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Honorable William L. Hanbery
Judge of Probate
Lauderdale County
P. O. Box 1059
Florence, AL 35631

Taxes - Tennessee Valley
Authority - Counties

Payments made by the City of
Florence for operating the
electrical distribution
system for the Tennessee
Valley Authority (TVA) to
Lauderdale County must be
considered a replacement for
lost taxes and should be
distributed as if property
taxes collected by the county.

Dear Judge Hanbery:

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

QUESTION

Whether or not the payment by the City of
Florence to Lauderdale County must be
distributed to various governmental agencies
by the Lauderdale County Commission as if
the payment was actually a property tax

collected by the revenue commissioner or whether the payment becomes a part of the general fund of the county to be used by the county for its obligations and expenses.

FACTS AND ANALYSIS

According to the information you provided, the City of Florence is operating the electrical distribution system for the Tennessee Valley Authority (TVA) distributing electricity to the City of Florence and to the area of Lauderdale County which lies outside the city limits.

The Electricity Department of the City of Florence is required under 16 U.S.C. §831(L), the Tennessee Valley Authority Act, to do the following:

Nothing herein shall be construed to limit the authority of the corporation in its contracts for the sale of power to municipalities, to permit or provide for the resale of power at rates which may include an amount to cover tax-equivalent payments to the municipality in lieu of State, county, and municipal taxes upon any distribution systems or property owned by the municipality, or any agency thereof, conditioned upon a proper distribution by the municipality of any amounts collected by it in lieu of State or county taxes upon any such distribution system or property . . .
(Emphasis added.)

Pursuant to a resolution adopted by the Board of Commissioners of the City of Florence, Alabama, on October 1, 1963, the Electricity Department of the City of Florence pays to Lauderdale County a tax-equivalent payment in lieu of state, county and municipal taxes. The resolution reads as follows:

BE IT RESOLVED by the Board of Commissioners of the City of Florence, Alabama, that the Electricity Department of the City of Florence be herein authorized and instructed to pay Lauderdale County, Alabama, (monthly) for the fiscal year commencing October 1, 1963 and for each fiscal year thereafter as a tax equivalent, a sum equal to the prevailing county tax rate (as utilized by the City of Florence in computing tax equivalent) multiplied by 20 percent of the value of the depreciated property as set out

in Paragraph I, Page 2, of the Court Decree
of September 12, 1963.

In Rutherford County v. City of Murfreesboro, 326 S.W.2d 653, 205 Tenn. 362, certiorari denied 80 S.Ct. 257, 361 U.S. 919, 4 L.Ed.2d 187 (1959), the Court defined "conditioned upon proper distribution" to mean that municipalities must distribute those tax-equivalent payments fairly and as replacement of lost taxes among the several governmental units.

Therefore, in response to the first part of your question, the payment to Lauderdale County should be distributed as if it was a payment of property tax due the county. In response to the second part of your question, the payments do not become part of the general fund of the county to be used for its obligations and expenses.

Section 40-28-2, Code of Ala. 1975, provides for the distribution of payments made in lieu of taxes by the Tennessee Valley Authority (TVA) to counties served by TVA. However, §40-28-2 would not be applicable in this instance. In-lieu-of-taxes payments are defined in §40-28-1, Code of Ala. 1975, to mean "those payments made directly to the State of Alabama and not to local governments or distributors under federal statute (16 U.S.C., §831) by TVA which are in lieu of all taxes to all levels of government in Alabama."

CONCLUSION

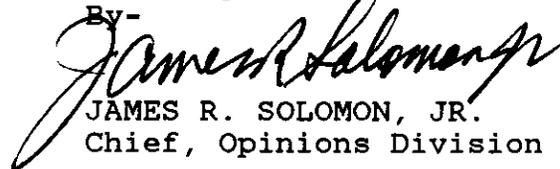
Payments made by the City of Florence for operating the electrical distribution system for the Tennessee Valley Authority (TVA) to Lauderdale County must be considered a replacement for lost taxes and should be distributed as if property taxes collected by the county.

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

Sincerely,

JIMMY EVANS
Attorney General

By-


JAMES R. SOLOMON, JR.
Chief, Opinions Division

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