

Library 5129

THE STATE OF SOUTH CAROLINA
OFFICE OF THE ATTORNEY GENERAL
COLUMBIA

OPINION NO. _____

May 4, 1993

SUBJECT: Taxation and Revenue - Authority to determine costs to be collected for levy, seizure, and sale of property.

SYLLABUS: The officer charged with the tax collection duty incurs the collection expenses. That duty is not given to anyone else, and it is that individual who establishes, within the confines of the collection statutes, the nature, and the amount of the expenses required to effectuate the duties of levy, seizure, and sale. Such individual is not free to add expenses based on arbitrary reasons or arbitrary amounts for costs. Rather, the individual must be able to substantiate the expenses which are being added as costs.

TO: Mr. Michael L. Horton
Assistant Comptroller General

FROM: Ray N. Stevens *RS*
Chief Deputy Attorney General

QUESTION: Who has the authority in Beaufort County to determine what costs are to be collected as the result of the levy, seizure, and sale of property for delinquent taxes?

APPLICABLE LAW: S.C. Code Ann. Sections 12-45-180, and 12-51-40 (Supp. 1992); Act 987, Acts of 1962.

DISCUSSION:

When taxes are not timely paid, S.C. Code Ann. Section 12-45-180 (Supp. 1992) begins the process for selling the property upon which the tax is owed.

. . . If the taxes, assessments, and penalties are not paid before the seventeenth day of March, the county treasurer shall issue his tax execution to the officer authorized and directed to collect delinquent taxes,

May 4, 1993

assessments, penalties, and costs for their collection as provided in Chapter 51 of this title and they must be collected as required by that chapter. .

. .

Under this statute, the tax execution can only be carried out by the "officer authorized and directed to collect delinquent taxes". The person so authorized varies from county to county depending upon special legislation. In Beaufort County, Act 987, Acts of 1962, places the collection of delinquent taxes in the treasurer.

In performing the collection process, the costs authorized for collection by Section 12-45-180 are further identified in Section 12-51-40(d). That section states in part the following:

. . . All expense of the levy, seizure and sale must be added and collected as additional costs, and shall include, but not be limited to, the expense of taking possession of the real or personal property, advertising, storage, identifying the boundaries of the property and mailing certified notices.

. . .

A tax collector's duty in the collection and enforcement of taxes is ministerial in character. 72 Am.Jur.2d, State and Local Taxation, Section 881. The officer has no discretion in deciding whether to add or not add the expenses in that the General Assembly has specifically directed the expenses be collected as costs. Once the General Assembly confers a duty, the public officer is bound to follow the manner prescribed. United States v. Jones, 176 F.2d 278 (1949).

Here, the manner for collecting costs has been prescribed by the General Assembly. The officer charged with the collection duty is charged with incurring the collection expenses. That duty is not given to anyone else. It is that individual who establishes, within the confines of the collection statutes, the nature, and the amount of the expenses required to effectuate the duties of levy, seizure, and sale. Such individual is not free to add expenses based on arbitrary reasons or arbitrary amounts for costs. Rather, the individual must be able to substantiate the expenses which are being added as costs.

Mr. Michael L. Horton
Page Three

May 4, 1993

CONCLUSION:

The officer charged with the tax collection duty incurs the collection expenses. That duty is not given to anyone else, and it is that individual who establishes, within the confines of the collection statutes, the nature, and the amount of the expenses required to effectuate the duties of levy, seizure, and sale. Such individual is not free to add expenses based on arbitrary reasons or arbitrary amounts for costs. Rather, the individual must be able to substantiate the expenses which are being added as costs.

RNS:wcg