

1979 S.C. Op. Atty. Gen. 166 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-118, 1979 WL 29121

Office of the Attorney General

State of South Carolina

Opinion No. 79-118

October 4, 1979

***1 SUBJECT: Municipal License Taxes**

(1) Municipal license taxes may be collected from insurance companies and insurance agencies as both are engaged in separate businesses.

(2) Section 38–5–490 relates only to the tax upon insurance companies and agents, therefore, any other business, i.e., an insurance agency, is not subject to the limitations of such section.

TO: Honorable James M. Waddell, Jr.

Senator

Senatorial District No. 15

QUESTIONS:

(1) May the City of Beaufort impose a business license tax on a casualty insurance company and collect that tax from the insurance company and then, in addition, collect a business license fee or tax from the agent who issued the policies?

(2) Is the license fee of two percent of premiums under § 38–5–490 of the Code a ceiling on the amount which may be charged to insurance companies or their agents, or is it a maximum that may be charged to the insurance companies without limiting an additional amount that may be made to the agents of these companies?

STATUTES:

[Sections 5–7–30](#) and 38–5–490, 1976 South Carolina Code of Laws.

DISCUSSION:

A municipality has authority to levy business license taxes under the authority found in the Home Rule Act. [Section 5–7–30 of the South Carolina Code of Laws](#). Insurance companies and insurance agencies may be taxed under this authority. [United States Fidelity and Guaranty Co. v. City of Newberry](#), 253 S. C. 197, 169 S. E. 2d 599; [United States Fidelity and Guaranty Co. v. City of Newberry](#), 257 S. C. 433, 186 S. E. 2d 239. In addition to these cases, § 38–5–490 recognizes, in the first sentence, this right:

‘Nothing elsewhere in this Title shall be construed as preventing any municipality from levying and collecting license fees or taxes in accordance with its provisions.’

The South Carolina courts have upheld the power of municipalities to classify various businesses and professions for the purpose of license taxation and their right to impose reasonable amounts upon the respective classes. [United States Fidelity and Guaranty Co. v. City of Newberry](#) (two cases), supra; [American Bakeries Co. v. City of Sumter](#), 173 S. C. 94, 174 S. E. 919; [Triplett v. City of Chester](#), 209 S. C. 455; 40 S. E. 2d 684. It was said in [City of Columbia v. Putnam](#), 241

S. C. 195, 127 S. E. 2d 631, that the fact that one class may pay more proportionately than other classes does not of itself make the license fee unreasonable or arbitrary since this is largely within the authority of city council. The presumption is that the license tax is reasonable.

Clearly, an insurance company writing insurance through a local agent within a municipality is doing business any may be required to pay municipal license taxes. See 1971–72 OAG No. 3358. A business agency may be also taxed by a municipality. An agency business is defined as one in which persons hold themselves out to the public as being engaged in the business of being agent. [Comer v. State Tax Commission of New Mexico](#), 41 N. M. 403, 69 P. 2d 936. In [Stewart v. Kehrer](#), 115 Ga. 184, 41 S. E. 680, it was held that one with the vocation of agent was 'doing business' and, therefore, subject to municipal taxation. It is, therefore, our opinion that a municipality with an ordinance purporting to tax agencies engaged in the business of representing different insurance companies, may tax this vocation under its business licensing power. The insurance companies represented in addition would be liable for business license taxes. License taxes would not be required of an employee of an insurance company.

CONCLUSION:

*2 Municipal license taxes may be collected from insurance companies and insurance agencies as both are engaged in separate businesses.

DISCUSSION:

Section 38–5–490 in part states:

'* * *. But no municipality shall charge a license fee to fire insurance companies or their agents licensed by the Commissioner in any other manner than on a percentage of the premiums collected in such municipality or realized from risks located within the limits of such municipality, or both, such license fee not to exceed two per cent of the premiums collected in such municipality and realized from risks located in such municipality, except in cities of fifty thousand inhabitants or more, where not exceeding five per cent may be charged. * * *.' (Emphasis added)

The underlined language clearly limits the application of this section to the tax on insurance companies and their agents. A business agency thus is not within the provisions of the section and is not limited by the maximum.

CONCLUSION:

Section 38–5–490 relates only to the tax upon insurance companies and agents, therefore, any other business, i.e., an insurance agency, is not subject to the limitations of such section.

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