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STATE OF ALABAMA

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89-00167

Honorable Charles V. Ford
Probate Judge
Choctaw County
Butler, AL 36904

Counties - Sales Tax - Notices

A county governing body is not required to give notice of its meeting under §11-3-9, Code of Alabama 1975, at which a countywide sales tax is adopted pursuant to §40-12-4, Code of Alabama 1975.

Dear Judge Ford:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTION

May the Choctaw County Commission at a special meeting called without notice adopt a \$.01 county sales tax without giving public notice under the provisions of Code of Alabama 1975, §11-3-9?

FACTS AND ANALYSIS

A special meeting of the Choctaw County Commission was called without notice. At the meeting a \$.01 sales tax was adopted which was to apply and be collected countywide. Since no notice was given to the public of the meeting to adopt the \$.01 sales tax, a question has arisen concerning whether the County Commission should have given notice to the public as required by Code of Alabama 1975, §11-3-9.

Section 11-3-9 provides:

In cases where officers are to be appointed or vacancies supplied or any other special duty required by law to be performed, a special meeting must be held, by direction of the chairman of the county commission,

upon five days notice by advertisement in some newspaper in the county, or by posting up at the courthouse door and two other public places in the county notice of the same.

The key question to be answered is whether the meeting to impose the \$.01 county sales tax is a "special duty required by law to be performed."

Code of Alabama 1975, §40-12-4 authorizes a county governing body to levy by ordinance a sales and use tax which parallels the state sales and use tax as long as the funds are used to support the operation of public schools in the county. There is no requirement nor affirmative duty imposed upon the county governing body to adopt the tax authorized by §40-12-4. The county governing body may in its discretion submit the imposition of the tax to a referendum of the county electorate or it may adopt the tax by ordinance. In addition the county governing body is given the implied authority in §40-12-4 to amend or repeal any tax adopted pursuant to the provisions of §40-12-4. See Opinion of the Attorney General issued April 14, 1988, to Honorable D'Wayne May, Attorney for Choctaw County Board of Education. Also, Attorney General Opinion issued September 22, 1986, addressed to Honorable T. Lester White, member, House of Representatives, District 81.

CONCLUSION

The imposition of a countywide \$.01 sales tax by the Choctaw County Commission is not a special duty required by law to be performed as is contemplated under §11-3-9, Code of Alabama 1975. Accordingly, the Choctaw County Commission was not required to give notice as provided in §11-3-9 when it met to impose a countywide \$.01 sales tax.

However, although not required by law, notice of special meetings of the commission should be given unless there is some compelling public purpose or need which would require action in less time than affordable by the notice provisions discussed hereinabove.

I hope that this sufficiently answers your question. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

DON SIEGELMAN
Attorney General

By-



J. WADE HOPE
Assistant Attorney General