

November 21, 2003

Re: Suit for collection of delinquent real property taxes

Dear Madam,

You have advised me that I was incorrect about the facts in the first letter faxed to you on this date. The Town's delinquent tax attorney has filed suit, but will not force a tax sale, as the county taxes have been paid. The Clerk and Master of the Chancery Court in which the suit is filed cannot auction the property without the appropriate filings and orders entered by the Court.

The Tennessee Attorney General has opined that municipalities may prosecute tax collection suits regardless of whether the county taxes have been paid. Tenn. Op. Atty. Gen. No. 87-106. The Attorney General states:

a municipality's right of action does not depend on whether any county taxes are due on the same property. Even though county taxes may have been paid, if municipal taxes are still due and unpaid, the municipality may bring suit.

The right to force a sale of property to enforce a tax lien is automatic with the authority to file suit. In other words, the courts would not give a city the right to file a suit without the power to prosecute the suit.

Direct authority for municipal tax sales, without the involvement of the county, is found at T.C.A. ' 6-55-205. This statute is found in that portion of the Tennessee Code addressing the licensing and taxing powers of municipalities, independent of county action. T.C.A. ' 6-55-205 states:

Tax suit -- Enforcement of judgment. -- The court may proceed to judgment or decree against all defendants who do not settle the taxes due as provided above, and enforce the judgment or decree and the lien for the taxes due by sale of the lands upon which such taxes are assessed, under the rules applicable to other chancery sales.

This language is clear in authorizing municipalities to proceed with tax sales, regardless of the status of county taxes.

The only situation in which a city may be delayed in enforcing a lien for taxes is if the county, acting independently, has filed suit first. A county suit pending at the time the city files suit may delay city action against the same property, but has no permanent impact on the city's right to force a sale. Once the county taxes are paid, the county has an obligation to dismiss the county suit, so the delay should only be temporary before the city may proceed with prosecution.

I know of no reason why the Town's delinquent tax attorney cannot proceed with filing the motion and order necessary to force a sale of property in the delinquent tax suit which has been filed by the Town. The county need not be involved, due to the clear authority granted cities in T.C.A. ' 6-55-205, and it is irrelevant whether the county taxes have been paid.

I hope I have now provided the information needed. Please let me know if you need further assistance in this matter.

Thank you for consulting with MTAS.

Sincerely,

Melissa A. Ashburn  
Legal Consultant