



2004 - 201

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

August 12, 2004

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Honorable J. Kirk Day  
Probate Judge of Cherokee County  
Cherokee County Courthouse  
Centre, Alabama 35960

Revenue Commissioners - Probate  
Judges - Counties - Settlements -  
Code Section 40-2-11

The State of Alabama Revenue  
Commissioner may enter into  
settlement or consent judgments  
without the consent or knowledge  
of the counties.

The State Revenue Commissioner  
may order the counties to comply  
with the provisions of settlement  
agreements pursuant to the  
authority granted under the statute.

Dear Judge Day:

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

**QUESTION**

Who is liable for the cost associated with  
the changes that this Office is being ordered to  
make in the Order to Comply as issued by the  
Commissioner of Revenue with regard to the  
*McCormick* Settlement Agreement and Order?

**FACTS, LAW, AND ANALYSIS**

The Order to Comply, signed by the Revenue Commissioner on March 16, 2004, states as follows:

1. On November 14, 2002, Montgomery County Circuit Judge William A. Shashy entered a Final Order approving the class action settlement reached in the case, *Fred M. McCormick, III, et al. v. James P. Hayes, Jr., Commissioner of the Alabama Department of Revenue, et al.*, CV 99-1239-SH.
2. The Settlement Agreement, which was approved in Judge Shashy's Final Order, called for all counties who send mailed motor vehicle tag renewal notices to include sufficient language on the notices informing of the Settlement Agreement. The language of such notice is subject to approval by the class counsel. Additionally, said notice is to run for two (2) years.
3. Pursuant to a hearing on the Plaintiffs' Motion to Hold in Contempt the Defendants, which was held before Judge Shashy on February 17, 2004, the class counsel for McCormick presented evidence that certain counties who send mailed tag renewal notices have not, and are currently not, including the ordered language on the mailed notices. Judge Shashy, rather than hold the Defendants in contempt, will allow the Department to order that all counties who have not included the required language on their mailed tag renewal notices to begin doing so.
4. Class counsel agreed that it is acceptable that said language may appear on the tag

renewal notices in the form of a rubber-stamped imprint.

**THEREFORE**, the State of Alabama Department of Revenue, pursuant to its authority granted under Section 40-2-11, Code of Alabama 1975, **ORDERS** you to begin immediately including language on the mailed tag renewal notices. You are further ordered to include this language for a period of two (2) years beginning from the date you begin. Should you have any questions regarding this Order, please contact Mr. Marvin Colston, Property Tax, Alabama Department of Revenue at 334-242-1525.

DONE AND ORDERED on this the 16 day of March, 2004.

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Commissioner of Revenue, State of Alabama

*Order to Comply Re: McCormick Settlement Agreement and Order to Hon. Phillip W. Jordan, Probate Judge, Cherokee County, Alabama, from G. Thomas Surtees, Commissioner, State of Alabama Department of Revenue (Mar. 16, 2004).*

Apparently, Cherokee County was ordered by the Department of Revenue, pursuant to the settlement agreement approved by Circuit Judge Shashy, to begin including certain language on the mailed license plate renewal notices it sends to automobile owners in the county. Your question asks who is liable for the costs associated with the changes your county has been ordered to make.

The Department of Revenue exercises great control over the various counties in enforcing the tax laws. Section 40-2-11 of the Code of Alabama, entitled "Powers and duties generally," states, in part, as follows:

It shall be the duty of the Department of Revenue, and it shall have the power and authority, in addition to the authority now in it vested by law:

(1) To have and exercise general and complete supervision and control of the valuation, equalization, and assessment of property, privilege, or franchise and of the collection of all property, privilege, license, excise, intangible, franchise, or other taxes for the state and counties, and of the enforcement of the tax laws of the state, and of the several county tax assessors and county tax collectors, probate judges, and each and every state and county official, board, or commission charged with any duty in the enforcement of tax laws, to the end that all taxable property in the state shall be assessed and taxes shall be imposed and collected thereon in compliance with the law and that all assessments on property, privileges, intangibles, and franchises in the state shall be made in exact proportion to the fair and reasonable market value thereof in substantial compliance with the law;

....

(3) To confer with, advise, and direct the several county tax assessors, county tax collectors, probate judges, boards, or commissions and each and every state and county official charged with the assessment and collection of taxes as to their duties under the laws of this state . . . .

ALA. CODE § 40-2-11 (2003).

Before answering who must bear the costs, it may be helpful to review the Commissioner's authority in ordering Cherokee County to comply with the *McCormick* agreement. Based on the language of section 40-2-11 of the Code, which grants the Department of Revenue "general and complete supervision and control," the Commissioner of Revenue is clearly within the rights and duties granted to that office in ensuring that the counties abide by the settlement agreement. Furthermore, it stands to reason that counties ordered to comply must each bear the costs for compliance.

The decision in *Ex parte Lawley*, 636 So. 2d 474 (Ala. Civ. App. 1994), provides much insight into the appellate courts' interpretation of the relationship between the State Department of Revenue and the various *county* departments of revenue. In *Lawley*, the circuit court in Talladega County found that a settlement agreement between the taxpayer and the State had produced no judgment against the county. The Court of Civil Appeals granted a petition for writ of mandamus ordering the circuit court to withdraw its order. In short, the *Lawley* court concluded that county entities are not necessary and proper parties to lawsuits between taxpayers and the State. In other words, it is not a violation of the counties' due process for the State and taxpayers to enter into settlement or consent agreements without the consent or even the knowledge of the counties. See also *State v. Colonial Refrigerated Transp., Inc.*, 261 So. 2d 767 (Ala. Civ. App. 1971), *aff'd*, 261 So. 2d 772 (1972); *Dallas County Bd. of Educ. v. Henry*, 507 So. 2d 911 (Ala. 1987).

Your main question is whether your office is responsible for the costs associated in complying with the Department of Revenue's order. There is no statutory provision for a state appropriation to fund your compliance with the order; however, the funding mechanism for the operation of your office is found in the statutes. Section 11-12-14 of the Code states as follows:

The judge of probate, the tax assessor, the tax collector, the sheriff and the county treasurer or custodian must be allowed reasonable expenses for suitable books, stationery, postage stamps used exclusively for official business and telephones, to be paid for by the county on the approval of the county commission, and the judge of probate shall also be allowed expense for his seal of office, to be paid for by the county.

ALA. CODE § 11-12-14 (1989).

Moreover, local Act 43-162, enacted June 17, 1943, and applicable to Cherokee County, states that the probate judge will be provided with the "necessary offices, books, stationery, office equipment, supplies, files, furniture, typewriters, adding machines, postage and other conveniences and equipment necessary for the proper and efficient conduction and handling of the affairs of said office." 1943 Ala. Acts No. 162,

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78-79. The Board of Revenue, or like governing body of Cherokee County, is responsible for these provisions. Additionally, sections 40-12-269 through 40-12-271 of the Code provides, generally, that funding for local county officials in administering the automobile license and registration program comes from fees collected. Absent a direct statutory provision, Cherokee County is responsible for the costs associated with your office's compliance with the order.

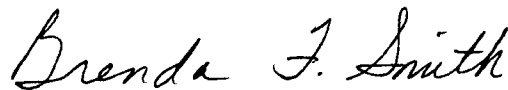
**CONCLUSION**

The Department of Revenue may order Cherokee County to incur the necessary expense of complying with the *McCormick* settlement agreement.

I hope this answers your question. If this Office can be of any further assistance, please do not hesitate to contact Brenda F. Smith of my staff.

Sincerely,

TROY KING  
Attorney General  
By:



BRENDA F. SMITH  
Chief, Opinions Division

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