

1974 S.C. Op. Atty. Gen. 316 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3886, 1974 WL 21384

Office of the Attorney General

State of South Carolina

Opinion No. 3886

November 13, 1974

**\*1 A construction permit is required for a church building.**

Attorney at Law  
Swansea, S. C.

This is in reply to your request for an opinion of this office on whether or not a construction permit is required for a church building in Lexington County.

The statute in question is Section 14-400.945 of the Code which is contained in the 1972 Acts and Joint Resolutions at page 2737. The Act was amended in 1973, but this amendment is not pertinent. The Act provides that: 'It shall be unlawful for any person to construct or improve any building. \* \* \*.' The Act, therefore, applies to all construction unless there is some other provision under South Carolina law which would exclude churches.

Churches are exempted from ad valorem property taxes under Section 65-1522(14) of the Code, and under Article 10, Section 4 of the South Carolina Constitution which is a self-executing provision. These exemptions have been held to apply only in the case of ad valorem property taxes and not in the case of excises or assessments. See the cases of *Greenville v. Query*, 166 S. C. 281, 164 S. E. 844 (1930), and *Wesley M. E. Church v. Columbia*, 105 S. C. 303, 89 S. E. 641 (1916).

You have expressed concern over the fact that the building permit fee provided under Section 3 of the Act is progressive with the cost of construction until the fee reaches \$25.00 when the cost of construction exceeds \$200,000. Even though the building permit fee increases with the cost of construction, it is the opinion of this office that the building permit fee is not an ad valorem property tax. As stated at *71 Am. Jur. 2d, State and Local Taxation, Section 20*: 'An ad valorem property tax is invariably based upon ownership of property and is payable regardless of whether the property is used or not.' The building permit on the other hand imposes a fee in the nature of an excise or license because more than ownership is involved. It has been held that a building permit fee is distinguishable from a tax. See *St. Paul v. Dow*, 37 Minn. 20, 32 N. W. 860. The case of *Maine v. Grand Trunk Railway Co.*, 142 U. S. 217, 12 S. Ct. 121, cited at *Section 25 of 71 Am. Jur. 2d, supra*, appears to be directly on point. It holds that if a tax is in the nature of an excise, it does not become a property tax because it is proportioned in amount to the value of the property used in connection with the privilege or act which is taxed.

We, therefore, conclude that the construction on church property is not exempt from the fee imposed for building permits.

John C. von Lehe  
Assistant Attorney General

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