

November 21, 2003

Re: Filing suit for collection of delinquent real property taxes

Dear Madam,

I am in receipt of your fax, with attachments, forwarded to your Municipal Management Consultant. It appears there is some confusion about the Town's ability to file suit for collection of delinquent property taxes. As we discussed on the phone, the fact that the property owners have paid county taxes has no impact on the ability of the Town's delinquent tax attorney to file suit and force a tax sale.

It appears the issue involves the wording of T.C.A. ' 67-5-2005(a) concerning the delivery of the delinquent tax list to the county trustee. This section of the statute states:

When a municipal corporation uses the county trustee or the delinquent tax attorney to collect delinquent real property taxes of the corporation, the proper officers of the corporation shall certify the delinquent taxes to the county trustee by April 1 of the second calendar year after the taxes become due.

You have advised me that the Town has taken the appropriate steps, through ordinance, for collection of municipal taxes without relying on the county trustee. The delinquent tax attorney hired by the Town refuses to file suit for collection of taxes until the tax list is certified to the county trustee. Although the statute likely could have been worded differently, by specifying the *county* delinquent tax attorney, this section is only applicable to cities which rely on the county trustee to collect taxes. This is not the case for your Town. The delinquent tax attorney has been retained by the Town, not through the county, so the step of delivering the tax list to the trustee or the county delinquent tax attorney is not necessary before filing suit for collection of municipal taxes.

MTAS Senior Legal Consultant Sid Hemsley actually drafted the 1997 public act, Chapter 367, which amended T.C.A. ' 67-5-2005(a) to insert the words "When a municipal corporation uses the county trustee," and he has advised me that the intent of the amendment was to allow cities collecting their own taxes to forgo that requirement. This is consistent with language used in this chapter of the tax law as a whole, as it only addresses the delinquent tax attorney hired by the county trustee, and makes no mention of delinquent tax attorneys retained by municipalities.

The Tennessee Attorney General has opined that cities may file suit for collection of real property taxes without using the county trustee's office, and without remitting fees to the county trustee. Tenn. Op. Atty. Gen. No. 87-106. It is important to note that once the delinquent tax list is certified to the county trustee the trustee is entitled to collect fees.

I have spent numerous hours over the past several months researching the Tennessee tax laws as applied to municipalities and my research leads me to conclude that cities may file tax collection suits without the involvement of, or certification to, the county trustee or the county delinquent tax attorney. The delinquent tax attorney hired by the Town may proceed with mailing notice and filing suit for the collection of delinquent municipal property taxes.

I hope this information is helpful. Please contact me should you need additional information or assistance.

Thank you for consulting with MTAS.

Sincerely,

Melissa A. Ashburn  
Legal Consultant