



2009-074

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

June 10, 2009

TROY KING
ATTORNEY GENERAL

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

Honorable Tim Russell
Commissioner, Department of Revenue
50 North Ripley Street
Montgomery, Alabama 36132-4400

Ad Valorem Taxes - Collections -
Contingency Fees

A city, county, or state agency in Alabama may not engage a private firm on a contingency-fee basis to collect delinquent property taxes.

Dear Commissioner Russell:

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

QUESTION

May an Alabama unit of government engage a private firm to verify from the tax assessor's records that a property tax return has been filed and that the amount paid is consistent with the taxpayer's prior payments and to then collect any taxes owed on a contingency-fee basis?

FACTS AND ANALYSIS

Cities, counties, and several state agencies have used private companies to collect delinquent taxes for a number of years on a contingency-fee basis. These arrangements are governed by section 40-2A-6 of the Code of Alabama, which provides as follows:

(a) The state or any county or municipal governing authority may not enter into any contract or arrangement for the examination of a taxpayer's books

and records if any part of the compensation or other benefits paid or payable for the services of the private examining or collecting firm conducting the examination is contingent upon or otherwise related to the amount of tax, interest, court cost, or penalty assessed against or collected from the taxpayer. Any such contract or arrangement, if made or entered into, is void and unenforceable. Any assessment or preliminary assessment of taxes, penalties, court costs, or interest proposed or asserted by, or based upon the recommendation of, a private examining or collecting firm compensated under any such contract or arrangement shall be void and unenforceable. This provision does not prohibit or restrict the state or any county or municipal governing authority from entering into contracts or arrangements for the collection of any tax, interest, court cost, or penalty when the private examining or collecting firm has no authority to determine the amount of tax, interest, court cost, or penalty owed the state, county or municipal governing authority.

ALA. CODE § 40-2A-6(a) (2003).

In an opinion issued to Honorable Curt Lee, Member, Alabama State Senate, dated August 1, 2005, A.G. No. 2005-168, this Office held that, under section 40-2A-6, a city, county, or state agency in Alabama may engage a private firm on a contingency-fee basis to collect delinquent property taxes, so long as any determination concerning the proper amount of taxes due is made by the tax assessor. The Walker County Commission has contracted with a private company to collect delinquent property taxes. The company is to be paid a contingency fee, and the county apparently intends that the fee is to be a percentage of the total taxes collected, not just the taxes designated by statute to be paid to the county.

The *Lee* opinion did not consider the effect of section 40-2A-2(2), which provides as follows:

(2) SCOPE. The provisions contained herein shall govern all matters administered by the department except as otherwise provided by law or by agreement entered into pursuant to lawful authority. However, nothing herein shall be construed to apply to the assessment of ad valorem taxes on real or personal

property which is administered by the various counties of the State of Alabama, except that the determination and assessment of value of property of public utilities under Chapter 21 of this title, and the determination and assessment of value of corporate shares of stock under Article 4 of Chapter 14 of this title shall be governed by the procedures set forth in this chapter.

ALA. CODE § 40-2A-2(2) (2003).

The primary rule of statutory construction is to ascertain the intent of the Legislature. *Beavers v. County of Walker*, 645 So. 2d 1365 (Ala. 1994). The intent of the Legislature may be gleaned from the language used, the reason and necessity for the statute, and the purpose sought to be obtained. *Bama Budweiser, Inc. v. Anheuser-Busch, Inc.*, 611 So. 2d 238 (Ala. 1992). Statutes, however, must be enforced as written when the language is plain and unambiguous. *Putman v. Womack*, 607 So. 2d 166 (Ala. 1992).

Section 40-2A-2(2) provides that section 40-2A-6 has no application to the assessment and, by logical extension, the collection of property taxes. Therefore, that section provides no statutory underpinning for a city or county to hire a private collection firm to collect property taxes on a contingency-fee basis or on any other basis.

Section 40-2A-6 applies to counties and cities that administer their own local taxes, such as sales and use taxes. Property taxes are not administered by the counties and cities, but instead are administered by the local tax assessors, tax collectors, and revenue commissioners, subject to the supervisory authority of the state revenue commissioner. See chapters 2 to 11 of title 40 of the Code of Alabama. Therefore, even if section 40-2A-6 applied to property taxes, it would not grant the authority to the county to enter into a contract for the collection of property taxes.

Property taxes are generally collected by the local revenue commissioner for the benefit of schools, local governing bodies, and the state. Even if the county had authority to enter into contracts for the collection of property taxes, it would have no authority to divert taxes that are statutorily required to be paid over to these tax-receiving entities by means of a contract with a tax-collecting firm. A particular unit of government cannot bind other units of government to the terms of a contract into which it unilaterally enters. *Ex parte Dickenson*, 711 So. 2d 984 (Ala. 1988). Therefore, unless the various tax-receiving entities agreed to have a portion of their property taxes diverted to pay a private firm to collect their taxes, the county could not contract to withhold distribution of tax

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monies from these entities for such a purpose. Therefore, it is the opinion of this Office that all property taxes collected by the revenue commissioner must be paid over to the entities that are statutorily entitled to receive them.

CONCLUSION

It is the opinion of this Office that section 40-2A-6 of the Code of Alabama does not grant authority to a county commission to hire a private collection firm to find and collect delinquent property taxes for a contingency fee to be paid out of the taxes collected. All of the property taxes collected must be remitted by the county revenue commissioner to the entities designated by law to receive them. The *Lee* opinion is overruled to the extent that it conflicts with this opinion.

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

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

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814325/78680-002