

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. _____

July 13, 1988

SUBJECT: Taxation and Revenue - Offices of County
Treasurer and Tax Collector

- SYLLABI:
1. The office of the Edgefield County Tax Collector continues to function pursuant to Section 65-2371, et seq., of the 1962 Code of Laws until changed by county ordinance.
 2. A county treasurer may not voluntarily assume the duties of the office of the county tax collector.
 3. The Edgefield County Council may not require the treasurer of Edgefield County to perform the duties of the Edgefield County Tax Collector.
 4. The General Assembly is precluded by Section 7 of Article VIII of the South Carolina Constitution from enacting special legislation that is applicable to the Edgefield County Tax Collector.

TO: Honorable John W. Pettigrew, Jr.
House of Representatives

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

QUESTIONS:

1. Are Sections 65-2371 through 65-2375 of the 1962 Code of Laws still law and applicable to the tax collector in Edgefield County?
2. Can the Edgefield County Treasurer voluntarily and with the agreement of County Council assume the duties of tax collector?

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3. Can the Edgefield County Council require the county treasurer to perform the duties of tax collector?
4. Does the legislature still have the power to pass legislation concerning the appointment and term of office of the tax collector in Edgefield County?

APPLICABLE LAW: Section 65-2371, et seq., of the 1962 Code of Laws; Section 4-9-30 of the 1976 Code of Laws and Section 7, Article VIII of the South Carolina Constitution.

DISCUSSIONS:

Question 1: The act creating the office of the tax collector of Edgefield County and codified in the 1962 Code as Section 65-2371, et seq., continues to be effective until changed by ordinance of the Edgefield County Council.

Section 3 of Act 283, the Home Rule Act of 1975, provided in part that:

All operations, agencies and offices of county government, appropriations and laws related thereto in effect on the date the change in form becomes effective shall remain in full force and effect until otherwise implemented by ordinance of the council pursuant to this act. Provided, however, that county councils shall not enact ordinances in conflict with existing law relating to their respective counties and all such laws shall remain in full force and effect until repealed by the General Assembly, or until January 1, 1980, whichever time is sooner . . .

Our Court considered this language as it related to special legislation for Horry County and held:

It was not until January 1, 1980, therefore, that the Horry County Council was no longer prohibited from enacting ordinance in conflict with those sections. The Horry County Council thus had three options under the Home Rule Act with respect to the Horry County Police Commission: (1) let it continue

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as it was being operated when Home Rule became effective in Horry County in 1976; (2) abolish the Horry County Police Department and devolve its power and function upon the Horry County Sheriff subject to approval by a county-wide referendum . . . or (3) otherwise provide by ordinance pursuant to the Home Rule Act.

Graham v. Creel, 289 S.C. 165, 345 S.E.2d 717. Therefore, in the absence of an ordinance by the Edgefield County Council, the office of the Edgefield County Tax Collector continues in effect as provided by Section 65-2371, et seq.

CONCLUSION 1:

The office of the Edgefield County Tax Collector continues to function pursuant to Section 65-2371, et seq., of the 1962 Code of Laws until changed by county ordinance.

Question 2: It is well settled that a public official can execute only those duties imposed by law. Such duties cannot be assumed or expanded by the official.

Official powers cannot be merely assumed by administrative officers . . .

1 Am.Jur., Administrative Law, Section 70, p. 867.

All persons are held to have notice of extent of public officer's powers, which are derived from statutes, and hence deal with him at their peril as to matters not within scope of his authority.

Baker v. State Highway Department, 166 S.C. 481, 165 S.E. 197.

Likewise, only an officer possessing lawfully conferred authority may execute upon and sell property for nonpayment of taxes. Barrineau v. Stevens, 75 S.C. 252, 55 S.E. 309.

CONCLUSION 2:

A county treasurer may not voluntarily assume the duties of the office of the county tax collector.

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Question 3: It is obvious that a person cannot at the same time hold the office of the county treasurer and county tax collector. To do so would constitute dual office holding and would be invalid. It is assumed, however, that you refer to the abolition of the office of tax collector and the transfer of duties of that office to the county treasurer. Whether this can be accomplished by county ordinance presents a more complex issue.

It should be noted that the Council may not enact legislation that is in conflict with a state statute. Section 4-9-30 confers certain powers upon the Council, however, subjects the same to the general laws of the State.

Edgefield has adopted the Council-Administrator form of government. Under such, it is clear that the administrator possesses very limited authority regarding the county treasurer. Section 4-9-650 provides:

With the exception of organizational policies established by the governing body, the county administrator shall exercise no authority over any elected officials of the county whose offices were created either by the Constitution or by the general law of the State.

Additionally, the Council has limited authority regarding personnel in that office. (See Section 4-9-30(7))

Section 4-9-30(6), however, confers authority upon Council

to establish such agencies, departments, boards, commissions and positions in the county as may be necessary and proper to provide services of local concern for public purposes, to prescribe the functions thereof and to regulate, modify, merge or abolish any such agencies, departments, boards, commissions and positions, except as otherwise provided for in this title.

. . .

The treasurer's office is created by general state law and the County Council is without authority to enact ordinances in conflict therewith. Neither, in our view, does the

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CONCLUSION 3:

The Edgefield County Council may not require the treasurer of Edgefield County to perform the duties of the Edgefield County Tax Collector.

Question 4: Article VIII, Section 7, of the South Carolina Constitution is specific on this subject. It provides in part that:

. . . No laws for a specific county shall be enacted and no county shall be exempted from the general laws or laws applicable to the selected alternative form of government. . . .

CONCLUSION 4:

The General Assembly is precluded by Section 7 of Article VIII of the South Carolina Constitution from enacting special legislation that is applicable to the Edgefield County Tax Collector.

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to determine the legality of the consolidation should be pursued. If this clarification is not had, any execution and sale of property for nonpayment of tax would be suspect and subject to invalidation.