



ALAN WILSON
ATTORNEY GENERAL

November 16, 2021

The Honorable John Richard C. King
Member
South Carolina House of Representatives
District No. 49
P.O. Box 11555
Rock Hill, SC 29731

Dear Representative King:

Attorney General Alan Wilson has referred your letter to the Opinions section. The letter states the following:

I write to you in reference to delinquent tax sales, specifically, whether a county's requirement that a bidder be registered in order to participate is authorized by law. Recently, constituents of mine attended a delinquent tax sale. When they arrived they were told they could not participate because they had not previously registered for the auction and should have done so beforehand. After reviewing all statutes related to delinquent tax sales, I do not see where registration is required in order to participate in an auction. If this is not statutorily required by the General Assembly, can a county require this on their own? I am inclined to think that because the process is very detailed and spelled out in statute that it is not the General Assembly's intent to require someone to register in order to participate in the auction.

Law/Analysis

It is this Office's opinion that the General Assembly did not prohibit delinquent tax collectors ("DTCs") from adopting bidder registration procedures for public tax sales. See S.C. Code § 12-51-40 et seq. Section 12-51-50 lists the procedures for the sale of a defaulting tax payer's property:

The property duly advertised must be sold, by the person officially charged with the collection of delinquent taxes, at public auction at the courthouse or other

convenient place within the county, if designated and advertised, on the advertised date for legal tender payable in full by cash, cashier's check, certified check, or money order on the date of the sale. If the defaulting taxpayer or the grantee of record of the property has more than one item advertised to be sold, as soon as sufficient funds have been accrued to cover all of the delinquent taxes, assessments, penalties, and costs, further items must not be sold.

S.C. Code § 12-51-50. This Office's August 31, 2020 opinion to Richland County Treasurer, David Adams, noted that while Chapter 51, of Title 12 is very detailed in several aspects, the parameters of the sale itself are fairly ambiguous. See Op. S.C. Att'y Gen., 2020 WL 5445898 (August 31, 2020). For instance, the statute does not mandate a specific date nor a particular place for the sale of property. Aside from the requirement that the sale of property must be sold "at public auction," the opinion concluded that "chapter 51 of title 12 does not give any further guidance or define the term 'auction.'" Id. at 10.

It is this Office's long standing policy, like that of our state courts, to defer to reasonable interpretations of statutes by those charged with their administration. See Op. S.C. Att'y Gen., 2013 WL 3133636 (June 11, 2013); see also Kiawah Dev. Partners, II v. S.C. Dep't of Health & Envtl. Control, 411 S.C. 16, 33, 766 S.E.2d 707, 717 (2014) ("If the statute or regulation 'is silent or ambiguous with respect to the specific issue,' the court then must give deference to the agency's interpretation of the statute or regulation, assuming the interpretation is worthy of deference."). Your letter does not specify who adopted the preregistration policy at issue, but, for purposes of analysis, this opinion will assume that it was adopted by the officer charged with the duty to sell real property and mobile or manufactured housing for nonpayment of ad valorem property taxes. Because section 12-51-50 is silent regarding the conduct of public auctions, this Office will generally defer to such an officer's policy decision "unless it is 'arbitrary, capricious, or manifestly contrary to the statute.'" Kiawah Dev. Partners, II, 411 S.C. at 34-35, 766 S.E.2d at 718.

Broadly speaking, this Office cannot categorically say adopting of a preregistration requirement for a public auction under chapter 51 of title 12 would be arbitrary. Section 12-51-60 requires a successful bidder to "pay legal tender... in the full amount of the bid on the day of the sale." If a successful bidder fails to make payment within that time, "the person officially charged with the collection of delinquent taxes shall cancel that bid and duly readvertise the same property for sale, in the same manner, on a subsequent delinquent tax sale date." S.C. Code § 12-51-70. The defaulting bidder is also liable for damages which can be collected by suit. Id. A court may well find that a preregistration process adopted to avoid the costs, delay, and litigation resulting from defaulting bidders is not arbitrary, but rather furthers legislative intent. However, a court could also find a preregistration policy is applied in a restrictive manner that effectively prevents "public" participation in the auction. If such a policy restricts public participation, a court may well find the particular policy violates section 12-51-50's requirement that the sale take place at public auction. Determining whether a particular preregistration policy restricts public

participation would necessarily require findings of fact which are beyond the scope of this Office's opinions.¹

Conclusion

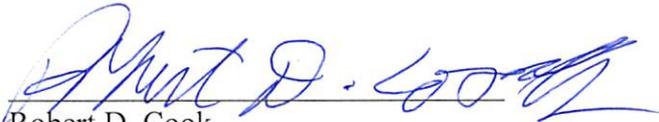
As is discussed more fully above, it is this Office's opinion that the General Assembly did not categorically prohibit delinquent tax collectors ("DTCs") from adopting bidder registration procedures for public tax sales. See S.C. Code § 12-51-40 et seq. However, a court may well find a preregistration policy is applied in a restrictive manner that effectively prevents "public" participation in the auction and, as a result, find the particular policy violates S.C. Code § 12-51-50.

Sincerely,



Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General

¹ See Op. S.C. Att'y Gen., 2006 WL 1207271 (April 4, 2006) ("Because this Office does not have the authority of a court or other fact-finding body, we are not able to adjudicate or investigate factual questions").