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STATE OF ALABAMA

APR 27 1990

90-00248

Honorable Greg Tucker
License Commissioner
Limestone County Courthouse
Athens, AL 35611

License Commissioners -- Funds --
Ad Valorem Taxes

Amendment No. 474, Constitution of Alabama 1901, does not apply to Act No. 89-913 and, therefore, does not postpone the effective date to establish funds for the benefit of taxing officials to October 1, 1990.

Funds remaining at end of tax official's term remains for use of newly elected official.

Dear Mr. Tucker:

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

QUESTION 1

If the earned interest described in the Act (No. 89-913) has already been paid to the county governing body and the taxing official has made his final settlement with all agencies, should the Constitutional Amendment passed in 1987 (Act No. 87-633) disallow the creation of the special fund for taxing officials from interest paid since October 1, 1988?

FACTS AND ANALYSIS

Your request presents the following additional facts:

Section One of Act No. 89-913 provides that taxing officials, "(O)n and after October 1, 1988," shall place the ad valorem taxes collected by such officials in short-term investments for the period of time between collection and distribution. Ten percent (10%) of the interest earned on such investments shall be maintained by the county treasurer in separate funds designated as a special fund for the taxing official.

From October 1, 1988, through September 30, 1989, Mrs. Polly Leopard, former License Commissioner of Limestone County, Alabama, maintained an interest-bearing fund that included ad valorem taxes collected. In October 1989, Mrs. Leopard submitted two payments from interest earned on investments during fiscal year 1988-1989 to the county treasurer: (1) monies for the county general fund, and (2) monies for the special fund mandated by Act No. 89-913.

On October 27, 1989, I received notification from the county treasurer of the Limestone County Commission that the separate fund was not allowed and would not originate from interest earned during fiscal year 1988-89 because of the Constitutional Amendment passed in 1987 (Act No. 87-633). The separate fund will be restricted to ten percent (10%) of interest earned on investments after October 1, 1989.

Constitution of Alabama 1901, Amendment No. 474 (proposed by Acts 1987, No. 87-633, ratified April 1, 1988) provides:

No law, whether general, special or local, whose purpose or effect is to provide for a new or increased expenditure of county funds held or disbursed by the county governing body shall become effective as to any county of this state until the first day of the fiscal year next following the passage of such law.

The only exceptions to the above-quoted provision are: (1) where such law is approved by a resolution of the county governing body of the county affected thereby, or (2) where such law

provides the respective county governing bodies with new or additional revenue sufficient to fund such new expenditures.

Act No. 89-913 was approved May 19, 1989. Its effect is "to provide for a new or increased expenditure of county funds." However, the Act also provides new or additional revenue sufficient to fund such new expenditures. Therefore, it is not subject to the provisions of Amendment No. 474 and takes effect under its own terms.

CONCLUSION

Amendment No. 474 does not apply to Act No. 89-913. Therefore, the Act takes effect under its own terms.

QUESTION 2

In the event that the county treasurer is mandated to establish and to maintain the separate funds required by Act No. 89-913, should the remaining monies in such fund for a former taxing official transfer to the use by the newly elected taxing official, or should the remaining monies return to the county governing body?

FACTS AND ANALYSIS

The fund mandated by Act No. 89-913 is for the benefit of the taxing officials. Any monies not expended from the fund remain in it for the benefit of subsequent taxing officials.

CONCLUSION

Any monies remaining in the fund for taxing officials at the end of the term of a taxing official shall remain in the fund for the use of the newly elected taxing official.

Sincerely,

DON SIEGELMAN
Attorney General
By-



RON BOWDEN
Assistant Attorney General

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