

1978 S.C. Op. Atty. Gen. 193 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-164, 1978 WL 22632

Office of the Attorney General

State of South Carolina

Opinion No. 78-164

October 2, 1978

***1 SUBJECT: Property Tax—Penalties—Nulla Bona**

A tax collector has no authority to nulla bona executions for unpaid taxes unless there is no property of the defaulting taxpayer on which the execution can be collected.

TO: Mr. W. H. Boylston
Aiken County Tax Collector

QUESTION:

Does the tax collector have the authority to nulla bona penalties because the defaulting taxpayer is in a difficult financial position due to illness?

APPLICABLE LAW:

48 Statutes at Large 1548 (1954 Acts, page 1548), § 12-45-180, et seq., § 12-49-450, § 12-49-420 and § 12-49-660.

DISCUSSION:

The office of Tax Collector for Aiken County was created in 1954 and the Act was codified in the 1962 Code of Laws as § 65-2207, et seq. The duties for the collection of delinquent taxes were transferred from the County Sheriff to the newly created office. The execution for unpaid taxes is provided for by § 12-49-450 and the language by § 12-49-420. The execution commands the tax collector to levy by distress and sale on so much of the defaulting taxpayer's property as is necessary to satisfy the execution.

The penalties you refer to are provided by § 12-45-180 and are mandatory. The only authority for the waiver is that found in § 12-45-190, which does not include the circumstances outlined above. The authority of your office to nulla bona a tax execution must be that as prescribed by law.

'In general, the powers and duties of officers are prescribed by the constitution or by statute, or both, and they are measured by the terms and necessary implication of the grant * * *.' 63 Am.Jur.2d, Public Officers and Employees, § 263. See also 14 S.C.D., Officers, Key 103, et seq.

Section 12-49-660 requires the return of uncollected executions and the term 'nulla bona' must be given its ordinary meaning. The same is defined in Black's Law Dictionary to mean:

'No goods. The name of the return made by the sheriff to a writ of execution where he has not found any goods of the defendant within his jurisdiction on which he could levy.'

CONCLUSION:

A tax collector has no authority to nulla bona executions for unpaid taxes unless there is no property of the defaulting taxpayer on which the execution can be collected.

Joe L. Allen, Jr.
Deputy Attorney General

1978 S.C. Op. Atty. Gen. 193 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-164, 1978 WL 22632

End of Document

© 2017 Thomson Reuters. No claim to original U.S. Government Works.