

THE STATE OF SOUTH CAROLINA  
OFFICE OF THE ATTORNEY GENERAL  
COLUMBIA

OPINION NO. \_\_\_\_\_

November 14, 1989

SUBJECT: Taxation and Revenue - Levy of a County Business License Tax on the Holders of a Class E or F Certificate Issued Pursuant to Article V, Chapter 23 of Title 58.

SYLLABUS: Section 58-23-620 of the South Carolina Code of Laws precludes the imposition by a county of its business license tax upon the holders of Class E or F Certificates issued such businesses by the Public Service Commission under authority of Section 58-23-510, et seq.

TO: Ms. Mary Alice Hobbs  
Staff Attorney  
Richland County Attorney's Office

FROM: Joe L. Allen, Jr. *JLA*  
Chief Deputy Attorney General

QUESTION: May Richland County impose a business license tax upon the holders of a Class E or F Certificate that is issued such business by the Public Service Commission under the provisions of Section 58-23-510?

APPLICABLE LAW: Sections 4-9-30(12) 58-23-510 and 58-23-620, Code of Laws of South Carolina, 1976, and Article VIII, Sections 7 and 9 and Article X, Section 6 of the South Carolina Constitution.

DISCUSSION:

Article X, Section 6, of our Constitution grants authority to the General Assembly to:

" . . . vest the powers of assessing and collecting taxes in all of the political subdivisions of the State . . ."

Article VIII, Sections 7 and 9, directs the General Assembly to provide for the powers, etc., of counties and municipi-

November 14, 1989

palties.

The General Assembly has provided in Section 4-9-30(12) that a county may:

" . . . levy uniform license taxes upon persons and businesses engaged in or intending to engage in a business, occupation or profession, in whole or in part, within the county but outside the corporate limits of a municipality . . ."

A Class E Certificate is for property carrying vehicles which will not operate upon any particular route or schedule. (See Section 58-23-260.) A Class F Certificate is for the business of contract hauling of freight or property that is not to be on a regular schedule or route or to solicit or receive patronage along the route. (See Section 58-21-270.)<sup>1</sup>

Section 4-9-30 sets forth the powers of a county and subsection 12 authorizes the imposition of the county business tax unless proscribed by Section 58-23-620 which provides in part that:

" . . . no city, town or county shall impose a license fee or license tax on the holder of a certificate E or a certificate F except the city or town of such carrier's residence or the location of his principal place of business . . ."

The powers of the county as conferred by Section 4-9-30, however, are limited by general law. Section 58-23-620 is a general law having been first enacted by Act 170, Acts of 1925. It has statewide application and is not local in its application. (For cases see 17 S.C.D., Statutes, Key 68, Laws of General or Public Nature.)

We thus look to that section to determine if the county business license tax is proscribed.

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<sup>1</sup>Note the reference to Chapter 21. It is published in Chapter 23 and is probably a printer's error.

November 14, 1989

The provisions of Section 58-23-620 were first adopted in 1925 by Act 170. The heading of the Act is that the same is for ". . . the Regulation, Supervision, and Control . . ." of persons engaged in transporting persons or property for compensation. The heading further provides that the Act is ". . . Prescribing and Imposing License Fees and Providing for the Disposition of the Revenue Raised by the Same."

The license fee is imposed in part for the raising of revenue and in part to fund the costs of enforcing the statute. Section 11 of the Act supports this conclusion. It provides that the money collected is to be deposited into the State Treasury. After deducting the costs of administering the Act, the remaining revenue is to be disbursed to the State, counties and towns by an established formula. A part of the revenue is therefore expended not for regulatory but for a State, county or municipal purpose.

A distinction can be made between the terms "license tax" and "license fee."

"A license tax 'is a tax in the ordinary acceptation of that term' . . ."  
Hay v. Leonard, 212 S.C. 81, 46 S.E.2d 653. (See also 51 Am.Jur.2d, Licenses and Permits, Section 1, p. 7.)

A license fee is generally a regulatory measure intended to cover the costs of administering the regulatory scheme. (See 24 Words and Phrases, License Fee.)

Here the General Assembly has provided for both the regulation of those businesses and for tax revenues to be paid therefrom.

Section 58-23-620 prohibits both the "license fee" and the "license tax." It is only logical to therefore conclude that the General Assembly intended to proscribe the county from levying both a "license fee" and a "license tax."<sup>2</sup>

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<sup>2</sup>This conclusion is fortified by other settled rules of construction. First is that the powers conferred a county are limited to those granted by express language or that may be necessarily implied therefrom. (For cases see 7 S.C.D., Counties, Keys 20-24.) Secondly, a tax imposition

Ms. Mary Alice Hobbs  
Page Four

November 14, 1989

CONCLUSION:

Section 58-23-620 of the South Carolina Code of Laws precludes the imposition by a county of its business license tax upon the holders of Class E or F Certificates issued such businesses by the Public Service Commission under authority of Section 58-23-510, et seq.

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statute is to be strictly construed against the tax. (For cases see 17 S.C.D., Statutes, Key 245, Revenue Laws.) Finally, the words of a statute are to be given their ordinary and popular meaning unless there is something in the statute that requires a different interpretation. (For cases see 17 S.C.D., Statutes, Key 187, et seq.)