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Honorable Charles Adair, Jr.
Mayor, Town of Ridgeville
Route 1, Box 475
Ridgeville, AL 35954

Ad Valorem Taxes - Municipalities

Timely resolution of governing body of municipality is required in order for fire protection tax authorized by Amendment 445, Constitution of Alabama 1901, to take effect in municipality.

June 21, 1985 Resolution of Town of Ridgeville came too late for tax to be collected beginning October 1, 1985, but may be collected beginning October, 1986.

Dear Mr. Adair:

In your request for an opinion you state that in the last general election (held in September, 1984) the qualified electors of Etowah County voted overwhelmingly in favor of the ratification of an amendment to Amendment 432, Constitution of Alabama 1901, authorizing a 3 mill fire protection tax. In the same election the qualified electors of the Town of Ridgeville, an incorporated municipality and a separately designated fire district in Etowah County, voted unanimously in favor of the ratification of said amendment. However, the Etowah County Commission and Tax Assessor have failed to acknowledge the Town of Ridgeville's right to become subject to the provisions of the above mentioned amendment. They justify their decision with the contention that the Ridgeville Town Council failed to submit a written resolution requesting that it become subject to the provisions of the amendment. You state that you have notified

the Chairman of the Etowah County Commission in person that the Town of Ridgeville desires to become subject to the provisions of the amendment and that you have appeared before the Etowah County Commission on two occasions to request that the Town of Ridgeville be allowed to become subject to the amendment. As a safeguard, you have hand-carried copies of a resolution adopted by the Town Council of Ridgeville and approved by your office to the Etowah County Commission and Tax Assessor. The resolution, which was passed on June 21, 1985, requested that the Town of Ridgeville become subject to the amendment. You ask three questions:

1. Is the Town of Ridgeville eligible to become subject to the provisions of the amendment commencing with the tax year for which taxes will become due and payable on October 1, 1985?
2. Does the Town of Ridgeville, as a corporate municipality, have the right to levy property taxes on its citizens through ordinances adopted by the Town Council, which shall become due and payable on October 1, 1985?
3. Should the Etowah County Commission, the Etowah County Tax Assessor and the Etowah County Tax Collector allow the Town of Ridgeville to become subject to the provisions of the amendment?

The amendment to which you refer is Amendment No. 445, Constitution of Alabama 1901. It reads in pertinent part as follows:

The Etowah county commission is authorized in its discretion to establish fire districts within the geographical boundaries of Etowah County, said districts to exclude any corporate municipalities. Provided, however, any corporate municipality may request through resolution of its governing body to become subject to the provisions of this amendment upon the approval of the additional tax levied herein by a majority of the qualified electors of the corporate municipality.

* * *

. . . Prior to the levy of the fire protection tax in a fire district, there shall be submitted to the electors of the district, at a special election called for that purpose in

the district, the question of whether the said tax shall be levied, and the said tax shall be authorized at such election by a majority of the qualified electors within any particular fire district of the county or corporate municipality therein who vote at such election; provided further, that if a majority of the qualified electors of any of the fire districts participating in the election on the ratification of this amendment shall vote for the ratification of this amendment, then the approval of this amendment as expressed by the vote in said district in favor of its ratification shall, of itself, authorize the levy and collection of the tax for fire protection purposes in that fire district, commencing with the levy for the tax year for which the taxes will become due and payable on October 1, 1985.

The above-quoted language authorizes the Etowah County Commission, in its discretion, to establish fire districts in areas of the county other than corporate municipalities. Corporate municipalities may become subject to the provisions of the Amendment 445 upon the passage of a resolution by its governing body. The language of the amendment is not clear as to whether it is necessary for the County Commission to designate a municipality as a fire district in order for the municipality to become subject to the amendment. It is also unclear to whom the resolution of the municipal governing body is to be directed. Further, the language of the amendment is not clear as to whether the intention was that the municipal governing body pass a resolution prior to the vote on the amendment or whether such resolution could be passed after the vote on the amendment. However, it is clear that a resolution of the municipal governing body is required before the municipality may become subject to the amendment.

Since the language of Amendment 445 is couched in terms of the municipal governing body requesting, through a resolution of its governing body, to become subject to the provisions of the amendment, it must be assumed that such request is directed to the Etowah County Commission. Once such a request is received by the Etowah County Commission, it is unclear whether it may then designate a municipality as a fire district, or whether the Commission must then levy the tax on behalf of the town, or whether the tax is thereby levied.

The amendment provides that elections on the question of the levy of a fire district protection tax may be held at any time and from time to time, provided that if in any such election held after the ratification of such amendment the proposal to levy the tax so submitted should be defeated, then the proposal may not be submitted at another election held in the same district within

two years from the last election held under the amendment. If the language of the amendment means that a resolution must be passed by the town before it may be designated a fire district, then another election must be held in Ridgeville in order for it to become subject to the amendment. It could be argued that the language in the amendment to the effect that the approval of the amendment by the voters in favor of its ratification shall, of itself, authorize the levy and collection of the tax, applies only to duly created fire districts, and that until such time as the County Commission receives a resolution from the municipal governing body it may not create a fire district in the municipality, and the remainder of the amendment therefore does not apply to it.

If the language of the amendment means that the resolution may be passed after the election approving the amendment, then the tax may take effect in Ridgeville. The question then becomes when it may take effect. The amendment was ratified at an election held in September, 1984. The resolution of the governing body of the Town of Ridgeville requesting to become subject to the provisions of the amendment was not passed until June 21, 1985. In Alabama, taxes are assessed by the Tax Assessor from October 1, the first day of a given tax year, until the third Monday in January, Section 40-7-2, Code of Alabama 1975, to be collected during a period comprising the subsequent October 1 through December 31, Section 40-11-4, Code of Alabama 1975. The assessment made at the beginning of the tax year is based on a levy passed in February of the current year, Section 40-7-42, Code of Alabama 1975. Although the county purported to designate Ridgeville as Fire District No. 14 prior to September, 1984, this designation was without legal authorization, inasmuch as no resolution of the municipal governing body had been passed at that time. The amendment provides that the "approval of this amendment as expressed by the vote in said district in favor of its ratification shall, of itself, authorize the levy and collection of the tax for fire protection purposes in that fire district, commencing with the levy for the tax year for which taxes will become due and payable on October 1, 1985." It is the opinion of this office that, though unclear, this provision should be read to authorize a municipality to become a fire district subject to the tax without the necessity of being designated as such by the county commission. This provision is effective only if the fire district becomes subject to the amendment in time, as a practical matter, for the taxes which become due and payable on October 1, 1985 to be assessed and collected. The June 21, 1985 resolution came too late for the Town of Ridgeville to come within the amendment for taxes to be collected on October 1, 1985. The earliest taxes that may be subject to the fire district tax in the Town of Ridgeville are those that will be collected beginning October 1, 1986. Your first question is therefore answered in the negative.

Your second question is also answered in the negative. Municipal corporations have no inherent power of taxation,

although such power may be delegated to them by the Legislature. Alabama Farm Bureau v. City of Hartselle, 460 So.2d 1219 (Ala. 1984). The Town of Ridgeville has no power to levy property taxes.

With the qualifications expressed previously, your question No. 3 is answered in the affirmative.

Sincerely yours,

CHARLES A. GRADDICK
Attorney General
By-

RON BOWDEN
Assistant Attorney General

CAG:RB:jt