

FINANCE AND TAXATION

The central constitutional issues of state finance can be stated briefly as:

- 1) limitations and restrictions on legislative taxing power;
- 2) inclusion of uniformity rules;
- 3) earmarking of revenues;
- 4) the budgetary system;
- 5) debt authorization and control.

Existing provisions of the South Carolina Constitution include rather elaborate and detailed sections concerning taxation, tax exemptions, and debt. Considerable attention is given to the property tax as it was the major source of public funds at the time the Constitution was drafted. Tax neutrality, or equity, and state solvency are emphasised in the Constitution of 1895.

The trend in Constitution writing has been toward an unshackled legislature. The Model State Constitution provides quite simply:

ARTICLE VII

Finance

Section 7.01. *State Debt.* No debt shall be contracted by or in behalf of this state unless such debt shall be authorized by law for projects or objects distinctly specified therein.

Section 7.02. *The Budget.* The governor shall submit to the legislature, at a time fixed by law, a budget estimate for the next fiscal year setting forth all proposed expenditures and anticipated income of all departments and agencies of the state, as well as a general appropriation bill to authorize the proposed expenditures and a bill or bills covering recommendations in the budget for new or additional revenues.

(continued on page 2)

Section 7.03. *Expenditure of Money.*

(a) No money shall be withdrawn from the treasury except in accordance with appropriations made by law, nor shall any obligation for the payment of money be incurred except as authorized by law. The appropriation for each department, office or agency of the state, for which appropriation is made, shall be for a specific sum of money and no appropriation shall allocate to any object the proceeds of any particular tax or fund or a part or percentage thereof, except when required by the federal government for participation in federal programs.

(b) All state and local expenditures, including salaries paid by the legislative, executive and judicial branches of government, shall be matters of public record.

SOUTH CAROLINA CONSTITUTION

Article I, Section 6.

Section 6. **Taxation.**—All property subject to taxation shall be taxed in proportion to its value.

See Const. 1868, I, 36.

This section, although not entirely inappropriate to a bill of rights, might better be removed to Article X, Finance and Taxation. The same thought is incorporated under Article III, Section 29, and under Article X, Section 1. Retention of the provision is of doubtful value.

Article I,
Section 7.

Section 7. **No tax without consent.**—No tax, subsidy, charge, impost tax or duties shall be established, fixed, laid or levied, under any pretext whatsoever, without the consent of the people or their representatives lawfully assembled.

See Const. 1868, I, 37.

An unneeded provision in that Section 5 of Article I guarantees "due process" and "equal protection" of the laws to all citizens, as does the federal constitution. Also, Article X, Section 3, prohibits a levy except in pursuance of law.

Article III, Section 29.

Section 29. Taxes laid upon actual value.—All taxes upon property, real and personal, shall be laid upon the actual value of the property taxed, as the same shall be ascertained by an assessment made for the purpose of laying such tax.

See Const. 1868, II, 33.

For consistency in the internal organization of the Constitution this section would seem to belong in Article X, Finance and Taxation. The section calls for assessments of property at "actual" or full value. In practice this provision has been proven unenforceable, but if retained it might well be consolidated with Section 13, Article X, which provides that all property taxes -- state, county, township, school, municipal -- shall be levied on the assessment which shall be made for State taxes. (Currently, the State does not levy a property tax and assessments are made locally on a county basis, except for certain types of property: public utilities, etc.)

Article VIII, Section 3.

Section 3. Taxes.—The General Assembly shall restrict the powers of cities and towns to levy taxes and assessments, to borrow money and to contract debts, and no tax or assessment shall be levied or debt contracted except in pursuance of law, for public purposes specified by law.

It is well established that local units of government possess only those powers expressly granted through constitutional or statutory provisions. This section makes mandatory legislative action to restrict the fiscal powers of cities and towns, which has been accomplished by means of specific tax authorizations granted by the legislature. The section is not a restriction on the taxing powers of the State; it is designed to limit local taxes and local debt. At issue is the method for providing for the financial needs of local government. The historic method among the states has been to deny a local unit any financial power not specifically granted. Recently there has been a trend toward loosening the restrictions to the point of permitting a local unit to make any levy not specifically denied by law. This tends to encourage local fiscal independence.

The new Michigan constitution makes this kind of provision as to cities: " ... is granted power to levy other taxes for public purposes, subject to limitations and prohibitions provided by this constitution or by law." Counties benefit from an identical provision.

Article VIII, Section 6.

Section 6. Corporate taxes must be uniform—license.—The corporate authorities of cities and towns in this State shall be vested with power to assess and collect taxes for corporate purposes, said taxes to be uniform in respect to persons and property within the jurisdiction of the body composing the same; and all the property, except such as is exempt by law, within the limits of cities and towns shall be taxed for the payment of debts contracted under authority of law. License or privileged taxes imposed shall be graduated so as to secure a just imposition of such tax upon the classes subject thereto.

The uniformity rule is imposed upon municipal taxes on property or persons, license and privilege taxes excepted. The section is duplicative in large part of Article X, Section 5.

In general, the section is subject to the criticism of containing statutory material, although a broad grant of taxing and other powers should be included in any constitutional article dealing with municipal and other local governments. For example, the municipalities of South Carolina are subject to many statutory regulations in the exercise of their constitutional power to levy license and privilege taxes.

ARTICLE X

Finance and Taxation

Section 1. Taxation and assessment.—The General Assembly shall provide by law for a uniform and equal rate of assessment and taxation, and shall prescribe regulations to secure a just valuation for taxation of all property, real, personal and possessory, except mines and mining claims, the products of which alone shall be taxed; and also excepting such property as may be exempted by law for municipal, educational, literary, scientific, religious or charitable purposes: *Provided, however,* That the General Assembly may impose a capitation tax upon such domestic animals as from their nature and habits are destructive of other property: *And provided, further,* That the General Assembly may provide for a graduated tax on incomes, and for a graduated license on occupations and business: *Provided, further,* That the General Assembly may provide by law for the assessment of all intangible personal property, including moneys, credits, bank deposits, corporate stocks, and bonds, at its true value for taxation for State, County and municipal purposes or either thereof: *Provided,* That the total rate of taxation imposed thereon shall never exceed one-half of one per centum of the actual value of such intangible property: *Provided, further,* That such intangible personal property shall not be subject to the three mill levy provided by Section 10, Article 11, of this instrument or to any other general or special tax levy, except such as is especially provided by the General Assembly by the authority and within the limitation of this provision; nor shall such intangible personal property be considered a part of 'taxable property,' as such term is used in this instrument, of the State or any subdivision thereof.

See Const. 1868, IX, 1.
1930 (36) 1349; 1932 (37) 1126.

The purpose of this section is to provide for uniformity in property taxation, uniformity to be considered as the means of providing tax equity. The wording of the first sentence of the section, "The General Assembly shall provide by law for a uniform and equal rate of assessment and taxation...", suggests that the Legislature may have power to set an assessment rate at a level below "actual value" as provided in Article III, Section 29.

Uniformity and Classification

It is popularly believed that uniformity insures neutrality of treatment or tax equity, a generally desirable goal, and consequently uniformity clauses were written into many state constitutions. Experience with the property tax had indicated that uniformity clauses do not gain this objective because of substantial differences among types of properties. Consequently, most states

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allow some degree of property classification which permits different treatment for different types of property. For example, the South Carolina Constitution permits classification to the extent of giving special consideration to all tangible personal property. Minnesota has one of the most comprehensive property classification systems for tax purposes of any state. The system is based largely on varying ratios of assessed to true value: iron at 50 percent, household goods at 25 percent, platted urban land at 40 percent, and so forth. The case for property classification rests on the assumptions that careful adjustments through classification will alleviate many of the inequities of the general property tax; that it makes easier the administration of the tax; and that the tax can become a more flexible tool for attaining social objectives. Opponents of property classification for tax purposes claim that the system is open to political pressure and abuse.

Property classification is secured in Minnesota through the following constitutional provision:

...(T)axes shall be uniform upon the same class of subjects, and shall be levied and collected for public purposes

Classification has been used in Kentucky and the recently proposed new constitution contained the following: *state*

...(A)n ad valorem tax shall be at a uniform rate upon all property of the same class within the ~~taxing district~~ unless the General Assembly provides for reasonable differences in the rate within areas of the taxing district....

(2) Nothing in this Constitution shall prevent the General Assembly from imposing additional forms of taxation, from providing for taxes in place of an ad valorem tax on one or more classes of property, from making reasonable classifications of property and setting the rate of ad valorem taxation thereupon, or from delegating parts of the taxing power to units of local government. The principle of taxation that there be uniformity and equality within reasonable classifications shall be saved inviolate.

Income Tax

In a few states, uniformity clauses have been interpreted as prohibiting the legislature from enacting graduated income taxes. In South Carolina the

General Assembly is specifically granted this power and has, with a majority (36) of other states, imposed by statute a tax on corporate and personal incomes. Rates, deductions, exemptions, and payment schedules are regulated by law.

Occupation and Business License

In Colonial America the taxing of the personal abilities of an individual, skills and education, was considered a part of the property tax. Later this feature of the tax was abandoned. Whether or not the lineage of occupation and business license taxes in South Carolina runs back to the general property tax is not clear but is suggested by its inclusion in this Article which is mainly concerned with the property tax. In any event, the General Assembly is granted authority to levy a non-uniform or graduated tax on occupations and businesses. The adoption of a classification system would probably obviate the need for these specific tax authorizations.

Section 2. Expenses of state government.—The General Assembly shall provide for an annual tax sufficient to defray the estimated expenses of the State for each year, and whenever it shall happen that the ordinary expenses of the State for any year shall exceed the income of the State for such year the General Assembly shall provide for levying a tax for the ensuing year sufficient, with other sources of income, to pay the deficiency of the preceding year together with the estimated expenses of the ensuing year.

See Const. 1868, IX, 3.

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The intent of this section is to prevent the accumulation of a "floating" debt. Expenditures for ordinary state expenses must not exceed revenues over a two-year period. It is essentially a "balanced budget" provision. Deficit financing is ruled out and considerations of fiscal policy (use of financial powers to offset variations in the economy) are excluded in favor of a balance between revenues and expenditures.

It is doubtful whether the section is legally enforceable, but self-restraint by the legislature and the democratic process of the ballot box provide adequately for compliance with its provisions.

Section 3. Tax shall be levied in pursuance of law.—No tax shall be levied except in pursuance of a law which shall distinctly state the object of the same; to which object the tax shall be applied.

See Const. 1868, IX, 4.

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A tax has been defined as a compulsory payment for a public purpose. In a democracy compulsion is the prerogative only of the state, and public purpose is established by law. This section indicates that taxes must be levied by law and the object of the tax stated. The point here is not to earmark taxes for specific purposes but to assure that tax levies are open, not secretive and hidden. Many state constitutions contain similar provisions. Their usefulness is open to some question, however.

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Section 4. Property exempt from taxation—household goods and furniture.—There shall be exempted from taxation all County, township and municipal property used exclusively for public purposes and not for revenue, and the property of all schools, colleges and institutions of learning, all charitable institutions in the nature of asylums for the infirm, deaf and dumb, blind, idiotic and indigent persons, except where the profits of such institutions are applied to private uses; all public libraries, churches, parsonages and burying grounds; but property of associations and societies although connected with charitable objects, shall not be exempt from State, County or municipal taxation; *Provided*, That as to real estate this exemption shall not extend beyond the buildings and premises actually occupied by such schools, colleges, institutions of learning, asylums, libraries, churches, parsonages and burial grounds, although connected with charitable objects.

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Provided, further, The General Assembly may by Act exempt from taxation household goods and furniture used in the home of the owner thereof.

1946 (44) 1745; 1947 (45) 136.
See Const. 1868, IX, 5.

This section cites exemptions from the property tax other than those included in Section 1. There is some ambiguity and possible conflict between the two sections in that Section 1 provides for exemptions at the discretion of the legislature and Section 4 lists types of property where exemption is constitutionally granted, or denied, or made permissible as with household goods. Exemption, of course, involves classification and might well be given over entirely to the discretion of the General Assembly. However, most state constitutions make provision for exemption of non-profit educational, religious and charitable institutions.

Under Section 1, exemptions from taxation include mines and mining claims, and other property which may be exempt by law "for municipal, educational, literary, scientific, religious or charitable purposes." Dr. Paul Alyea, in a study of the South Carolina property tax in 1965, noted that there were 50 general exemptions and 138 specific property exemptions listed in the 1962 Code. Since tax exemption amounts to an indirect subsidy, the entire question should be carefully studied. The exemption accorded mines and mining claims by this section is of little significance as is the provision permitting a capitation tax on domestic animals.

Section 5. Taxes may be levied for corporate purposes—share of stockholders—limit of bonded debt.—The corporate authorities of counties, townships, school districts, cities, towns and villages may be vested with power to assess and collect taxes for corporate purposes; such taxes to be uniform in respect to persons and property within the jurisdiction of the body imposing the same. All shares of stockholders in any bank or banking association located in this State, whether now or hereafter incorporated, or organized under the laws of this State or of the United States, shall be listed at their true value in money, and taxed for municipal purposes in the city, ward, town or incorporated village, where such bank is located, and not elsewhere: *Provided*, That the words "true value in money" as used in line 12 of this Section shall be so construed as to mean and include all surplus or extra moneys, capital, and every species of personal property of value owned or in possession of any such bank: *Provided*, A like rule of taxation shall apply to the stockholders of all corporations other than banking institutions. And the General Assembly shall require that all the property, except that herein permitted to be exempted within the limits of municipal corporations, shall be taxed for corporate purposes and for the payment of debts contracted under authority of law.

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Uniformity Clause

This section authorizes the legislature to delegate taxing power to the subunits of the state... "such taxes to be uniform in respect to persons and property within the jurisdiction of the body imposing the same." Several problems arise here. First, taxes may be levied and collected only for corporate purposes. Not infrequently questions arise as to the authority of a local unit to tax and spend for a particular purpose -- Aiken County's interest in a joint planning venture with a neighboring Georgia county can be cited. (The powers of local units of government is to be studied separately by the committee, however). The uniformity rule presents another problem, as, for example, where the citizens of one section of a county, usually an urbanized section, desire a particular service from the county. The county may be willing to provide the service but cannot do so without imposing a tax uniform within the county. This would result in the obvious inequity of requiring many citizens to support a service from which they receive no benefits. The proposed new constitution for Kentucky met this problem with the following:

...(A)n ad valorem tax shall be at a uniform rate upon all property of the same class within the taxing district unless the General Assembly provides for reasonable differences in the rate within areas of the taxing district. Those reasonable differences shall relate directly to differences between governmental services and benefits giving land urban character which are furnished in all of any area in contrast to other areas of the taxing district. (emphasis supplied)

Share of Stockholders. This is another piece of property classification and probably should be stricken, giving the legislature discretion over the matter. The intent is to give equal treatment to state banks and national banks as required under federal law. Also, the tax is earmarked as a municipal tax. Included for similar treatment as bank stockholders are the stockholders of all other corporations, an inducement for corporations to locate beyond municipal boundaries.

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Section 6. Credit of State—for what purposes tax levied or bonds issued—proviso.—The credit of the State shall not be pledged or loaned for the benefit of any individual, company, association or corporation; and the State shall not become a joint owner of or stockholder in any company, association or corporation. The General Assembly shall not have power to authorize any county or township to levy a tax or issue bonds for any purpose except for educational purposes, to build and repair public roads, buildings and bridges, to maintain and support prisoners, pay jurors, County officers, and for litigation, quarantine and court expenses and for ordinary County purposes, to support paupers, and pay past indebtedness

Credit of State. The section prohibits the legislature from engaging in financial support of individuals or businesses through extension of credit or purchases of stock. A common provision in state constitutions since the canal-and railroad-building era with its misuse of state funds, this prohibition could probably be eliminated and the matter regulated by state law.

County Taxes and Bonds. The provision is excessively limiting on the legislature, and on counties, and ought to be repealed as outdated. The phrase "ordinary county purposes" has required much litigation and court interpretation. (This section will receive further discussion later when the broad topic of Local Government is considered.)

See

Section 7. Scrip, certificate, or evidence of state debt.—No scrip, certificate or other evidence of State indebtedness shall be issued except for the redemption of stock, bonds or other evidences of indebtedness previously issued, or for such debts as are expressly authorized in this Constitution.

See Const. 1868, IX, 10.

Relating to debt, this section simply protects the credit of the state against unauthorized issues. Provision could be combined with Section 11.

Section 8. Receipts and expenditures.—An accurate statement of the receipts and expenditures of the public money shall be published with the laws of each regular session of the General Assembly, in such manner as may by law be directed.

See Const. 1868, IX, 11.

Tantamount to a requirement for an annual audit of state finances, this provision makes state finances a matter of public record.

Section 9. Money.—Money shall be drawn from the Treasury only in pursuance of appropriations made by law.

See Const. 1868, II, 22 and IX, 12.

A time-honored requirement safeguarding public funds against unlawful expenditure.

Section 10. Fiscal year.—The fiscal year shall commence on the First day of July in each year: *Provided*, That the General Assembly at its first regular session after the passage of this amendment, shall be authorized and empowered to make appropriations for governmental purposes for not exceeding eighteen (18) months, and to make such other changes and provisions in law as may be necessary to effectively make the foregoing provision operative: *Provided, further*, That should this Constitution be amended so as to provide for biennial sessions, then the General Assembly shall have power at the first session after the adoption of such an amendment to make appropriations for a period not exceeding two and one half (2½) years and thereafter for each succeeding biennium.

1932 (37) 1402; 1933 (37) 591.

The Constitution of 1868 provided that the fiscal year begin on the first day of November. In 1895, the section was changed to provide for a fiscal year beginning January first of each year. In 1932 this was amended to provide for the current fiscal year. Determination of the fiscal year is hardly a constitutional issue and ought to be fixed by law, thus making easier any change needed to meet new conditions. The period for which the legislature may make appropriations should coincide with the fiscal year, but state

constitutions do not usually limit state legislatures as to the duration of appropriations. (The federal constitution bars military appropriations beyond a two-year period.)

Section 11. Public debt—state bonds.—To the end that the public debt of South Carolina may not hereafter be increased without the due consideration and free consent of the people of the State, the General Assembly is hereby forbidden to create any further debt of obligation, either by the loan of the credit of the State, by guaranty, endorsement or otherwise, except for the ordinary and current business of the State, without first submitting the question as to the creation of such new debt, guaranty, endorsement or loan of its credit to the qualified electors of this State at a general State election; and unless two-thirds of the qualified electors of this State, voting on the question, shall be in favor of increasing the debt, guaranty, endorsement, or loan of its credit, none shall be created or made. And any debt contracted by the State shall be by loan on State bonds, of amounts not less than fifty dollars each, bearing interest, payable not more than forty years after final passage of the law authorizing such debt. A correct registry of all such bonds shall be kept by the Treasurer in numerical order, so as to always exhibit the number and amount unpaid, and to whom severally made payable. And the General Assembly shall levy an annual tax sufficient to pay the annual interest on said bonds.

See 16th amend. to Const. 1868.

A severe restriction on debt incurrence by the legislature, this section will be reserved for discussion at a later time.

Section 12. Safe-keeping of public funds—embezzlement of, felony—General Assembly may remove.—Suitable laws shall be passed by the General Assembly for the safe-keeping, transfer and disbursement of the State, County and school funds; and all officers and other persons charged with the same shall keep an accurate entry of each sum received, and of each payment and transfer, and shall give such security for the faithful discharge of such duties as the General Assembly may provide. And it shall be the duty of the General Assembly to pass laws making embezzlement of such funds a felony, punishable by fine and imprisonment, proportioned to the amount of the deficiency or embezzlement, and the party convicted of such felony shall be disqualified from ever holding any office of honor or emolument in this State: *Provided, however,* That the General Assembly, by a two-thirds vote, may remove the disability upon payment in full of the principal and interest of the sum embezzled.

See Const. 1868, art. IX, § 15.

This section is statutory material and the matter it takes up is dependent ultimately upon legislative action. It would improve Article X if the section were eliminated.

Section 13. One assessment for all taxes.—The General Assembly shall provide for the assessment of all property for taxation; and State, county, township, school, municipal and all other taxes shall be levied on the same assessment, which shall be that made for State taxes; and the taxes for the subdivisions of the State shall be levied and collected by the respective fiscal authorities thereof.

This section is rooted in the golden age of the property tax. It applies now only to local taxes, and property is assessed locally with few exceptions. The provision that state, county, township, school, municipal and all other taxes (emphasis supplied) shall be levied on the same assessment reinforces the uniformity rule. The uniformity rule, incidentally, has been the cause of a series of amendments (Sections 13a-22) to permit the levying of special assessments for property abutting various types of public works among the counties and cities of the State. The rule should be eliminated from the Constitution and placed under legislative discretion.

FEDERAL AID

In a few states constitutional attention is being given to the problem of federal aid. The Model State Constitution in prohibiting the general practice of earmarking revenues makes an exception "when required by the federal government for participation in federal programs." Several areas of friction have arisen, namely, the by-passing of the state in federal aid to localities, statewide planning and coordinating difficulties, and budgetary control problems. Solutions to these problems are not clear but include such courses of action as bringing all federal funds to local units under state control, or declaring grants to be state funds to be expended under state provisions. The overall problem is a difficult one which perhaps is not amenable to a constitutional solution.

BUDGETING

The preparation of the budget has become central to the entire state fiscal process. The answer to the question of who shall prepare the budget has been met in a number of ways among the states; the majority (40) lodge this responsibility with the governor, but some make use of boards or commissions. The principal arguments favoring the so-called executive budget are:

- Responsibility for the preparation of the budget is centralized
- The governor is in the best position to know of the needs of state agencies and effect coordination between them
- The budget is an indispensable tool for administrative control of the executive branch

The arguments for boards and commissions tend to be:

- The governor is only one member of the executive department
- A board provides a better opportunity for a balanced viewpoint on agency requests
- A budget has improved chances in the legislature if legislative members are involved in its preparation.

Whether or not a budgetary provision should be included in a constitution involves the lively and delicate question of balance of power between the legislative and executive branches. Clearly a governor who has constitutional control over the preparation of the budget is in a much stronger position, politically and administratively, than one who has not. If no provision is made the ultimate authority lies with the legislature, of course, for it may bestow power or take it away. The present budgetary system in South Carolina rests on statutory provisions which establish the State Board of Budget and Control and defines its powers,

The rationale of the executive budget is based essentially upon a concept which views the preparation of the budget as a truly executive function and the review and consideration of the budget as a legislative function. A typical state constitutional provision is that of Michigan which states:

"The governor shall submit to the legislature at a time fixed by law, a budget for the ensuing fiscal period setting forth in detail, for all operating funds, the proposed expenditures and estimated revenue of the state. Proposed expenditures from any fund shall not exceed the estimated revenue thereof. On the same date, the governor shall submit to the legislature general appropriation bills to embody the proposed expenditures and any necessary bill or bills to provide new or additional revenues to meet proposed expenditures. The amount of any surplus created or deficit incurred in any fund during the last preceding fiscal period shall be entered as an item in the budget and in one of the appropriation bills. The governor may submit amendments to appropriation bills to be offered in either house during consideration of the bill by that house, and shall submit bills to meet deficiencies in current appropriations."

Proposed Statement on Post-Auditing

Alternative A:

The Comptroller General shall be elected by the joint vote of the General Assembly for a term of four (?) years and shall have such qualifications as may be specified by law. The Comptroller General shall perform the post-audit of state revenues and expenditures as required by law, ~~report~~ ^{He will} at least annually the results of his audits to the General Assembly, and shall perform such other duties as the General Assembly may prescribe.

Alternative B:

A post-audit of state revenues and expenditures shall be made and reported to the General Assembly at least annually by the Comptroller General who shall be elected by a joint vote of the General Assembly for a four-year term and who shall have such qualifications as may be specified by law.

Alternative C:

There shall be a Department of State Audits under the supervision of the Comptroller General who shall be elected for a four-year term by a joint vote of the General Assembly. The Department shall be vested with the duties, powers, and responsibilities involved in performing post-audits of all financial transactions of the State Government, detecting and reporting any defaults, and determining that expenditures have been ^{lawfully and} made in accordance with appropriation acts. The Department of State Audits is hereby vested with the duties, powers, and responsibilities involved in making a complete examination of the books, records, and financial transactions of any and all state agencies, and in examining and appraising the accounting methods and internal control procedures as to adequacy and adaptability to auditing requirements.

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DANIEL R. MCLEOD
ATTORNEY GENERAL

JULIAN L. JOHNSON
J. C. COLEMAN, JR.
EVERETT N. BRANDON
VICTOR S. EVANS
C. T. GOOLSBY, JR.
EDWARD B. LATIMER
BEN T. DEDERRY
JAMES B. ELLISOR
ROBERT W. BROWN
RAYMOND G. HALFORD
CARL R. REASONOVER
IRVIN D. PARKER
ASSISTANT ATTORNEYS GENERAL

STATE OF SOUTH CAROLINA

OFFICE OF THE ATTORNEY GENERAL

COLUMBIA, S. C. 29211

P. O. Box 125

October 24, 1967

ASSISTANT ATTORNEYS GENERAL

JOE L. ALLEN
G. LEWIS ARGOE, JR.
S. C. TAX COMMISSION

MRS. SADYE B. DAVIS
SECRETARY - LAW CLERK

Mr. Robert Stoudemire
Bureau of Governmental Research and Service
Lieber College
University of South Carolina
Columbia, South Carolina

Dear Mr. Stoudemire:

Reference is made to the request of the Committee that this office consider the constitutional provisions that relate to taxation and to comment thereon. The provisions that relate primarily to ad valorem taxation are Article 1, Section 6, that requires property to be taxed in proportion to its value, Article 3, Section 29, that requires the tax to be laid upon the actual value of the property that is ascertained by an assessment made for such purposes and Article 10, Section 1, that requires the tax and assessment to be uniform and equal.

The South Carolina Supreme Court, in the case of State v. Cheraw & D. R. Co., 54 S. C. 564, 32 S. E. 691, held a valid assessment must exist before there could be a liability for a tax. The United States Supreme Court, in the case of Sioux City Bridge Co. v. Dakota County, Nebraska, 260 U. S. 441, 67 L. Ed. 340, 43 S. Ct. 190, 28 A. L. R. 979, held that the mandate for uniformity and equality took precedent over those requiring the tax on property to be in proportion to value and that the value be the actual value of such property.

Except for the classification as provided for in Article 10, Section 1, all properties within the State should be assessed and taxed equally. The statutes however require the Tax Commission to value certain classes of property, such as that of manufacturers, merchants, railroad companies, etc., while requiring the County Boards of Assessors to value other classes of property. The ratios as used by the Tax Commission and by the local Boards of Assessors may vary from

Mr. Robert Stoudemire

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county to county or among the classes of property within the county. The effect of such is to classify property for tax purposes and the Committee may wish to grant that authority to the General Assembly.

Additional consideration should be given to the use of a ratio in fixing the value of property. The need for such is evident because of the other constitutional limitations upon the bonded indebtedness of cities and counties, the same being limited to a percentage of the assessed values of properties within the respective cities or counties. If the assessed values were the actual values as required in Article 3, Section 29, the limits of the bonded indebtedness would be materially broadened, possibly creating an added tax upon property.

It is noted that in Article 10, Section 5, there is a provision that relates to the tax on State and national banks. This provision in all probability conflicts with the provisions of the Federal statutes that limit the method of taxing national banks. 12 U.S.C.A. 531. The General Assembly has also in Chapter 7 of Title 65 provided for a tax on banks and it may therefore be advisable to exclude this provision from the Constitution.

The fact that many of our senior citizens live on fixed incomes creates a need to review exemptions. Because of the increase in the costs of government and inflation such persons could be faced with the necessity of disposing of their property. It may be advisable to provide for a homestead exemption so as to give this group some protection.

Article 10, Section 1, provides constitutional authority to impose a tax on intangibles and came about by an amendment in 1932. The Supreme Court, in the case of Francis Marion Life Insurance Co. v. Columbia, 237 S. C. 162, 115 S. E. 2d 796, has held that there are no statutes that levy this tax. Additionally, the Section provides that the products of mines and mining claims are to be taxed, which, however, is not being done today. Those are examples of provisions under which the grant to tax is not exercised or where limitations are not followed.

The Constitution could provide a grant to the General Assembly authorizing taxation as was needed to raise revenue with a limitation only as the same applied to ad valorem taxation to assure equality and uniformity. Under such a provision the General Assembly would

Mr. Robert Stoudemire

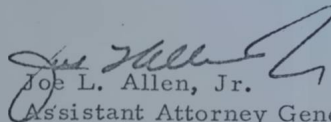
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be empowered to enact statutes that provide for taxation without constitutional limitations except for the uniformity and equality for ad valorem tax purposes.

We hope that this information will be of some benefit and if we can be of additional help, please let us know.

Yours very truly,



Joe L. Allen, Jr.

Assistant Attorney General

SOUTH CAROLINA TAX COMMISSION

JLAJr:ns

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THE SOUTH CAROLINA NATIONAL BANK



223 North Clemson Avenue
Clemson, South Carolina
October 22, 1967

DR. GEORGE H. AULL
CONSULTING ECONOMIST

Prof. Robert H. Stoudemire
University of South Carolina
Columbia, South Carolina

Dear Bob;

My office has been undergoing a bit of remodeling and refurbishing which accounts in part for the delay in answering your letter.

I wish very much that time permitted me opportunity for a full discussion of our out-moded Constitution or even a re-examination of comments along this line which I have made over the years. Yours is an extremely important assignment and my best wishes go out to you. I sincerely hope that the current efforts will bear more fruit than previous ones. It does appear that you are off to a more auspicious start with more legislative support than ever before.

You ask me in particular about the provisions relating to property tax assessments. While I have not taken time to look it up, I am on record somewhere as suggesting that the Constitution provide simply that "The General Assembly Shall provide by law for a fair and equitable system of taxing property." Perhaps this isn't quite enough. Maybe the Constitution should provide that "property may be classified" and that a different rate of taxation may be applied to the different classes. (I prefer that ALL property be assessed at its market value, with distinctions, if any, being shown in the rate applied to the different classes).

I would go so far as to say that ALL property should be ASSESSED -- including any which might be subject to exemptions. (Definitely, the public should be made painfully aware of the magnitude of property legally exempt from taxation). This might raise some problems of assessment, for example, of a church and some measure other than market value might have to apply. For practical purposes, exempt classes might be assessed less frequently than others, etc., etc., and it may be found necessary to SHOW intangibles in totals -- or they might HAVE to be omitted altogether.

I agree with you that the Constitution should touch on only the basic things with the details to be worked out through legislation. The Constitution, however, MIGHT require the same LEVEL of assessments throughout the State. (Of course, this would be the case if it used such term as Market Value -- and enforced it. It seems, also, that Counties should be uniform in the nature and extent of exemptions -- even for such things as new industries; in fact, I am almost willing to see this prohibited by State Constitution.

Perhaps we can discuss some of these things at a time when I feel less pressure of other duties.

Sincerely,

*I have no desire
to be quoted but
certainly it is not
necessary to "bias"
my views from the
Comm. George*

*(the above
suggestion
is to be
thought
the state)*

*description
of "class-
es" and
the*

George has been... us to do.

State of South Carolina
South Carolina Tax Commission

ROBERT C. WASSON
CHAIRMAN

JAMES A. CALHOUN, JR.
WYATT E. OURHAM
ROBERT C. WASSON
COMMISSIONERS

Columbia

October 20, 1967

Mr. Robert H. Stoudemire, Staff Consultant
Committee To Study The Constitution
of South Carolina, 1895
C/O Bureau of Governmental Research
The University of South Carolina
Columbia, South Carolina

Dear Mr. Stoudemire:

The following comments are made for the consideration of the Committee to Study the Constitution of South Carolina, 1895. They are not for quotation by any news media. I am not speaking for the South Carolina Tax Commission but I am expressing my personal opinion based upon experience and study as concerns the property tax.

I do not advocate any change in the present wording of the Constitution as to Article I, Section 6, which states, "All property subject to taxation shall be taxed in proportion to its value" and as to Article III, Section 29, "All taxes upon property real and personal shall be laid upon the actual value of the property taxed, as the same shall be ascertained by an assessment made for the purpose of laying such a tax."

I suggest that Article X, Section 4 of the Constitution be amended to provide, further, the General Assembly may by act exempt from taxation up to an actual value of \$10,000.00 the homestead of any taxpayer living in said house. I believe Article X, Section 1 gives the General Assembly enough authority to legislate some of the cures for the present ills of our property tax situation.

Needless to tell this Committee that the State assessed property is assessed at a far higher percentage of value than locally assessed property. State assessed property is almost all business property, while locally assessed

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Mr. Robert H. Stoudemire, Staff Consultant
Committee To Study The Constitution
of South Carolina, 1895

October 20, 1967

property includes all property of individuals, farms, homes and personal property. Even property assessed by the State is assessed in varying ratios. The ratio for manufacturers now varies from 5-1/2% to 18%. The ratio for autos is 13%. The ratio for merchants inventory now is 13% and by legislation will be 10% in 1970. Assessments made by County authorities are as low as 2% in some instances. The ratio varies from county to county and from property to property.

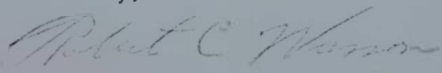
I have made two suggestions which, of course, would not require a Constitutional amendment. One would be the enactment of legislation requiring a fixed ratio to the true value of all properties, therefore requiring the same ratio to be applied in every county. Once the ratio has been set, a true market value must be determined.

Second, I think an immediate step should be taken to appraise all manufacturing plants in the State. Reassessment of all plants will require considerable time and qualified personnel. The reevaluation of all plants in the State of South Carolina could be accomplished by a competent commercial appraisal firm. Once this re-appraisal was made then our present field forces of the Reassessment Unit of the Property Tax Division could maintain and up-date assessed values in the future.

The courts have ruled in states which have similar constitutional provisions as our State that uniformity in ad valorem assessment taxation throughout the state must exist. "All taxable property in the State by whomever owned must for ad valorem tax purposes be taxed uniformly and equally at the same rate and the same ratio of assessment." We cannot delay any longer steps that must be taken to achieve uniformity among all taxpayers in our State whether centrally or locally assessed.

I appreciate your giving me the opportunity to make some comments to your Committee and I shall be glad to further discuss this matter with you if you so desire.

Sincerely,


Robert C. Wasson, Chairman
South Carolina Tax Commission

RCW:ml

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All real property and all personal ² [tangible] property shall be subject to ad valorem taxes unless exempt by this Constitution or by law. All property subject to taxation shall be treated ^{assessed} uniformly throughout the State and all assessments shall be ^{based upon actual} determined from the market value. The General Assembly may classify property and provide for assessments of varying ratios of market value if the assessments shall be uniform and equal upon all property of the same class.

Exemptions from taxation may be granted only by general laws. Exemptions may be altered or repealed except those exempting real property and ^{intangible} tangible personal property used exclusively for public purposes of political entities within the State and for religious, educational, or charitable purposes as defined by law and owned by a corporation or association organized or conducted exclusively for one or more such purposes and not operating for profit. (Property which may be exempt shall not extend beyond the buildings and premises devoted to a religious, educational, or charitable purpose.)

Assessment uniform throughout the state -

Would not involve

Consensus not to classify

Adopt first part.

10/4 - adding report

Memo. No. 5

To: Committee on Constitutional Revision

FROM: Robert H. Stoudemire, Staff Consultant.

1. Enclosed is Working Paper Number 5. on Finance and Taxation. This study was prepared by Doctor James Larson of the Political Science Department of the University of South Carolina. Please note that the indebtedness question is considered in a separate paper.
2. Enclosed is Working Paper Number 6. on Bonded Indebtedness prepared by the Staff Consultant.

October 2, 1967