



2005 - 078

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

March 1, 2005

TROY KING
ATTORNEY GENERAL

ALABAMA STATE HOUSE
11 SOUTH UNION STREET
MONTGOMERY, AL 36130
(334) 242-7300
WWW.AGO.STATE.AL.US

Honorable Eugene Melton, Chairman
Storm Water Management Authority, Inc.
216 Summit Parkway
Birmingham, Alabama 35209

Storm Water Act – Fees – Ad Valorem
Taxes – State Departments and Agencies –
Jefferson County

In the light of the Alabama Supreme Court's decision in *Densmore v. Jefferson County*, the opinion to Honorable Robert L. Childree, State Comptroller, Department of Finance, dated June 11, 2004, A.G. No. 2004-155, is correct. State-owned property is exempt from the storm-water fees and assessments levied pursuant to section 11-89C-9 of the Code of Alabama.

Dear Mr. Melton:

This opinion of the Attorney General is issued in response to your request on behalf of the Storm Water Management Authority, Inc. ("SWMA").

QUESTIONS

Are state-owned properties exempt from the payment of the storm-water fees levied by Jefferson County and the other member governing bodies of the Storm Water Management Authority, Inc., pursuant to the Storm Water Act, section 11-89C-9(d) of the Code of Alabama?

In the light of the Alabama Supreme Court's decision in *Densmore v. Jefferson County*, 813 So. 2d 844 (Ala. 2001), that the storm-water fees levied by

SWMA members under the Storm Water Act are fees and not ad valorem taxes, was the Attorney General's conclusion in Opinion 2004-155, that state-owned properties are exempt from the payment of storm-water fees, an incorrect statement of Alabama law as it pertains to the storm-water fees levied by SWMA's member governing bodies?

FACTS AND ANALYSIS

In an opinion to Honorable Robert L. Childree, State Comptroller, Department of Finance, dated June 11, 2004, A.G. No. 2004-155, this Office opined that state-owned property is exempt from the storm-water fees and assessments levied pursuant to section 11-89C-9 of the Code of Alabama. The *Childree* opinion stated that section 11-89C-10 mandates that the storm-water fees are to be assessed, collected, and enforced as are other ad valorem taxes. Because ad valorem taxes are not assessed against state-owned properties, the opinion concluded that the storm-water fees, likewise, cannot be assessed against state-owned properties. *Id.*

Section 11-89C-9(d) of the Code of Alabama allows the governing bodies of the SWMA to impose revenue-raising measures within their jurisdictions, including the assessment of fees and other charges, and states as follows:

(d) Any governing body may establish, levy, and impose by resolution or ordinance, any revenue-raising measure within its jurisdiction, including, but not limited to, fees, charges, or assessments, without any referendum unless required by the Constitution of Alabama of 1901, deemed necessary to implement this chapter or to comply with all provisions of storm water laws. Any such fee, charge, or assessment may be levied and collected in any manner permissible by law. In addition, any such measure may include incentive provisions including reductions of waiver of all or part of such fee, charge, or assessment where the responsible entity constructs, installs, or otherwise employs or utilizes any structure, service, equipment, or system to reduce or eliminate storm water pollution. Any governing body may call upon and enter into agreements with the respective tax assessor and tax collector or

other public official performing the function of the tax assessor and tax collector to assess and collect any such fees, charges, or assessments.

ALA. CODE § 11-89C-9(d) (Supp. 2004).

Section 11-89C-10 sets out the provisions for assessment and collection of the storm-water assessments and reads as follows:

(a) The tax assessor and the tax collector, or other public official performing the functions of the tax assessor and tax collector, of every county in this state shall, upon request, implement procedures necessary and appropriate in order to assess and collect the fees, charges, or assessments levied by any governing body or member governing body, whether or not related to the value of any land.

(b) The fees, charges, or assessments shall be a lien upon any land to which it may be levied, and ***shall be assessed, collected, and enforced as are other ad valorem taxes.*** Each county collecting such fee, charge, or assessment shall receive a two percent commission on all amounts levied and collected which shall be deposited to the county general fund.

ALA. CODE § 11-89C-10 (Supp. 2004) (emphasis added).

Amendment 325 of the Constitution of Alabama and section 40-9-1 of the Code of Alabama provide that property owned by the State is exempt from ad valorem taxation. Section 40-9-1 of the Code of Alabama provides as follows:

The following property and persons shall be exempt from ad valorem taxation and none other:

(1) All bonds of the United States and this state and all county and municipal bonds issued by counties and municipalities in this state, ***all property, real and personal, of the United States and this state and of county and municipal corporations in this state; . . .***

ALA. CODE § 40-9-1 (2003).

In the *Densmore* case, the Alabama Supreme Court was asked to decide whether the storm-water fee was an illegal, unconstitutional tax because its primary purpose was to raise revenue and was not related to the benefit the property owners receive from SWMA. *Id.* at 853. The Court held that a tax may be levied for both revenue purposes and for regulatory purposes. *Id.* The Court concluded that the storm-water fee is a valid fee for the purpose of regulating storm-water discharge and that it is not a tax designed to raise revenue. *Id.* at 854. The Court did not find that the fee was not a tax, but that it was not a tax designed to raise revenue. Accordingly, the ruling in the *Densmore* case does not change the opinion of this Office that storm-water fees are to be assessed, collected, and enforced as if they are ad valorem taxes. Because ad valorem taxes cannot be assessed against state-owned properties, the storm-water fees cannot be assessed against state-owned properties.

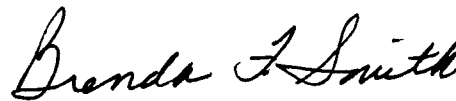
CONCLUSION

In the light of the Alabama Supreme Court's decision in *Densmore v. Jefferson County*, 813 So. 2d 844 (Ala. 2001), the opinion to Honorable Robert L. Childree, State Comptroller, Department of Finance, dated June 11, 2004, A.G. No. 2004-155, is correct. State-owned property is exempt from the storm-water fees and assessments levied pursuant to section 11-89C-9 of the Code of Alabama.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Gwendolyn B. Garner, Legal Division, Department of Revenue.

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division