South Carolina Code (2004 & Supp. 2010).

Reassessment of Real Property

Section 12-43-217 of the South Carolina Code (2000 & Supp. 2010) provides:

> (A) Notwithstanding any other provision of law, once every fifth year each county or the State shall appraise and equalize those properties under its jurisdiction. Property valuation must be complete at the end of December of the fourth year and the county or State shall notify every taxpayer of any change in value or classification if the change is one thousand dollars or more. In the fifth year, the county or State shall implement the program and assess all property on the newly appraised values.
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> (B) A county by ordinance may postpone for not more than one property tax year the implementation of revised values resulting from the equalization program provided pursuant to subsection (A). The postponement ordinance applies to all revised values, including values for state-appraised property. The postponement allowed pursuant to this subsection does not affect the schedule of the appraisal and equalization program required pursuant to subsection (A) of this section.
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> (C) Postponement of the implementation of revised values pursuant to subsection (B) shall also postpone any requirement for submission of a reassessment program for approval by the Department of Revenue.

(Emphasis added). Thus, if Sumter County was due to reassess the properties in its jurisdiction and has failed to do so, one possible explanation is that Sumter County might have enacted the "postponement ordinance" permitted by section 12-43-217(B). On the other hand, in the event that Sumter County has

willfully failed to comply with the requirements of law with respect to reassessment, the Department of Revenue may seek a factual finding from a circuit court to that effect. See S.C. Code Ann. § 12-43-260 (2000) (copy attached). This Office is not empowered to make factual findings. E.g., Letter to the Honorable Michael T. Rose, Senator, Op. S.C. Att'y Gen. No. 89-40 (April 3, 1989) ("[T]his Office does not have the authority of a court or other fact-finding body, [and] we are not able, in a legal opinion, to adjudicate or investigate factual questions.").

Separate Fees

South Carolina Code section 6-1-330 (2004 & Supp. 2010) expressly permits counties and municipalities to impose a "service or user fee" for public services. Section 6-1-330(C) contemplates that fees might be imposed for services that were previously funded using ad valorem property taxes: "If a governmental entity proposes to adopt a service or user fee to fund a service that was previously funded by property tax revenue, the notice required pursuant to Section 6-1-80 must include that fact in the text of the published notice."

A court evaluating the validity of a particular fee will consider whether such fee is paid in exchange for a "special benefit" to the payers and whether the fee is used to fund the service for which it is imposed. See, e.g., Brown v. County of Horry, 308 S.C. 180, 185, 417 S.E.2d 565, 568 (1992) ("A service charge is imposed on the theory that the portion of the community which is required to pay [the charge] receives some special benefit as a result of the improvement made with the proceeds of the charge."). If the fee is a general revenue-raising measure, as opposed to a reasonable charge for services, a court will find that it is in the nature of tax. See id. at 184, 417 S.E.2d at 567 ("The question of whether a particular charge is a tax depends on its real nature and not its designation.").

If the fee is a tax, then it must comply with the millage cap in section 6-1-320(A) of the South Carolina Code or satisfy one of the statutory exemptions to that cap. E.g., Letter to Edwin C. Haskell, III, Esquire, Op. S.C. Att'y Gen. (June 26, 2007) (opining that "any increase in the millage rate levied by a county for the purpose of providing fire protection services . . . is limited by section 6-1-320(A), unless the increase is due to one of the exemptions provided under section 6-1-320(B)"). On the other hand, if the fee is a proper "service or user fee," it need not comply with the section 6-1-320 millage cap. See S.C. Code Ann. § 6-1-320(C) ("The millage limitation provisions of this section do not apply to revenues, fees, or grants not derived from ad valorem property tax millage or to the receipt or expenditures of state funds." (emphasis added)).

Very truly yours,

Dana E. Hofferber

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REVIEWED AND APPROVED BY:

Robert D. Cook

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Deputy Attorney General