



2014-018

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

November 22, 2013

LUTHER STRANGE
ATTORNEY GENERAL

501 WASHINGTON AVENUE
P.O. BOX 300152
MONTGOMERY, AL 36130-0152
(334) 242-7300
WWW.AGO.ALABAMA.GOV

Honorable Don Armstrong
Shelby County Property Tax Commissioner
Post Office Box 1269
Columbiana, Alabama 35051

Tax Sales – Redemption – Excess Funds –
Effective Date – Act No. 2013-370

The provisions of Act 2013-370 apply only to redemptions and dispositions of excess funds arising from tax sales that have taken place on or after August 1, 2013.

Proof of a negotiated and agreed redemption with a tax-sale purchaser will not support recovery of excess funds pursuant to Act 2013-370.

Dear Mr. Armstrong:

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

QUESTION 1

Do the provisions of Act 2013-370 apply to all redemptions taking place on or after August 1, 2013, even for tax sales that have taken place prior to that date, or do they apply only to redemptions and dispositions of excess funds arising from tax sales that have taken place on or after August 1, 2013?

FACTS AND ANALYSIS

As noted in your request, Act 2013-370, which became effective on August 1, 2013, amended section 40-10-28 of the Code of Alabama. 2013 Ala. Acts No. 2013-370, § 3. Section 40-10-28 provides for the disposition of excess funds arising from tax sales of real property. Section 1 of Act 2013-370 states as follows:

On and after the effective date of the act adding this amendatory language, the excess arising from the sale of any real estate remaining after paying the amount of the decree of sale, including costs and expenses subsequently accruing, shall be paid over to a person or entity who has redeemed the property . . .

2013 Ala. Acts No. 2013-370, § 1.

Your inquiry questions whether the provisions of Act 2013-370 apply to all redemptions taking place on or after August 1, 2013, even for tax sales that have taken place prior to that date, or do the provisions apply only to redemptions and dispositions of excess funds arising from tax sales that have taken place on or after August 1, 2013. The act uses the phrase “on and after the effective date.” *Id.* Phrases of this nature have previously been interpreted, based on plain language, to mean that implementation of the act commences with respect to all matters on the effective date of the act. *See, generally,* the following opinions:

- Honorable Wendell Shelton, Randolph County Industrial Development Council, dated August 1, 2013, A.G. No. 2013-062;
- Honorable Greg Medders, Chairman, Tuscaloosa Police Officers and Firefighters Retirement Plan Board of Trustees, dated July 30, 2012, A.G. No. 2012-072; and
- Honorable James H. Alexander, Director, Department of Public Safety, dated August 1, 2001, A.G. 2001-235.

Retroactive application of a law occurs when the application of the law takes away or impairs vested rights acquired under existing laws, creates a new obligation and imposes a new duty, or attaches a new disability with respect to transactions or considerations already past. *Alexander* at 2; see also, opinion to Honorable Ella B. Bell, Executive Director, Alabama Family Trust, dated

June 28, 2001, A.G. No. 2001-208 at 3 (stating that “statutes affecting vested rights or altering legal status, being substantive, are denied retrospective application”).

Act 2013-370 authorizes excess funds arising from the sale of any real estate remaining after paying the amount of the decree of sale to be paid over to the person or entity who redeemed the property. Prior to Act 2013-370, section 40-10-28 of the Code authorized such excess funds to be paid to the owner of the property or his or her agent or into the county treasury. ALA. CODE § 40-10-28 (2011). Implementation of Act 2013-370 could act to take away a right acquired under existing law for the owners of the property.

Because retroactive application is not favored unless explicitly provided for, it is the opinion of this Office that the provisions of Act 2013-370 apply only to redemptions and dispositions of excess funds arising from tax sales that have taken place on or after August 1, 2013. *See Ala. Ins. Guar. Ass’n v. Mercy Med. Ass’n* 1111206, -- So. 3d. --, 2013 WL 563412 (Ala., Feb. 15, 2013) at *4.

CONCLUSION

The provisions of Act 2013-370 apply only to redemptions and dispositions of excess funds arising from tax sales that have taken place on or after August 1, 2013.

QUESTION 2

Would proof of a negotiated and agreed redemption with a tax-sale purchaser support recovery of excess funds under the act, or is a court order for judicial redemption, pursuant to section 40-10-83 of the Code, the sole method to recover excess funds after three years from the date of the sale?

FACTS AND ANALYSIS

As you mentioned in your inquiry, there has developed a method of redemption, which is referred to as a negotiated redemption, that is not found within the Code of Alabama. The closest term to negotiated redemption that is defined by Black’s Law Dictionary is the term “negotiated agreement.” This

term is defined as “[a] settlement that disputing parties reach between themselves, usu. with the help of their attorneys, but without benefit of formal mediation.” BLACK’S LAW DICTIONARY 1136 (9th ed. 2009). You seek guidance regarding whether Act 2013-370 supports the distribution of excess funds to a person who merely has proof of ownership as a result of a negotiated redemption or whether a court order for judicial redemption is the sole method for recovery of excess funds.

In amending the provisions of section 40-10-28 of the Code, the Legislature added specific language regarding who is authorized to redeem excess funds. Previously, section 40-10-28 authorized the distribution of excess funds to “the owner, or his agent, or the person legally representing such owner.” ALA. CODE § 40-10-28 (2011). Now, Act 2013-370 amends section 40-10-28 such that the distribution of funds may only be given to the following:

[A] person or entity who has redeemed the property as authorized in Section 40-10-120 or any other provisions of Alabama law authorizing redemption from a tax sale, provided proof that the person or entity requesting payment of the excess has properly redeemed the property is presented to the county commission within three years after the tax sale has occurred.

2013 Ala. Acts No. 2013-370.

The Legislature, in enacting a statute, is presumed to have full knowledge and information as to the prior and existing law and legislation on the subject of the statute. *Blue Cross & Blue Shield of Ala., Inc. v Nielson*, 714 So. 2d 293 (Ala. 1998); *Miller v. State*, 349 So. 2d 129 (Ala. Crim. App. 1977). Moreover, it is presumed that the Legislature does not enact meaningless, vain, or futile statutes. *Ex parte Uniroyal Tire Co.*, 779 So. 2d 227, 236 (Ala. 2000); *Ex parte Watley*, 708 So. 2d 890, 892 (Ala. 1997).

As a general rule of statutory construction, courts will attempt to give some meaning to acts passed by the Legislature. *Haralson v. State ex rel. King*, 260 Ala. 473, 479, 71 So. 2d 79, 84 (1953). The Alabama Supreme Court has stated that “[w]e should not hold that the legislature has done a vain and useless thing. We must give some meaning to the amendment.” *Id.*; *see, generally, Alidor v. Mobile County Comm’n*, 291 Ala. 552, 558, 284 So. 2d 257, 261 (1973); opinion to Honorable Mary F. Gunter, Attorney for Henry County School Board, dated October 16, 1997, A.G. No. 98-00012.

Honorable Don Armstrong
Page 5

Based on the foregoing, it is the opinion of this Office that proof of a negotiated redemption with a tax-sale purchaser would not support recovery of excess funds under Act 2013-370. As such, a person who reached a negotiated redemption agreement prior to August 1, 2013, would be entitled to receive excess funds arising from a tax sale.

CONCLUSION

Proof of a negotiated and agreed redemption with a tax-sale purchaser will not support recovery of excess funds pursuant to Act 2013-370.

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

Sincerely,

LUTHER STRANGE
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

LS/MMG
1641920/172410