



2009-045

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

February 23, 2009

TROY KING
ATTORNEY GENERAL

500 DEXTER AVENUE
MONTGOMERY, AL 36130
(334) 242-7300
WWW.AGO.STATE.AL.US

Honorable Wanda J. Cochran
Attorney for City of Orange Beach
465 Dauphin Street
Mobile, Alabama 36602

Notices – Municipal Business License
Reform Act of 2006 – Mail – Electronic
Media – Baldwin County

The City of Orange Beach may deliver the renewal reminder notice required under the provisions of the Alabama Municipal Business License Reform Act of 2006 by means other than via the U.S. mail. Should the required renewal reminder notice be transmitted other than by use of the U.S. mail, the city would be precluded from assessing any fines or penalties otherwise due for late payment until proof of actual delivery has been achieved, and the city would not be entitled to the statutory presumption of compliance with delivery where the U.S. mail is not utilized.

Dear Ms. Cochran:

This opinion of the Attorney General is issued in response to your request on behalf of the City of Orange Beach.

QUESTION

The provisions of the Alabama Municipal Business License Reform Act of 2006 require that municipalities must deliver a renewal reminder notice to each taxpayer that purchased a business license during the preceding license tax year. The City of Orange Beach requests the Attorney General to render an opinion on whether the law requires that the renewal reminder

notice to be mailed via the U.S. mail, or whether the act allows for the renewal reminder notice to be transmitted by electronic means.

FACTS AND ANALYSIS

In 2006, the Legislature of Alabama enacted Act 2006-586, which was subsequently approved by the Governor and has come to be known and cited as the "Municipal Business License Reform Act of 2006." 2006 Ala. Acts No. 2006-586, 1548. This act is now codified in section 11-51-90 of the Code of Alabama. ALA. CODE § 11-51-90 (2008). One of the stated purposes of the act is to "provide a statewide uniform system for the issuance and calculation of municipal business licenses." 2006 Ala. Acts No. 2006-586, 1548, 1549.

As a result of the enactment of the statute, municipalities have been given the power to issue privilege licenses to businesses located within the jurisdiction of the municipalities. Part of Act 2006-586 provides that the licenses shall be issued and paid for on an annual basis. Section 2 of the act amended the language of section 11-51-90 of the Code of Alabama, which now requires, *inter alia*, a municipality to issue a renewal reminder notice to those taxpayers who had previously purchased a business license from the municipality during the year preceding the year in which the license is due to be renewed or reissued. Specifically, Section 2 of Act 2006-586 amended the language of section 11-51-90(d) so as to provide, in pertinent part, that "each municipality **shall mail or otherwise transmit** a renewal reminder notice to each taxpayer that purchased a business license during the preceding license year, **via regular U.S. mail addressed to the taxpayer's last known address**, on or before December 31 of the current license year." 2006 Ala. Acts No. 2006-586, 1548, 1552 (emphasis added).

From the above-emphasized language found in the amended statute, it appears that municipalities are now required to provide a renewal reminder notice to each taxpayer that had purchased a business license from the municipality during the preceding license year. The language of the statute also states that the municipality shall "mail **or otherwise transmit**" the renewal reminder notice. *Id.* The language also states that if the regular U.S. mail is chosen as the means to provide the notice to the taxpayers, then the renewal notice must be "addressed to the taxpayer's last known address, on or before December 31 of the current license year." *Id.*

The sentence immediately following the above-quoted language found in Act 2006-586 addresses the consequences of a municipality's failure to comply with the requirement of delivering a renewal reminder notice to those taxpayers

who had purchased a business license from the municipality during the preceding license year. It states, in pertinent part, as follows:

The failure of the municipality to comply with the preceding sentence shall not, however, preclude it from enforcing its business license tax laws against a taxpayer but shall preclude the municipality from assessing any fines or penalties otherwise due for late payment until 10 days after a renewal reminder notice has been mailed to the taxpayer at its last known address as indicated in the municipality's records, or personally delivered to the taxpayer, and the taxpayer then fails or refuses to remit the business license tax due for such license year within the 10-day period.

Id.

From the above-quoted language found in Act 2006-586, it appears that the Legislature recognized that there would be instances where there would be a failure on the part of municipalities to comply with the provisions of transmitting the required renewal reminder notice to taxpayers who had purchased a business license from the municipality during the preceding license year. The language states that if the municipality fails to comply with the requirement of mailing or otherwise transmitting the renewal reminder notice to each taxpayer that purchased a business license during the preceding license year, then such failure would not preclude the municipality "from enforcing its business license tax laws against the taxpayer *but shall preclude the municipality from assessing any fines or penalties* otherwise due for late payment until 10 days after a renewal reminder notice has been mailed to the taxpayer at its last known address as indicated in the municipality's records, or personally delivered to the taxpayer and the taxpayer then fails or refuses to remit the business license tax due for such license year within the 10-day period." *Id.* (emphasis added).

In other words, while the statute specifically requires that the municipality shall "*mail or otherwise transmit*" to the taxpayer the renewal reminder notice, in the event the municipality chooses not to mail the renewal reminder notice, and instead transmits the notice by other means, such as e-mail, then the municipality would be precluded from enforcing its business license tax laws or assessing any fines or penalties otherwise due for late payment until the specific delivery requirements stated in the statute had been fulfilled.

The sentence immediately following the above-quoted sentence found in Act 2006-586 deals further with the duty of a municipality to deliver the required renewal reminder notice: "If the municipality *mails* a renewal

reminder notice to the last known address of the taxpayer, as indicated in the municipality's records, there shall exist a presumption that the municipality has complied with the above provisions." *Id.* (emphasis added).

This language found in Act 2006-586, which addresses the requirement for delivering a renewal reminder notice to taxpayers, establishes a presumption that if the municipality mails the renewal reminder notice to the last known address of the taxpayer, then it is presumed that the municipality has complied with the delivery requirements previously established in the statute. Of course, it is just as apparent that if the municipality decides to transmit the renewal reminder notice by a method other than utilization of the U.S. mail, then such presumption of compliance with the notice-giving requirements would not be established. In such case, the municipality would not receive the benefit of a presumption of delivery. In other words, should the municipality choose to transmit the renewal reminder notice by electronic means, rather than via U.S. mail, then the municipality would risk losing the benefit of the presumption of delivery established in the statute.

CONCLUSION

The provisions of the Alabama Municipal Business License Reform Act of 2006 require municipalities to deliver a renewal reminder notice to each taxpayer that purchased a business license from the municipality during the preceding license tax year. The Municipal Business License Reform Act of 2006 authorizes each municipality to deliver the required renewal reminder notice by use of either regular U.S. mail or by "otherwise transmitting" such notice. Such "other transmission" could include electronic transmission such as the use of e-mail. The obvious advantage of the use of electronic transmission for delivery, as opposed to the use of the U.S. mail, would be the cost savings realized in the reduction of postage expenses incurred by the municipality.

The plain language of Act 2006-586, however, regarding delivery of the renewal reminder notice contemplates that if the U.S. mail is not used as the means of delivery of the required notice, then municipalities may not assess any fines or penalties due to late payment until proof of compliance with the requirements of delivery of the renewal reminder notice has been achieved. A municipality that chooses to use a means of delivery of the renewal reminder notice other than via U.S. mail also would not be "presumed" to have complied with the delivery requirements stated in the statute for delivery to the last known address of a taxpayer.

Honorable Wanda J. Cochran
Page 5

I hope this opinion answers your question. If this Office can be of further assistance, please contact John J. Breckenridge, Legal Division, Department of Revenue.

Sincerely,

TROY KING
Attorney General

By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH
Chief, Opinions Division

TK/JJB

740367/128150