

THE STATE OF SOUTH CAROLINA  
OFFICE OF THE ATTORNEY GENERAL  
COLUMBIA

OPINION NO. \_\_\_\_\_

November 8, 1989

SUBJECT: Taxation & Revenue - Collection Of Delinquent  
Taxes By A Municipality.

SYLLABUS: A municipality may enforce the payment of delinquent property taxes by execution and sale. The lien of the municipal tax, however, is subordinate to the lien for county and state taxes. When property is sold by a county or the state that is impressed with a city lien, the municipality may bid at the sale to protect its tax lien. As an alternative, it may pay the taxes owed the county or the state, making its lien a first lien.

TO: Ms. Ali Bring  
Town Administrator  
Town of Hardeeville

FROM: Joe L. Allen, Jr. *JLA*  
Chief Deputy Attorney General

QUESTION: In the absence of an agreement with a county, what are the rights of a municipality to collect delinquent taxes on property that is impressed with state or county tax liens?

APPLICABLE LAW: Sections 5-7-300, 12-49-10 and 12-51-90,  
Code of Laws of South Carolina, 1976, as amended.

## DISCUSSION:

Prior to Home Rule in 1975, the state law provided the procedure a municipality was to follow in the collection of delinquent taxes. (See Sections 47-168 and 47-253 of the 1962 Code of Laws) These provisions, however, were repealed by Section 5 of Act 283, Acts of 1975 (Home Rule Act.) Chapter 51 of Title 12 provided a procedure for the collection of municipal taxes when a municipality by ordinance elected to follow the same. This election was repealed by Section 17 of Act 166, Acts of 1985, effective January 1, 1986. Between that date and the adoption of Act 19, Acts of 1987, effective March 31, 1987, there was no state statute that set forth a procedure for the collection

Mr. Ali Bring  
Page Two

November 8, 1989

of a delinquent municipal tax. Presumably, the procedure was that set forth in the municipal ordinance. The 1987 Act, as amended by Act 419, Acts of 1988, is codified as Section 5-7-300.

A copy of that Section is appended and by reference made a part of this opinion as if fully published herein. Under the statute, the municipality may provide by ordinance for the collection of the delinquent taxes. The statute further provides that the taxes shall:

" . . . constitute a lien upon the property upon which the tax is levied until paid, paramount to all other liens, except the lien for county and state taxes . . . "

A municipality may, therefore, enforce payment of its taxes by the levy and sale of the property taxed. Its lien is superior to all others except those for county and state taxes. The right to establish the priority of liens is vested in the General Assembly.

"Subject to constitutional limitations, the legislature has the power to fix the priorities of liens, and it is established that priority as between statutory liens must be determined upon the basis of legislative intent." 51 Am.Jur. 2d, Section 57, page 188.

A sale of property by a municipality is therefore subject to the liens for county and state taxes. A buyer at such a municipal tax sale would acquire a title to the property that is impressed with these prior liens.

A sale of property for non-payment of county or state taxes, however, would be free of liens for the municipal tax.

A municipality, in order to protect its lien and secure payment of the taxes on sales by a county or the state, may bid upon the property at the county or state tax sale. In the alternative, it may pay the county or state taxes and free the property of those liens which would result in its lien being of first priority.

#### CONCLUSION:

A municipality may enforce the payment of delinquent property taxes by execution and sale. The lien of the

Mr. Ali Bring  
Page Three

November 8, 1989

municipal tax, however, is subordinate to the lien for county and state taxes. When property is sold by a county or the state that is impressed with a city lien, the municipality may bid at the sale to protect its tax lien. As an alternative, it may pay the taxes owed the county or the state making its lien a first lien.

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