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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Unclaimed Property – Checks – Municipalities – Exemptions – Baldwin County

Incorporated municipalities remain exempt from all duties and requirements of the Uniform Disposition of Unclaimed Property Act of 2004. Accordingly, incorporated municipalities retain discretion regarding the procedures to be taken with regard to unclaimed funds. This Office, however, recommends that entities exempt from the act maintain a clear policy regarding the procedures to be taken with regard to unclaimed funds.

Dear Mr. Bonner:

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

QUESTIONS

Whether municipalities such as the City of Foley ("City) remain exempt from all duties and requirements under the 2004 Unclaimed Property Act?

> If not, what duties and requirements must municipalities such as the City satisfy regarding unclaimed funds in its possession under the 2004 Unclaimed Property Act?
>
> Under the 2004 Unclaimed Property Act, do municipalities such as the City retain the discretion to determine: (a) what procedures will be taken to locate the apparent owners of unclaimed funds; (b) what procedures will be taken to attempt to return unclaimed funds; and (c) whether the unclaimed funds can be forfeited to the city's general fund if the apparent owners cannot be located?
>
> Does Alabama law require the City to maintain a written directive regarding the procedure for handling unclaimed funds?

FACTS AND ANALYSIS

In your letter of request, you stated as follows:

> The City of Foley currently holds approximately $11,000 in uncashed checks and $4,000 in unidentified funds in a court bond checking account. It has been at least one year since these funds became distributable, but the apparent owners have not communicated with the City concerning the property and have not otherwise indicated an interest in the property. The City would like to pass an ordinance stating that, after a specified amount of time and the exercise of due diligence to notify the apparent owners, all unclaimed monies will be forfeited to the City's general fund. It was well settled that the requirements of the 1982 Unclaimed Property Act were entirely inapplicable to municipalities. It is unclear, however, whether this exemption is still applicable under the language of the 2004 Unclaimed Property Act on the reporting

> requirements and other attendant duties of municipalities regarding unclaimed property.

As noted in your inquiry and by your questions, you have concerns regarding the applicability of the Uniform Disposition of Unclaimed Property Act ("Act") to the City of Foley. The Uniform Disposition of Unclaimed Property Act of 1982 was previously codified in section 35-12-20 through 35-12-40 of the Code of Alabama. The Uniform Disposition of Unclaimed Property Act of 2004 repealed the previous legislation. The authority for the new Act is codified at section 35-12-70 through 35-12-96 of the Code of Alabama. For the following reasons, it is the opinion of this Office that the Uniform Disposition of Unclaimed Property Act still does not apply to incorporated municipalities.

First, section 35-12-73(2) states that incorporated municipalities of the state are exempt from reporting property under the Uniform Disposition of Unclaimed Property Act of 2004. As stated in a supplemental letter by your colleague, there is still a question of whether being exempt from reporting also exempts a holder from complying with the other requirements or procedures such as custody, notification, and disposition found within the Act.

In construing statutes, courts do not interpret provisions in isolation, but consider them in the context of the entire statutory scheme. *Siegelman v. Ala. Ass'n of School Boards*, 819 So. 2d 568, 582 (Ala. 2001). Where more than one Code section is involved, each should be construed in harmony with the other Code sections in effect, so far as is practical. *Kinard v. Jordan*, 646 So. 2d 1380, 1383 (Ala. 1994).

Section 35-12-73 states that certain entities are exempt from reporting. Thereafter, section 35-12-77 sets out the manner in which payment or delivery of such property should be made to the state treasury. Section 35-12-77 states, in pertinent part, as follows:

> (a) Except for property held in a safe deposit box or other safekeeping depository, upon filing the report required in Section 35-12-76, the holder of property presumed abandoned shall pay, deliver, or cause to be paid or delivered to the Treasurer the ***property described in the report*** as unclaimed, but if the property is an automatically renewable deposit, and a penalty or forfeiture in the payment of interest

> would result, the time for compliance is extended until a penalty or forfeiture would no longer result.
>
> (b) Tangible property held in a safe deposit box or other safekeeping depository shall be delivered to the Treasurer within ***120 days after filing the report*** required in Section 35-12-76.
>
> (c) If the ***property reported*** to the Treasurer is a security or security entitlement under Article 8 of Title 7, the Uniform Commercial Code, the Treasurer is an appropriate person to make an indorsement, instruction, or entitlement order on behalf of the apparent owner to invoke the duty of the issuer or its transfer agent or the securities intermediary to transfer or dispose of the security or the security entitlement in accordance with Article 8 of Title 7, the Uniform Commercial Code.

ALA. CODE § 35-12-77 (Supp. 2008) (emphasis added). Once property is reported to the state treasury, subsequent rules set out the authority and the appropriate action to which both parties must adhere. Thus, because an incorporated municipality is not required to report property that is assumed abandoned, an incorporated municipality is also not required to comply with other procedures regarding notification, payment, or disposition.

Furthermore, section 11-40-15 states that "[t]he incorporated municipalities and incorporated municipal boards of this state shall be exempt from the Uniform Disposition of Unclaimed Property Act, which is codified in sections 35-12-20 through 35-12-48." ALA. CODE § 11-40-15 (1989). Section 11-40-15 designates sections 35-12-20 through 35-12-48 as the applicable authority. Those sections have been repealed, and the Uniform Disposition of Unclaimed Property Act is now contained in sections 35-12-70 through 35-12-96. Thus, it is the opinion of this Office that both sections 11-40-15 and 35-12-73(2) exempt municipalities from the requirements of the Uniform Disposition of Unclaimed Property Act of 2004. Although the act is not applicable to municipalities, section 35-12-86 authorizes a holder exempt from reporting to voluntarily report, subject to certain conditions prescribed by the Treasurer. ALA. CODE § 35-12-86 (Supp. 2008).

Entities that are exempt from the Uniform Disposition of Property Act should be mindful that they have a custodial relationship with regard to the contemplated property. In an opinion issued to Honorable Lucy Baxley, Treasurer, State of Alabama, dated December 2, 1998, A.G. No. 99-00049, this Office stated the following:

> The unclaimed property funds do not belong to the State of Alabama and are not a source of revenue for the State General Fund. Property pursuant to the Uniform Disposition of Unclaimed Property Act is merely in the custodial possession of the State of Alabama. As stated by the Supreme Court of Alabama, with regard to the Act:
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> > It is a means of providing custodial possession of property where the owner has not for a specified number of years exercised any control or possession of the same. It offers the owner an opportunity to reclaim the same at any time, with the credit of the state insuring his regaining the property upon satisfactory proof of ownership.

Id. at 4, *citing Boswell v. Citronelle-Mobile Gathering, Inc.,* 292 Ala. 344, 350, 294 So. 2d 428, 432 (Ala. 1974).

Although a municipality is not subject to the Act, a municipality having a custodial relationship with regard to the contemplated property may have some potential liability. Thus, it is advisable that a clear and definite policy be implemented that provides some protections to the apparent owners and the municipality. This Office is unaware of any statutory authority that requires a municipality to maintain a written directive. This Office has, however, specifically advised entities to adopt clear and definite policies regarding property that is presumed abandoned. *See, generally,* opinion to Honorable A.V. Callins, Attorney, City of Fairfield, dated June 25, 2003, A.G. No. 2003-175, and opinion to Honorable Craig L. Williams, Attorney, Parrish Water Sewer Board, dated February 12, 2002, A.G. No. 2002-137.

CONCLUSION

Incorporated municipalities remain exempt from all duties and requirements of the Uniform Disposition of Unclaimed Property Act of 2004. Accordingly, incorporated municipalities retain discretion regarding the procedures to be taken with regard to unclaimed funds. This Office, however, recommends that entities exempt from the act maintain a clear policy regarding the procedures to be taken with regard to unclaimed funds.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

TROY KING
Attorney General
By:

BRENDA F. SMITH
Chief, Opinions Division

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