

OFFICE OF THE
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STATE OF ALABAMA

DEC 31 1987

Honorable Patrick H. Boone
City Attorney
City of Vestavia Hills
1312 City Federal Building
Birmingham, Alabama 35203

Municipalities - Education -
Fees - Service Charge

City's power to levy fees and
taxes exists only where
authorized by legislation.

Dear Mr. Boone:

You have forwarded to this office the resolution of the City Council of the City of Vestavia Hills requesting an opinion from this office respecting whether or not the city has authority to establish and fix an interim service fee for municipal and educational services to be paid by the owners of residential property until such time as the City of Vestavia Hills begins collecting local general municipal and special local school district ad valorem tax at the rate of three and 88/100 dollars per one hundred dollars of assessed value on the full assessed value of said real estate and improvements.

We are informed that there is levied a local general municipal and special local school district ad valorem tax in the amount of \$3.88 per one hundred dollars of assessed value on property located within the City of Vestavia Hills. Obviously when property is annexed to the city, and when improvements are constructed on residential property located within the city after the law day for ad valorem taxes, October 1 of each year, taxes will not be collected on such property until the next law day, the next October 1. Since such taxes will not be collected until the following year, the city, of course, does not receive any revenues from such properties. However, in the interim the city is providing municipal services, and the Vestavia Hills Board of Education is providing educational services which may be beneficial to

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residents in the annexed property, or the users of the improved residential property located within the city. In an attempt to bridge the gap between annexation and/or improvement and the assessment and collection of taxes, the city proposes to levy a charge called an interim service fee, which is to be based on the value of property at the same rate as the ad valorem tax in question, and prorated by month. It is proposed that the due date for such a fee would be the date of the certificate of occupancy issued for newly constructed residential improvements, or the date of the enactment of an ordinance annexing the property in question if there were already residences located thereon.

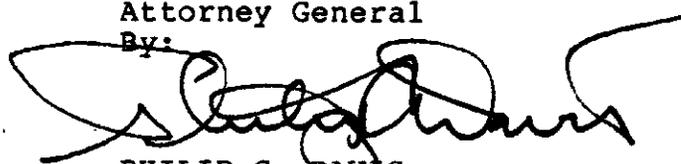
An exhaustive search of the statutes which authorize the city to levy fees or taxes fails to disclose any statute which would authorize the proposed tax or interim service fee. As a city is a mere creature of the legislature, possessing only those powers granted to it by the legislature, absent any authorizing legislation the city cannot levy a tax or interim service fee such as has been proposed. Arrington v. Associated General Contractors 403 So.2d 893, cert. den. 71 L.Ed.2d 453.

I trust that the foregoing answers the City Council's question. If we can be of any further service to you or the city, please let us know.

Yours very truly,

DON SIEGELMAN
Attorney General

By:



PHILIP C. DAVIS
Assistant Attorney General

DS/PCD/dn