

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. _____ October 1, 1986

SUBJECT: Taxation & Revenue - Exemption Of
Manufacturers From Taxes Levied To Pay Bond
Debt Of The Union Hospital District.

SYLLABUS: The exemptions afforded new manufacturing
establishments or certain additions to
existing manufacturing establishments from
county ad valorem taxation do not include the
tax levied for payment of the
bond debt of the Union Hospital District.

TO: William E. Whitney, Jr., Esquire
Attorney for the Union Hospital District

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

QUESTION: Do the exemptions afforded new manufacturing
establishments or certain additions to existing
manufacturing establishments from county property taxation
include taxes levied to pay bond debt of the Union Hospital
District?

APPLICABLE LAW: Act 848, Acts of 1946; Article 5 of
Chapter 11 of Title 6 (§ 6-11-830, et seq.) of the 1976 Code
of Laws; Article X, Section 3(g) of the South Carolina
Constitution and § 12-37-220A(7) of the South Carolina Code
of Laws, 1976, as amended.

DISCUSSION:

The General Assembly created the district by Act 848, Acts
of 1946. The district was there authorized to issue bonds
and its full faith and credit was pledged for repayment.
The Act was upheld in the case of McLure v. McElroy, 211
S.C. 106, 44 S.E.2d 101. The validity of the Act was also
questioned upon the ground that the direction to the auditor
to levy and the treasurer to collect the tax was an
unconstitutional delegation of taxing power. The court
however held that:

"But upon examination such is not found.
It is the legislature itself which

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levies the taxes and Sec. 16 of the act directs the assessment and collection by the county officers. The fixing of the amount is a ministerial duty of the board and will be regulated by the necessities which in turn will depend upon the maturities of the principal and interest of the bonds which may be issued, within the legislative limit upon the amount of them. There is no attempted delegation of the legislative taxing power. *Evans v. Beattie*, supra, 137 S.C. 496, 135 S.E. 538. The situation is not unlike that of every county, with respect to the financing of its ordinary functions. The legislature levies the taxes, with the rates often fixed by the county officers in the discharge of their ministerial duties under the applicable special legislative acts." See also *Stackhouse v. Floyd*, 248 S.C. 183, 149 S.E.2d 437.

The bonds here involved were issued, however, pursuant to the provisions of Act 1189, Acts of 1974, now codified as § 6-11-810, et seq. The substantial difference between the authority to issue bonds as provided in the 1946 Act and that provided in the 1974 Act is the requirement that the bond issue be approved or authorized by the Union County Council. Section 6-11-830 states that the Council could hold a hearing and it is further understood that the County Council followed the act and authorized the district to issue the bonds.

Does that approval make the tax a county tax? In our view it does not. The 1974 Act states specifically that the district is to issue the bonds and that the full faith and credit of the district is pledged for repayment. Insofar as the tax levy, the county auditor is directed to levy and the treasurer to collect a tax sufficient to pay the bond debt. This is not an unlawful delegation of the taxing power. It instead is the direct tax levy by the statute. *McLure v. McElroy and Stackhouse v. Floyd*, supra. Additionally, the tax is to be "levied and collected in the same manner as county taxes are levied and collected". This language reflects that the tax levy is something other than a county tax levy.

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In the case of Michelin Tire Corp. v. Spartanburg County Treasurer, 281 S.C. 31, 314 S.E.2d 8 (1984). The court held that:

"Yet, the existence of special purpose districts is protected, even under home rule, until they are dissolved by the General Assembly after a favorable referendum. S. C. Code Ann. ... Counties cannot abolish the districts. ... The existence of home rule does not require this Court to construe county taxes to include taxes of special purpose districts."

The conclusion herein stated is further fortified by the language of § 4-9-80 that provides in part that:

"... and such political subdivisions shall continue to perform their statutory functions prescribed in laws creating such districts or authorities except as they may be modified by act of the General Assembly, ... "

The tax levied by the county auditor and collected by the county treasurer to fund the payment of the district's bond debt is not a county tax. The exemption provided by Article 10, Section 3(g) and § 12-37-220A(7) does not apply to such taxes.

CONCLUSION:

The tax exemptions afforded new manufacturing establishments or certain additions to existing manufacturing establishments from county taxes do not include the tax levied for payment of the bond debt of the Union Hospital District.

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