

OFFICE OF THE ATTORNEY GENERAL



CHARLES A. GRADDICK
ATTORNEY GENERAL
STATE OF ALABAMA

JAMES R. SOLOMON, JR.
DEPUTY ATTORNEY GENERAL

WILLIAM M. BEKURS, JR.
EXECUTIVE ASSISTANT

WALTER S. TURNER
CHIEF ASSISTANT ATTORNEY GENERAL

JANIE NOBLES
ADMINISTRATIVE ASSISTANT

ADMINISTRATIVE BUILDING
64 NORTH UNION STREET
MONTGOMERY, ALABAMA 36130

NOV 24 1981

(205) 832-5640
HERBERT I. BURSON, JR.
B. FRANK LOEB
RON BOWDEN
JOHN J. BRECKENRIDGE
WILLIAM L. THOMPSON
ASSISTANT ATTORNEYS GENERAL
REVENUE DEPARTMENT

Honorable Robert G. Methvin
Tax Assessor, Barbour County
Barbour County Courthouse
Eufaula, AL 36027

Homesteads - Ad Valorem Taxes - Exemptions

Dominant use of property determines eligibility for homestead exemption.

Primary and secondary uses of property are questions of fact to be decided by tax assessor.

Property may qualify for homestead exemption but not for Class III designation.

Dear Mr. Methvin:

In your request for an opinion dated October 22, 1981, you ask whether certain properties which are used as residences by their owners but which also are used for business purposes should be considered Class III property for purposes of ad valorem taxation. Further, you ask whether these properties would qualify for the homestead exemption or the principle residence exemption contained in §§40-9-18 and 40-9-21, Code of Alabama 1975. You give as examples homes which are used as residences and also as beauty shops, barber shops, upholstery shops, florist shops, arts and crafts shops, country stores and automobile repair shops. Inasmuch as the answer to your question depends upon the facts of each individual case, I can give you only general guidelines to follow.

In general, a single-family dwelling which is used primarily as a residence but which contains a business not open to the public on a regular basis as a commercial business is entitled to a homestead exemption and classification as Class III property. See Informal Opinion of the Attorney General addressed to Marvin D. Driver, Tax Assessor of Montgomery County, Alabama, dated May 12, 1980. The corollary to the above rule is that if the residence

contains a business which is open to the public on a regular basis, then said residence would not qualify as Class III property.

As a general rule where the primary use of property is that of a home for the owner and some part, not essential to this end, is used as an office which is incidental or secondary only to its habitation as a dwelling, it qualifies as a homestead. Garrett v. Jones, 95 Ala. 906, 10 So. 702. Therefore, in deciding whether such property qualifies for the homestead exemption you must determine whether the use as a business is only incidental to its use as a home. You should also keep in mind that the homestead exemption under Code of Alabama 1975, §40-9-19 does not depend upon classification as single-family owner-occupied dwelling in Class III. See Opinion addressed to Honorable Edward Christopher dated February 9, 1981. In Quarterly Report of the Attorney General, Vol. 8, Page 9, this office held that a lot in a city upon which is erected a small building divided into rooms, used as a home in connection with which a filling station is operated and a small line of groceries carried is a homestead. On the other hand, the Supreme Court of Alabama held in Garrett v. Jones, 95 Ala. 96, 10 So. 702, that a house built in the business part of town, and used principally as a store building is not a homestead, though the owner sleeps in a small back room. In Quarterly Report of the Attorney General, Vol. 8, Page 80, this office held that property which is primarily used as a homestead, although secondarily used for commercial purposes, is exempt from taxes, but if the reverse is true, it is not exempt.

From this it can be seen that the dominant use of the property determines its eligibility for the homestead exemption. The primary and secondary uses of the property are questions of fact for you to determine. This is not as strict a criteria as that for eligibility as Class III property which, under §40-8-1, Code of Alabama 1975 includes "only real property used exclusively as a single-family dwelling by the owner thereof". It may be that the examples which you cite would qualify for the homestead exemption, but would be considered Class II property.

Sincerely yours

CHARLES A. GRADDICK

Attorney General

By-



RON BOWDEN

Assistant Attorney General