

1979 S.C. Op. Atty. Gen. 115 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-85, 1979 WL 29090

Office of the Attorney General

State of South Carolina

Opinion No. 79-85

June 29, 1979

***1 SUBJECT: Property Tax—Authority of County Governing Body to Enact Ordinance to Provide for a Penalty for Late Payment of Property Taxes and to Provide Discount for Early Payment.**

1. The governing body of Aiken County is without authority to alter the discounts provided by Act 202, Acts of 1973, for early payment of property taxes until January 1, 1980.

2. The governing body is without authority to provide a penalty for late payment of property taxes that is in conflict with general law.

TO: John H. Williams, Esquire
Aiken County Attorney

QUESTION:

Does the governing body of Aiken County have authority to enact legislation that imposes a penalty for late payment of property taxes and to provide a discount for early payment?

APPLICABLE LAW:

Section 3 of Article 7 of Act 283, Acts of 1975, (contained in 1976 Code as editor's note under [§ 4-9-10 of the 1976 Code of Laws](#)), Act 202, Acts of 1973, and [§ 4-9-30, 1976 Code of Laws](#).

DISCUSSION:

THE DISCOUNT

Section 3 of Article 7 of Part I of Act 283, found in the editor's note to [§ 4-9-10 of the 1976 Code](#), provides in part: '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with existing law relating to their respective counties and all such laws shall remain in full force and effect until repealed by the General Assembly, or until January 1, 1980, whichever time is sooner, * * *.' (Emphasis added)

Act 202, Acts of 1973, provides that:

'The taxpayers of Aiken County shall be given the following discount for the payment of taxes during the month of October: October first through October fifteenth, inclusive, two per cent; October sixteenth through October thirty-first, inclusive, one per cent.'

The above was codified in the 1962 Code of Laws as § 65–1987.1. It is a special Act for Aiken County and cannot under the 1975 Act be changed by the governing body until January 1, 1980. The governing body is without authority until January 1, 1980 to alter or modify the discount provided by the 1973 Act.

THE PENALTY

Section 4–9–30 provides for the powers of the governing body and states in part that:

‘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 * * *:

(5) to assess property and levy ad valorem property taxes * * *.’ (Emphasis added)

We do not find a provision that authorizes the council to levy a penalty and more importantly the penalty is specifically provided by general law. The same is found in § 12–45–180 and by an alternate procedure to collect delinquent taxes found in Chapter 51 of Title 12, § 12–51–10, et seq.

*2 Our court in the case of [Webster v. Williams](#), 183 S. C. 368, 191 S.E. 51, held:

‘This undoubtedly is a subject within the legislative province, and one requiring legislative action. Accordingly, we find that to meet the very purposes of the legislation now in question, the Legislature has provided by general law, in section 2830 of the Code, for certain penalties, in the form of graduated payments, when taxes become delinquent; and in section 2854 of the Code, further provisions are made, imposing additional penalties in the form of costs, when the taxes go into execution.’

Under the specific language of § 4–9–30, the powers of the governing body are subject to the general law of the State. Because the penalty is provided by general law the governing body is without authority to adopt an ordinance providing for a penalty that is in conflict with such law.

The above conclusion is fortified by Article VIII, Section 14, that provides that the following matters shall not be set aside: ‘In enacting provisions required or authorized by this article, general law provisions applicable to the following matters shall not be set aside:

* * * (6) the structure and the administration of any governmental service or function, responsibility for which rests with the State government or which requires statewide uniformity.’

As stated in [Webster v. Williams](#), supra, no reason exists to penalize a taxpayer in Aiken County any differently from a taxpayer in any other county. The above constitutional provision probably precludes the adoption of a local penalty ordinance.

CONCLUSION:

1. The governing body of Aiken County is without authority to alter the discounts provided by Act 202, Acts of 1973, for early payment of property taxes until January 1, 1980.
2. The governing body is without authority to provide a penalty for late payment of property taxes that is in conflict with general law.

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