



ALAN WILSON
ATTORNEY GENERAL

August 3, 2020

The Honorable Daniel M. Gregory
Delinquent Tax Collector
Charleston Count Bridge View Drive
Suite 110B
North Charleston, South Carolina 29405-7464

The Honorable Maria E. Walls, CPA
Beaufort County Treasurer
P.O. Box 487
Beaufort, South Carolina 29901-0487

Dear Mr. Gregory and Ms. Walls:

We received your requests for opinions of this Office concerning the ability of counties to hold delinquent tax sales online due to the Covid-19 pandemic. Mr. Gregory, in your letter, you explain:

Many of my colleagues of Delinquent Tax Collectors throughout the State have questioned whether it is legal to hold an online tax sale auction due to the fact that the many venues that tax collectors use around their county to conduct their tax sales are already jammed with multiple hundreds of people in one room elbow to elbow.

With the Covid-19 Pandemic continuing to cause social distancing measures that we now realize are not currently moving in the right direction we are now faced with a dilemma if we cannot find a large enough venue to hold our in-person tax sale then the county and municipalities that rely on this revenue (which can run into the millions in some counties) will not receive this revenue until much later next year when social distancing may not be a factor of holding an in-person tax sale.

In speaking of online sale auctions, there are experienced private entities that counties could use to facilitate online tax sale auctions. There also is the

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possibility of the Counties' IT departments having the capability of helping delinquent tax collectors set up an online tax sale auction in house.

Ms. Walls, you state you have a related question: "Would a live, public auction conducted virtually by the person officially charged with the collection of delinquent taxes from the County Offices of a given county, satisfy the statutory requirements of S.C. Code Ann. § 12-51-50?" You further explain: "The term 'virtual' meaning that the conduct and level of participation is live and consistent with historical practices but the avenue through which bidders participate is through the internet rather than physical attendance."

Law/Analysis

As Mr. Gregory noted in his letter,

South Carolina appellate courts have consistently held the enforcing agencies of government to strict compliance with all the legal requirements surrounding tax sales. Dibble v. Bryant, 274 S.C. 481, 265 S.E.2d 673 (1980); Manji v. Blackwell, 473 S.E.2d 837 (Ct.App.1996) (Davis Adv.Sh. No. 16 at 23). The sound view is that all requirements of law leading up to tax sales which are intended for the protection of the tax payer against surprise or the sacrifice of his property are to be regarded as mandatory and are to be strictly enforced. Dibble v. Bryant, supra.

Rives v. Balsa, 325 S.C. 287, 292-93, 478 S.E.2d 878, 880-81 (Ct. App. 1996).

As you both mention in your letters, section 12-51-50 of the South Carolina Code (2014) governs the sale of property as an alternate procedure for the collection of taxes. This provision states:

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 Ann. § 12-51-50 (emphasis added). Accordingly, the answers to your questions depend upon whether a virtual auction qualifies as an "other convenient place within the county."

“The primary rule of statutory construction is to ascertain and give effect to the intent of the legislature.” Mid-State Auto Auction of Lexington, Inc. v. Altman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996) (citation omitted). Our Supreme Court offered this thorough explanation of statutory construction in Lambries v. Saluda County Council, 409 S.C. 1, 10–11, 760 S.E.2d 785, 789–90 (2014):

If a statute is ambiguous, the courts must construe its terms. Sparks v. Palmetto Hardwood, Inc., 406 S.C. 124, 750 S.E.2d 61 (2013). “A statute as a whole must receive practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers.” Id. at 128, 750 S.E.2d at 63 (citation omitted). “In interpreting a statute, the language of the statute must be read in a sense that harmonizes with its subject matter and accords with its general purpose.” Id. (citation omitted).

“Where the statute’s language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning.” Media Gen., 388 S.C. at 148, 694 S.E.2d at 530 (quoting Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)). “If a statute’s ‘terms are clear and unambiguous, they must be taken and understood in their plain, ordinary and popular sense, unless it fairly appears from the context that the Legislature intended to use such terms in a technical or peculiar sense.’” Id. (citation omitted).

“What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will.” Id. (quoting Norman J. Singer, Sutherland Statutory Construction § 46.03, at 94 (5th ed.1992)). “Therefore, the courts are bound to give effect to the expressed intent of the legislature.” Id. “While it is true that the purpose of an enactment will prevail over the literal import of the statute, this does not mean that this Court can completely rewrite a plain statute.” Hodges, 341 S.C. at 87, 533 S.E.2d at 582; cf. Lancaster Cnty. Bar Ass’n v. S.C. Comm’n on Indigent Defense, 380 S.C. 219, 222, 670 S.E.2d 371, 373 (2008) (“In construing a statute, this Court will reject an interpretation when such an interpretation leads to an absurd result that could not have been intended by the legislature.”).

Beginning with the plain language used in the statute, section 12-51-50 gives the option of conducting the auction at a courthouse or “other convenient place.” Included among the definitions of “place” are “physical environment” and “a building or locality used for a special purpose.” See Merriam-Webster’s Online Dictionary, “place” (last visited July 22, 2020) <<http://www.merriam-webster.com/dictionary/place>>. According to the plain and ordinary meaning of “place,” section 12-51-50 indicates an auction shall be conducted in a physical space. In addition, section 12-51-50 states such place is “within the county,” also indicating it should

take place in a physical space. Thus, we are concerned the Legislature intended for the auction to take place in a physical location rather than online.

However, Ms. Walls suggested conducting a live, public auction within the county but on a virtual platform could meet the statutory requirements. The statute itself does not allow or prohibit the use of an online platform. Further, a court could find the auction technically is taking place in “place within the county,” but the bidding is online.

The Covid-19 pandemic presents many challenges especially when our laws suggest gathering in groups to conduct government functions. Certainly, our lawmakers never considered these challenges when enacting such legislation. Our courts have been clear the statutory mandates must be strictly complied with when conducting tax sales, but most of these cases dealt with satisfying notice requirements, which are critical to protecting the taxpayer against the surprise forfeiture of his or her property. See In re Ryan Inv. Co., Inc., 335 S.C. 392, 517 S.E.2d 692 (1999) (holding postal regulations do not excuse non-compliance with tax sale statute’s restricted delivery requirements for notice); Dibble v. Bryant, 274 S.C. 481, 265 S.E.2d 673 (1980) (holding statutory notice requirements were not met when a tax collector tacked a notice of sale in name of prior owner to front of an abandoned building); Aldridge v. Rutledge, 269 S.C. 475, 238 S.E.2d 165 (1977) (finding the failure to provide notice to true owner is not excused, regardless of actual notice); S.C. Fed. Sav. Bank v. Atl. Land Title Co., 314 S.C. 292, 295, 442 S.E.2d 630, 632 (Ct. App. 1994) (relying on strict construction of the statutory requirements, the Court found notice by certified mail did not comply with the statutory requirement of notice by registered mail); Donohue v. Ward, 298 S.C. 75, 378 S.E.2d 261 (Ct. App. 1989) (invalidating a tax sale because the twenty-day statutorily required notice was not given prior to advertising the property for sale).

In this instance, one could argue that by conducting the auction within the county, but using an online platform to conduct the sale substantially complies with the statutory requirements if the purpose of the statute is achieved. See Responsible Econ. Dev. v. Florence Consol. Mun. Planning Comm’n, 2005 WL 7084861 (S.C. Ct. App. Nov. 16, 2005) (“American jurisprudence generally holds substantial compliance is met if the purpose of the statute is achieved.”). We are not privy to the exact protections afforded to the taxpayer by requiring the auction be conducted in a certain location, but presume this requirement is to allow the taxpayer the ability to redeem the property at the sale. If this protection, along with other protections afforded to taxpayers by this statute, remain in effect through use of an online bidding platform, a court could find this method substantially complies the requirements of the statute.

However, we are not a court and cannot make determinations of fact in order to resolve this question. Op. Att’y Gen., 1990 WL 599346 (S.C.A.G. Dec. 18, 1990) (“[T]his Office cannot comment upon or find facts . . .”). Therefore, we advise you seek clarification from a court in order to avoid questions of an invalid sale. Op. Att’y Gen., 2006 WL 3877519 (S.C.A.G. Dec. 14, 2006) (stating only a court, not this Office, can make factual determinations). In the

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alternative, you could seek a clarification from the Legislature through an amendment to section 12-51-50 to specifically allow for the conduct of online tax sales, which many other jurisdictions allow for by statutory law. See eg., La. Rev. Stat. Ann. § 47:2154; Miss. Code Ann. § 27-41-59; Tenn. Code Ann. § 67-5-2501; Tex. Tax Code Ann. § 34.01.

Conclusion

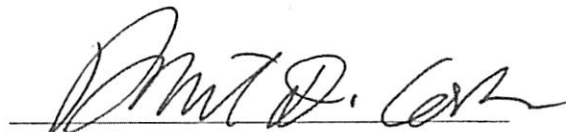
Section 12-51-50 mandates tax sales be conducted “at a public auction at the courthouse or other place within the county” The plain and ordinary meaning of the terms in this statute indicate the Legislature likely intended for tax sales to take place at a physical location rather than on an online platform. However, given the unprecedented nature of the Covid-19 pandemic, a court could find that conducting a live auction within the county, but allowing bidding through an online platform, substantially complies with the requirements of section 12-51-50 if the taxpayer is provided the same level of protection as he or she would by a live auction conducted in person. Whether or not a particular method used meets this requirement is a question of fact and beyond the scope of an opinion of this Office. Therefore, we strongly recommend clarification from a court as courts have indicated the requirements of section 12-51-50 shall be strictly enforced. In the alternative, we suggest you seek a legislative amendment to the statute specifically allowing for online tax sales.

Sincerely,



Cydney Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
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