

1976 WL 30896 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

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*1 The Town of Williston has no authority to exempt by ordinance town taxes new manufacturing plant.

Honorable William E. Knotts, Jr.
Senator
District 8

QUESTION

Is a new manufacturing plant in Williston, South Carolina, exempt from taxes imposed by the Town?

DISCUSSION

A manufacturing plant intends to move into an existing building located in Williston and begin manufacturing operations on or about January 1, 1977. The building will be improved and adapted to the manufacturer's needs and machinery and equipment will be placed in the building. The land, pre-existing building and new equipment will constitute a new manufacturing plant and any exemptions for new plants would encompass and include the land and building. Cummins Engine Co. Inc. v. William O. Thomas, Jr., Treas., Charleston County, Op. No. 20306, November 10, 1976.

In 1970 the Town of Williston enacted an ordinance under Article 8, Section 8 of the South Carolina Constitution which exempted from town taxes new manufacturing plants for five years. Article 8, Section 8 stated: 'Cities and towns may exempt from taxation, by general or special ordinance, except for school purposes, manufacturers established within their limits for five successive years from the time of the establishment of such manufacturers: Provided, That such ordinance shall be first ratified by a majority of such qualified electors of such city or town as shall vote at an election held for that purpose.'

An amendment to Article 8 was ratified in 1973 by Act No. 63 (1973 (58) 67) and now provides the constitutional authority under which county and municipal governments are structured and operate, including the powers of taxation.

The General Assembly, carrying out the mandate of amended Article 8, enacted the local government or Home Rule Act. Act No. 283, 1975 Acts; (1975 (59) 692). It states that municipalities shall adopt one of three forms of government and that such adoption shall be made by ordinance in a form most nearly corresponding to the form of government in effect for the municipality on March 1, 1975. The sections immediately following Section 47-26 state how a change in the form can be made. Section 47-32 confers power to municipalities to enact regulations and ordinances, including the authority to levy and collect taxes on real and personal property. Such ordinances shall not be 'inconsistent with the Constitution and general law of this State.'

Any ordinance in conflict with Article 8 in its amended form is unconstitutional and void, thus if Article 8 as amended does not permit a municipality to adopt ordinances to exempt property, the previously adopted ordinance must fail. Doubt has heretofore been expressed under both the local government amendment and Act that a municipality can exempt taxes by ordinance. The deletion of the specific exempting authority from amended Article 8 and the failure of

the General Assembly to specifically grant this power is in support of the conclusion that municipalities do not have this authority. It is well understood that a municipality may exercise only that authority conferred by the General Assembly. [Carroll v. York](#), 109 S. C. 1, 95 S. E. 121.

*2 Article 10, Section 1 presently provides a limitation on the power of the General Assembly to exempt property from taxation. This is expressed also in amended Article 10, Section 1, which has been favorably voted upon in the last general election but has not yet been ratified by the General Assembly. The amendment expressly precludes the General Assembly from exempting property from municipal and school taxation. These provisions provide uniformity of taxation for all municipalities.

The case of [Neel v. Shealy](#), 261 S. C. 266, 199 S. E. 2d 542, has been reviewed for possible effect. The case however is distinguishable in that the statute in issue was held not to be in conflict with Article 8.

CONCLUSION

The Town of Williston has no authority to exempt by ordinance town taxes of a new manufacturing plant.

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