

Library #1210

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. 25-27

May 14, 1985

SUBJECT: Taxation and Revenue - Method Of Payment Of County Taxes.

SYLLABUS: Richland County could not lawfully provide for the payment of real property taxes in installments that begin in July in that the same is in conflict with the general law of the State.

TO: William Able, Esq.
Richland County Attorney

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

QUESTION: Richland County presently has under consideration a proposed ordinance that provides, among other things, the due date and method of payment of taxes to the County Treasurer. The ordinance would provide that the taxes are due and payable on personal property between the 1st day of July and the 15th day of September. Those due on real property could be paid in a lump sum between September 15th and January 31st following. An election is further given for prepayment in six monthly installments beginning July 1st of the tax year. The question presented is whether the county may lawfully adopt the ordinance providing for the installment election?

APPLICABLE LAW: Article X, §§ 1 and 6; Article VIII, §§ 1 and 7, of the South Carolina Constitution; § 4-9-30, § 12-45-70, of the 1976 Code of Laws; Act 1008, Acts of 1966; Act 95, Acts of 1967; Act 116, Acts of 1969 and Act 599, Acts of 1971.

DISCUSSION:

Article X, § 1 of the Constitution provides in part that:

"The General Assembly may provide for the ad valorem taxation by the State or any of its subdivisions of all real and personal property. * * *"

Section 6 of the Article further provides that:

REQUEST LETTER

May 14, 1985

"The General Assembly may vest the power of assessing and collecting taxes in all of the political subdivisions of the State. Property tax levies shall be uniform in respect to persons and property within the jurisdiction of the body imposing such taxes; * * *."
(Emphasis added)

Article VIII, § 7 of the Constitution further directs that the General Assembly provide the powers of the counties. It is thus apparent that the authority of the county to assess and collect the tax is that as conferred by the General Assembly. By special legislation, Act 1008, Acts of 1966; Act 95, Acts of 1967; Act 116, Acts of 1969 and Acts 271 and 599, Acts of 1971, the General Assembly has provided that taxes due on real property situate in Richland County are payable "between the fifteenth day of September and the thirty-first day of January after their assessment in each year". Taxes on personal property are due and payable "between the first day of July and the fifteenth day of September * * *".

The county, in the absence of legislative authority, could not modify or amend these legislative Acts.

The General Assembly, however, treated this issue in Act 283, Acts of 1975, generally referred to as the Home Rule Act. The powers of a county council were there set forth and are now codified in § 4-9-30 of the South Carolina Code of Laws. In subsection 5, the power is conferred "to assess property and levy ad valorem property taxes * * *". That power, however, is limited by the following language:

"Under each of the alternate forms of government * * * , each county government within the authority granted by the Constitution and subject to the general law of this State shall have the following enumerated powers * * *."
(Emphasis added)

By general law, the General Assembly has provided the date when taxes are due and payable. Section 12-45-70 provides in part that:

"All taxes shall become due and payable between the fifteenth day of September and the thirty-first day of December after their assessment in each year. * * *"

William Able, Esq.
Page Three

May 14, 1985

The limitation was given judicial recognition in a concurring opinion in Roton v. Sparks, 270 S.C. 637, 244 S.E.2d. 214. The issue was the custody of a county jail. It was there held that:

"While I do not doubt the counties possess the requisite authority to construct and operate a multi-purpose law enforcement facility that includes a jail within its physical structure, that authority is 'subject to the general law of this State' which provides:
The sheriff shall have custody of the jail in his county. . . . Section 24-5-10.

Section 24-5-10 has not been repealed by either specific legislative enactment or necessary implication, and cannot be repealed by a county ordinance. It should not be repealed by judicial fiat."

The power of the county to provide for the date of the payment of county taxes is therefore subject to the State's general law. Section 12-45-70 is clear in its provisions. "All taxes shall be due and payable between the fifteenth day of September and the thirty-first day of December after their assessment * * *." An installment payment that beings in July obviously conflicts with the general law.

"In order that there be a conflict between a state enactment and a municipal regulation both must contain either express or implied conditions which are inconsistent and irreconcilable with each other. Mere differences in detail do not render them conflicting. If either is silent where the other speaks, there can be no conflict between them * * *." AmVets Post 100 v. Richland County Council, 313 S.E.2d 293; McAbee v. Southern Ry. Co., 166 S.C. 164, 164 S.E. 444 and City of Charleston v. Jenkins, 243 S.C. 225, 133 S.E.2d 242.

The proposed ordinance and the general law contain

William Able, Esq.
Page Four

May 14, 1985

inconsistent and irreconcilable conditions.¹

CONCLUSION:

Richland County could not lawfully provide for the payment of real property taxes in installments that begin in July in that the same is in conflict with the general law of the State.

JLAJr:wcg

¹It is recognized that the special acts that provide for the tax payment in Richland County presently conflict with general law. No opinion is expressed or implied concerning the constitutionality of that legislation. The General Assembly did provide in § 3 of Act 283, Acts of 1975, 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. * * *"

It has been the consistent position that these provisions remain effective until repealed by the General Assembly or by action of a county council. A repeal or modification by the council is subject, however, to the general law. Article VIII, § 1 of the Constitution provides that the powers conferred upon the State's political subdivisions at the time of the Amendment to the Article were to continue until changed in a manner provided by law. Any change in the special acts providing for payment of taxes in Richland County must conform to § 12-45-70.