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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Solid Waste Disposal – Exemptions –
Rental Property – Landlord and Tenant –
Jefferson County

The City of Fairfield does not have the authority under section 22-27-3(a)(3) of the Code of Alabama to enact an ordinance that creates a reduced rate for Social Security recipients.

The City of Fairfield may adopt an ordinance that places the assessment of solid waste collection fees for such services against the owners of rental property, provided that the bills are received in the name of the owner of the property where the service is provided.

Dear Mr. Trucks:

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

QUESTION 1

May the City of Fairfield charge Social Security recipients and/or households below poverty level a reduced rate for solid waste collection and disposal fees rather than granting such recipients and households an exemption from the payment of these fees as provided by section 22-27-3(a)(3) of the Code?

FACTS AND ANALYSIS

The City of Fairfield has adopted a solid waste ordinance incorporating the language contained in section 22-27-3(a)(3) of the Solid Wastes Disposal Act, which provides an exemption from the payment of solid waste collection and disposal fees for Social Security recipients. ALA. CODE §§ 22-27-1 to 22-27-16 (2006, Supp. 2011). Your request states that one-half of the residents of the City of Fairfield are either Social Security recipients or live at or below poverty level. Many of these residents live in rental property either through the Fairfield Housing Authority, Section 8 subsidy, or as tenants leasing from private landlords. Because of these circumstances, the city cannot fund its continuing solid waste commitment without changes to its current ordinance.

Section 22-27-3(a)(3) provides, in pertinent part, as follows:

Any household whose sole source of income is Social Security benefits *shall* be granted an exemption from payment of any fees required under this article, provided the household seeking to claim the exemption shall present proof of income to the county health officer no later than the first billing date of any year in which the exemption is desired.

ALA. CODE § 22-27-3(a)(3) (Supp. 2011) (emphasis added).

When applying the common-law rule of statutory construction, the Alabama Supreme Court has held the following:

Words used in [a] statute must be given their natural, plain, ordinary, and commonly understood meaning, and where plain language is used[,] a court is bound to interpret that language to mean exactly what it says. If the language of the statute is clear and unambiguous, then there is no room for judicial construction and the clearly expressed intent of the Legislature must be given effect.

Tuscaloosa County Comm'n v. Deputy Sheriffs' Ass'n of Tuscaloosa County, 589 So. 2d 687, 689 (Ala.1991) (internal citations omitted).

In *Ex parte Prudential Ins. Co. of Am.*, the term “shall” is defined as “a word of command, and one which has always or which must be given a compulsory meaning; as denoting obligation. The word in ordinary usage means ‘must’ and is inconsistent with a concept of discretion.” 721 So.2d 1135, 1138 (Ala. 1998), *citing* BLACK’S LAW DICTIONARY 1375 (6th ed. 1991).

The language of section 22-27-3(a)(3) is explicit and unambiguous. It clearly reflects the intent of the Legislature that eligible Social Security recipients shall be fully exempt from payment of solid waste collection and disposal fees charged by the county or municipal governing body. If the Legislature had intended that Social Security recipients receive a partial exemption or a reduction in such fees in lieu of an exemption, it could have plainly stated this in the statute.

The assessment of solid waste collection and disposal fees against households below the federal poverty level is addressed by section 22-27-3(a)(3) of the Code. This section provides that the Legislature may, “by local law, authorize the county commission to grant additional exemptions to households whose total income does not exceed 75% of the federal poverty level.” ALA. CODE § 22-27-3(a)(3) (Supp. 2011). Because your request does not provide sufficient information as to whether these exemptions have been authorized or granted within the City of Fairfield, this Office cannot provide an opinion as to whether the city may reduce any such exemptions.

CONCLUSION

The City of Fairfield does not have the authority under section 22-27-3(a)(3) of the Code to enact an ordinance that creates a reduced rate for Social Security recipients. Due to a lack of information, this Office is unable to provide an opinion as to whether the city may reduce any other exemptions that may be provided to households below the federal poverty level.

QUESTION 2

Does section 22-27-3 of the Code allow the City of Fairfield to adopt an ordinance that places the assessment of solid waste collection against landlords, as opposed to tenants?

FACTS AND ANALYSIS

The Solid Wastes Disposal Act authorizes local governing bodies to adopt ordinances requiring public participation and subscription to services for the collection and disposal of solid wastes. Under the Act, “[e]very person, household, business, industry, or property generating solid wastes, garbage, or ash as defined in this section shall participate in and subscribe to such system of service unless granted a certificate of exemption. . . .” ALA. Code § 22-27-3(a)(2) (Supp. 2011). The term “person” includes, but is not limited to, any individual, trust, firm, corporation, partnership, agent, agency, or association. ALA. CODE § 22-27-2(24) (Supp. 2011). Clearly, this broad definition must include owners of rental property.

Counties and municipalities undertaking the responsibility of providing such services for its citizens are also authorized to establish fees, charges, and rates for the specific purpose of administering solid waste programs. ALA. Code § 22-27-5(a) (2006). Therefore, every person, household, and business, including owners of rental properties, that “participate in and subscribe” to a mandatory garbage collection and disposal service, are subject to and liable for the collection and disposal fees charged by the local governing body.

Although landlords are clearly subject to this statutory provision, they may not be liable for sewer bills that are received in the name of their tenants. Section 35-9-14 of the Code explicitly states that, “[n]otwithstanding any other provision of law, any bill for sewer service received in the name of a tenant or tenants shall be the sole responsibility of the tenant or tenants and shall not constitute a lien on the property where the sewer service was received.” ALA. CODE § 35-9-14 (1991).

This statute remains in effect, even though the Alabama Supreme Court recently found it to be unconstitutional as applied because it directly conflicted with a constitutional amendment governing the authority of Jefferson County to levy and collect sewer charges. *See Lunsford v. Jefferson County*, 973 So. 2d 327 (Ala. 2007).

Thus, if bills for sewer service provided by the City of Fairfield are solely received in the name of a tenant or tenants, then the city may not assess the collection of solid waste collection and disposal fees against landlords. Conversely, the city would be authorized to assess the collection of fees for such services against the property owner, provided that the bills are received in the name of the owner of the property where the service is provided.

CONCLUSION

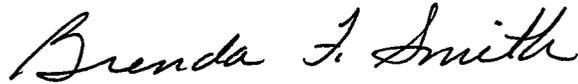
The City of Fairfield may adopt an ordinance that places the assessment of solid waste collection fees for such services against the owners of rental property, provided that the bills are received in the name of the owner of the property where the service is provided.

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

Sincerely,

LUTHER STRANGE
Attorney General

By:



BRENDA F. SMITH
Chief, Opinions Division

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