

1980 S.C. Op. Atty. Gen. 76 (S.C.A.G.), 1980 S.C. Op. Atty. Gen. No. 80-37, 1980 WL 81921

Office of the Attorney General

State of South Carolina

Opinion No. 80-37

March 27, 1980

***1 SUBJECT: Property Tax-Delinquent Tax Collections**

(1) The penalties and costs allowed by Chapter 51 of Title 12 are exclusive and no additional costs or expenses may be collected by the county.

(2) The officer that seizes property under a tax execution is required to exercise proper care and diligence to preserve the same. If the property is damaged, lost or destroyed by the failure to exercise such care and diligence, the officer is liable therefor.

(3) The 'notice of delinquent property taxes, penalties and costs' as provided by § 12-51-40 should be mailed as directed by the section and not delivered by hand.

(4) The officer charged with the duty to enforce the tax execution or warrant should proceed as directed by Chapter 51 of Title 12 where applicable when the notice of delinquency is not delivered.

TO: Honorable Gerald W. Burnett
Deputy Comptroller

QUESTIONS:

See Discussion.

APPLICABLE LAW:

Chapter 51 of Title 12, Code of Laws, 1976; Article X, Section 6 and [Article VIII, Section 14 of the Constitution of South Carolina](#).

DISCUSSION:

Question 1. May a county adopt any fee or fees, charges, etc., in addition to those specified in §§ 12-51-30, 12-51-40, 12-51-90 and 12-51-130 in order to recoup cost incurred for advertising and certified mailing or other costs relating to processing property in execution? If the costs to the county of complying with Chapter 51 exceeds the costs which a county is allowed to charge in Chapter 51 as specified for a particular singular piece of property, may the county apply an additional charge to cover these expenses?

The power to tax is vested in the General Assembly. It may delegate or vest that authority in the State's political subdivisions (Article X, Section 6). The section provides in part that:

'The General Assembly may vest the power of assessing and collecting taxes in all of the political subdivisions of the State. Property tax levies shall be uniform in respect of persons and property within the jurisdiction of the body imposing such taxes;

* * *.'

Article VIII, Section 14 provides in part that:

'In enacting provisions required or authorized by this article, general law provisions applicable to the following matters shall not be set aside:

(6) the structure and administration of any governmental service or function, responsibility for which rests with the State government or which requires statewide uniformity.'

The powers of the governing body of a county are set forth in § 4-9-30 and the same are 'subject to the general law of this State.'

The provisions of Chapter 51 of Title 12 are complete and do not authorize the imposition of additional fees or charges. The language of the chapter controls.

'As a general rule the recovery of costs and fees in actions to sell land for delinquent taxes is regulated by statute * * *.

Costs and fees can be recovered where warranted by statutory provisions but not otherwise, and in any event, only to the extent authorized.' 85 C.J.S., Taxation, § 785.

*2 'The various costs of a tax sale, payable from the proceeds thereof, and the circumstances under which they are allowed and paid depend on the provisions of the statute regulating such matters.' 85 C.J.S., Taxation, § 818.

Of further significance are the provisions of § 12-49-460, a part of the general statutory procedure to collect delinquent taxes. It specifically allows the deduction from the proceeds of sale of 'the costs and expenses of sale.' Expenses are not allowed, however, under the procedure provided in Chapter 51 of Title 12.

CONCLUSION:

The penalties and costs allowed by Chapter 51 of Title 12 are exclusive and no additional costs or expenses may be collected by the county.

Question 2. What is a county's liability for such damages as fire, theft or injury to and on property after the said county 'takes exclusive possession' of said property being in execution and during the period in which it is subject to redemption?

The general rule is stated in 70 Am.Jur.2d, Sheriffs, Police, and Constables, § 71, as follows:

'The rule is well established that a sheriff, a United States marshal, or a constable having property in his custody, pursuant to a levy of attachment or execution thereon, is liable for its loss, damage, or destruction, whenever such loss is caused by his failure to exercise proper care and diligence to preserve it. If he has, by negligence, permitted property to be lost, destroyed, or disposed of, so that it cannot be reached by the execution, he has thereby deprived the execution creditor of a substantial right, for which, in a proper case, he should be held liable. Similarly, an attaching officer is liable for misuse of attached property in his custody. While there are some old decisions based upon the common-law liability of carriers or innkeepers, to the effect that the sheriff is absolutely liable for the forthcoming of property levied on by him unless he has been deprived of it by the act of God, inevitable accident, or the public enemy, the general rule is that an officer levying upon property has the duty to exercise, in its care and preservation, that degree of diligence which an ordinarily prudent person would exercise toward property of a like nature if vested with complete ownership thereof, commonly called 'due,' 'reasonable,' or 'ordinary' care, and that while he is not responsible as an insurer, or for loss or damage by act of God, the public enemy, or inevitable accident, he is responsible for reasonably foreseeable happenings or contingencies which, with the exercise of care commensurate with the danger, having regard for the nature and situation of the property, he could have prevented.'

The officer charged with custody of the property is thus liable for damage, loss or destruction to the property caused by his negligence in protecting the same.

CONCLUSION:

The officer that seizes property under a tax execution is required to exercise proper care and diligence to preserve the same. If the property is damaged, lost, or destroyed by the failure to exercise such care and diligence, the officer is liable therefor.

*3 Question 3. Is it permissible for a county to deliver in person the warrant as described in § 12-51-40 paragraph (a), rather than using 'Certified Mail, return receipt requested' as specified?

No requirement exists for the hand delivery of the notice provided by § 12-51-40. Subsection (a) of the section requires only that a 'notice of delinquent property taxes, penalties and costs' be mailed via certified mail. The notice, if delivered, constitutes the taking of possession and, if not, the section provides for the taking of exclusive possession. The statutory procedure must be followed, otherwise, the sale would be invalid.

'Proceedings on tax sales are in invitum, and every essential or material step prescribed by law must be strictly followed; otherwise, the sale may be avoided.' 51 Am.Jur., Taxation, § 1045.

CONCLUSION:

The 'notice of delinquent property taxes, penalties and costs' as provided by § 12-51-40 should be mailed as directed by the section and not delivered by hand.

Question 4. If the certified letter or notice referred to in § 12-51-40 paragraph (c), is returned undelivered due to insufficient address or other similar reason, may the county then proceed with the procedure leading to the sale of the property as specified? If not, what is the proper procedure in the case where the owner cannot be located through the mail?

The provisions of the chapter are complete and when the notice is not delivered the procedure prescribed should be followed. Section 12-51-40(b) provides:

'On or before August thirty-first next, following the year in which the taxes became due, in the event the certified mail notice has been returned, take exclusive possession of the property against which such taxes were assessed, by posting a notice at one or more conspicuous places on the premises, in the case of real estate, reading 'Seized by person officially charged with the collection of delinquent taxes of political subdivision to be sold for delinquent taxes,' the posting of which notice shall be equivalent to levying by distress, seizing and taking exclusive possession thereof, or by taking exclusive possession of personalty.'

Subsequent sections provide for the complete procedure.

CONCLUSION:

The officer charged with the duty to enforce the tax execution or warrant should proceed as directed by Chapter 51 of Title 12 when the notice of delinquency is not delivered.

Joe L. Allen, Jr.
Deputy Attorney General

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