



ALAN WILSON  
ATTORNEY GENERAL

March 27, 2018

The Honorable Sylleste H. Davis, Member  
South Carolina House of Representatives, District No. 100  
414-C Blatt Building  
Columbia, SC 29201

Dear Representative Davis:

We received your letter dated February 7, 2017 for a response. The following is this Office's understanding of your questions and our opinion based on that understanding.

**Issues** (as quoted from your letter):

*"In previous opinions, the South Carolina Attorney General has addressed the authority of a county to collect code enforcement liens on behalf of municipalities who have attached such liens to property as allowed in South Carolina Code of Laws Section 5-7-80. The Attorney General opinion from February 15, 1989 concludes a county is not required to collect a code enforcement lien since it is not a tax. The Attorney General opinion from December 21, 1977 discusses the priority of a code enforcement lien in the collection process and the applicability of the statute to certain types of property clean up.*

*Neither of those opinions directly address the questions I have about the authority of counties to collect code enforcement liens on behalf of municipalities who have attached such liens to property as allowed in SC Code of Laws Section 5-7-80.*

*Therefore, would you please opine on the following questions:*

- 1. If a county agrees to collect a municipal code enforcement lien on behalf of a municipality without a contract with the municipality to do so, does the language in Section 5-7-80 provide the county the authority to collect that lien in the same manner as municipal taxes, up to and including using the procedures in Title 12, Chapter 51?*
- 2. If a county agrees to collect a municipal code enforcement lien on behalf of a municipality through a contract with the municipality to do so, does the language in Section 5-7-80 provide the county the authority to collect that lien in the same manner as municipal taxes, up to and including using the procedures in Title 12, Chapter 51?"*

**Law/Analysis:**

1) Legal analysis regarding your questions:

*1) If a county agrees to collect a municipal code enforcement lien on behalf of a municipality without a contract with the municipality to do so, does the language in Section 5-7-80 provide the county the authority to collect that lien in the same manner as municipal taxes, up to and including using the procedures in Title 12, Chapter 51?*

South Carolina Code Ann. § 5-7-80 states that:

(1) Any municipality is authorized to provide by ordinance that the owner of any lot or property in the municipality shall keep such lot or property clean and free of rubbish, debris and other unhealthy and unsightly material or conditions which constitute a public nuisance.

(2) The municipality may provide by ordinance for notification to the owner of conditions needing correction, may require that the owner take such action as is necessary to correct the conditions, may provide the terms and conditions under which employees of the municipality or any person employed for that purpose may go upon the property to correct the conditions and may provide that the cost of such shall become a lien upon the real estate and shall be collectable in the same manner as municipal taxes.

S.C. Code Ann. § 5-7-80 (1976 Code, as amended) (emphasis added). As you mention in your letter, this Office answered a similar question in a 1989 opinion in that a municipal lien is not a tax, and thus a court would likely determine a lien could not be collected and enforced the same as a tax via a tax bill without an agreement to collect liens. See Op. S.C. Att’y Gen., 1989 WL 406099 (S.C.A.G. February 15, 1989) (“A county is not required to collect the clean-up cost for a lot under an agreement with a municipality to collect property taxes due the municipality because the clean-up cost is not a tax.”). In the 1989 opinion we stated that:

It is understood that the city and county have entered into an agreement for the county to collect the city's tax. Under such an understanding, the county is under no obligation to collect the assessment for improvements to the lot, in that the assessment is not a tax.

The phrase “in the same manner” has been held to mean:

“... by similar proceedings so far as such proceedings are applicable to the subject matter.” (See 38 Words and Phrases, page 327, Same Manner)

It is presumed that the county's responsibility under the agreement is only to collect the property taxes due the municipality. The word “tax” would therefore not include other charges made by the city and the county under the agreement is without authority to collect the charges for cleaning the lot. If this charge is to be collected by the county it must also be by agreement between the county and the city. Here no such agreement has been reached.

Op. S.C. Att’y Gen., 1989 WL 406099 (S.C.A.G. February 15, 1989). South Carolina Code Ann. § 5-7-300 governs the collection of delinquent ad valorem property taxes by municipalities. It states in Section (A) that “[f]or those municipalities that, as of the effective date of this sentence collect their delinquent municipal taxes without an agreement as to collection with a county, such payment makes the municipal lien a first lien on the property which shall continue in full force and effect until legally discharged.” South Carolina Code Ann. § 5-7-300(A). South Carolina Code Ann. § 5-7-300(B) authorizes a municipal governing body to “enforce payment against the property of delinquent taxpayers to the same extent and

substantially in the same manner, as is provided by law for the collection of county property taxes and penalties, except that a municipal governing body may determine the municipality's tax year, penalty dates, and the amount of penalty to be added on the penalty dates. Executions to enforce the payment of the taxes and penalties must be issued under the seal of the municipality... ." (emphasis added). Thus, the controlling statute for the collection of municipal taxes would still be § 5-7-300 as opposed to § 12-51-40, et seq. Moreover, the code states regarding a county's collection of a municipality's taxes that:

A county and municipality may contract for the collection of municipal taxes by the county. When by contract a tax due a municipality is to be collected by the county, the provisions of this chapter are exercisable by the county official charged with the collection of the delinquent taxes. He may employ, appoint, or designate others to perform or carry out the provisions of the chapter.

S.C. Code Ann. § 12-51-170 (1976 Code, as amended) (emphasis added). While the South Carolina Constitution and the Code authorize agreements between local governments for "joint administration of any function and exercise of powers," the law still requires a contract. See S.C. Code Ann. § 4-9-40 (1976 Code, as amended) (emphasis added) ("Any county may perform any of its functions, furnish any of its services within the corporate limits of any municipality, situated within the county, by contract with any individual, corporation or municipal governing body, subject always to the general law and the Constitution of this State regarding such matters. *Provided*, however, that where such service is being provided by the municipality or has been budgeted or funds have been applied for that such service may not be rendered without the permission of the municipal governing body."); S.C. Code Ann. § 4-9-41; S.C. Const. art. VIII, § 13. Traditionally, a more specific statute will prevail over a general statute. Wilder v. S.C. Hwy. Dept., 228 S.C. 448, 90 S.E.2d 635 (1955); Wooten ex rel. Wooten v. S.C. Dept. of Transp., 333 S.C. 464, 511 S.E.2d 355, 357 (1999); Spectre, LLC v. S.C. Dept. of Health & Envir. Control, 386 S.C. 357, 688 S.E.2d 844 (S.C. 2010). Therefore, we believe a court will determine that a municipal lien in § 5-7-80 could not be collected using the procedures in Title 12, Chapter 51 where the county does not have a contract with the municipality to collect the municipal lien in § 5-7-80.

2) *If a county agrees to collect a municipal code enforcement lien on behalf of a municipality through a contract with the municipality to do so, does the language in Section 5-7-80 provide the county the authority to collect that lien in the same manner as municipal taxes, up to and including using the procedures in Title 12, Chapter 51?*

As stated above, the question regarding when a contract is already in place between the county and municipality for the collection of property taxes was answered by our 1989 opinion in that a municipal lien is not a tax, and thus a court would likely determine a lien could be collected and enforced the same as a tax via a tax bill only with specific statutory authority and pursuant to a contract with the county. See Op. S.C. Att'y Gen., 1989 WL 406099 (S.C.A.G. February 15, 1989) ("A county is not required to collect the clean-up cost for a lot under an agreement with a municipality to collect property taxes due the municipality because the clean-up cost is not a tax."). While we acknowledge that § 4-9-41 and S.C. Const. art. VIII, § 13 authorize "the joint administration of any function and exercise of powers," and § 4-9-40 authorizes a county "perform any of its functions, furnish any of its services within the corporate limits of any municipality, situated within the county, by contract," a tax bill is separate and distinct from a lien and thus should be collected separately. Op. S.C. Att'y Gen., 1989 WL 406099

(S.C.A.G. February 15, 1989); S.C. Code Ann. §§ 4-9-40; 4-9-41; S.C. Const. art. VIII, § 13 (emphasis added).

In your second question where you establish there is a contract to collect municipal liens, you ask whether the language in Section 5-7-80 provides the county with the necessary authority to collect the lien according to tax sales, etc. in Title 12, Chapter 51. First and foremost, we must clarify that the only lien that we are considering for this question is the one in § 5-7-80 with the understanding its language grants specific statutory authority for that particular municipal lien to be a lien on the real property and collectable in the same way as municipal taxes. S.C. Code Ann. § 5-7-80. Since South Carolina Code Ann. § 5-7-80 authorizes the municipal lien to be collectable “in the same manner as municipal taxes” and we presume its constitutionality, we next address whether “in the same manner as municipal taxes” entails collection pursuant to the alternate procedure in § 12-51-40, et seq. As discussed above, delinquent municipal ad valorem property taxes are enforceable pursuant to South Carolina Code Ann. § 5-7-300. Section (D) states that:

A municipality may contract with the county for the collection of municipal taxes or for the collection of delinquent municipal taxes upon terms and conditions mutually agreeable to both the municipality and the county. If a municipality contracts with a county for collection of municipal taxes or delinquent municipal taxes, the provisions of state law that prescribe the procedure for collection of property taxes by counties must be followed. A delinquent tax sale for the purpose of collecting municipal taxes and held in conjunction with a delinquent tax sale for the purpose of collecting county taxes may take place at the public place in the county that is designated by the county.

S.C. Code Ann. § 5-7-300(D) (1976 Code, as amended). Thus, based on the language in § 5-7-300(D) and § 5-7-80, the municipal lien in § 5-7-80 could be collected “in the same manner as municipal taxes” and a municipality’s “municipal taxes” and “delinquent municipal taxes” may be collected pursuant to a contract with the county subject to the condition that “the provisions of state law that prescribe the procedure for collection of property taxes by counties must be followed.” S.C. Code Ann. § 5-7-300(D); § 5-7-80. Moreover, the code states regarding a county’s collection of a municipality’s taxes that:

A county and municipality may contract for the collection of municipal taxes by the county. When by contract a tax due a municipality is to be collected by the county, the provisions of this chapter are exercisable by the county official charged with the collection of the delinquent taxes. He may employ, appoint, or designate others to perform or carry out the provisions of the chapter.

S.C. Code Ann. § 12-51-170 (1976 Code, as amended).

## II. Reconsideration of the June 2, 2014 opinion in light of your questions:

This Office takes this opportunity to readdress the opinion issued June 2, 2014 to the Honorable Daniel M. Gregory. See *Op. S.C. Att’y Gen.*, 2014 WL 2757535 (S.C.A.G. June 2, 2014). In the June 2, 2014 opinion, we opined that Delinquent Tax Collectors likely could include stormwater runoff and solid waste fees on the county tax bill as “any applicable fees” pursuant to South Carolina Code Ann. § 12-43-

350. Id. In that opinion we relied on reasoning, in part, that since § 12-51-170 authorized a municipality to contract with a county for the collection of municipal fees, stormwater and solid fees could be “applicable fees” in § 12-43-350 on a tax bill. However, as you see in this opinion, we have relied on specific statutory authority for a county to collect a municipal lien the same way as municipal taxes, we must clarify that we believe a court would likely find that § 12-43-350(9) requires stormwater and solid waste fees to likewise have specific statutory authority to be interpreted as “applicable fees.” This Office believes that South Carolina Code Ann. § 12-43-350(9) was intended for the collection of taxes on a tax bill for real property. It states that:

Affected political subdivisions must use a tax bill for real property that contains standard information as follows:

- (1) tax year;
- (2) tax map number;
- (3) property location;
- (4) appraised value, taxable;
- (5) tax amount;
- (6) state homestead tax exemption pursuant to Section 12-37-250, if applicable;
- (7) state homestead tax exemption pursuant to Section 12-37-220(B)(47) and the estimated value of the exemption and the amount of any credit against the property tax liability for county operations on owner-occupied residential property attributable to an excess balance in the Homestead Exemption Fund;
- (8) local option sales tax credit, if applicable;
- (9) any applicable fees;
- (10) total tax due;
- (11) tax due with penalties and applicable dates;
- (12) prior year amount paid--only required to be shown if assessment is unchanged from prior year, except during reassessment years, in which case all properties must show the prior year tax amount.

The information required pursuant to this section must be contained in a “boxed” area measuring at least three inches square placed on the right side of the tax bill.

S.C. Code Ann. § 12-43-350 (1976 Code, 2008 Supp.) (emphasis added). Quoting one case cited within the opinion, it states regarding solid waste disposal that:

Counties have the power to assess service charges for solid waste disposal. S.C. Code Ann. § 4-9-30(5)(a). Unlike a tax, a service charge or user fee is imposed on those members of the community who receive a special benefit from the proceeds of the charge. To be valid, a service charge must be uniform. *Brown v. County of Horry*, 308 S.C. 180, 417 S.E.2d 565 (1992).

Skyscraper Corp. v. Cty. of Newberry, 323 S.C. 412, 416, 475 S.E.2d 764, 765-66 (1996). While it may be convenient for a county to add all other fees and liens and monies owed by a taxpayer, whether related to the real property taxes or not, this is not what the General Assembly intended with the tax bill except where there is specific statutory authority such as in § 12-51-170 where a county is statutorily authorized to contract for the collection of municipal taxes, as discussed above. As you are aware, real property may be owned by a corporation, a limited liability company or other entity. Many contracts for services such

as solid waste fees and violations of municipal ordinances are signed with and enforced against an individual, not necessarily the property owner. Additionally, this Office is aware of specific instances both where a county placed and attempted to place illegal taxes and fees on the county real property tax bills. See, e.g., Op. S.C. Att’y Gen., 2015 WL 8773705 (S.C.A.G. November 24, 2015) (even though owner-occupied residential property is exempt from all property taxes for school operating purposes pursuant to S.C. Code Ann. § 12-37-220, one county attempted to put a school operating charge on owner-occupied residential tax bills). Moreover, this Office has previously opined that the homestead exemption does not apply to fees that are not based on the value on any property and as such are not a part of the ad valorem taxes. See Op. S.C. Att’y Gen., 2012 WL 1649763 (S.C.A.G. April 24, 2012). As you are likely aware, “[a] county treasurer may not issue a tax receipt to a taxpayer unless the taxes, any applicable penalties and costs, and all other charges included on the tax bill have been paid in full. ...” S.C. Code Ann. § 12-45-430. Quoting from a 2012 opinion this Office explained that:

In a 2004 opinion, this Office concluded there was “substantial doubt” about whether a county treasurer could withhold a tax receipt for non-payment of a fee imposed by the county. Letter to Jonathan M. Robinson, Op. S.C. Att’y Gen. (Jan. 13, 2004). In 2005, the General Assembly resolved this doubt, providing “[a] county treasurer may not issue a tax receipt to a taxpayer unless the taxes, any applicable penalties and costs, and all other charges included on the tax bill have been paid in full.” Act No. 145, § 46, 2005 S.C. Acts 1634, 1667-68 (codified at S.C. Code Ann. § 12-45-430 (Supp. 2011)) (emphasis added). By analogy, it is likely that a municipality could refuse to issue a tax receipt for a payment that did not satisfy all charges on its tax bill.

2012 WL 1649763, at \*2 (S.C.A.G. Apr. 24, 2012). Thus, this Office is cautious in advising what charges can and cannot be on a real property tax bill. Based on our conclusion in this opinion that a court would likely determine a municipal lien could be collected and enforced the same as a tax via a tax bill only with specific statutory authority and pursuant to a contract with the county (see Op. S.C. Att’y Gen., 1989 WL 406099 (S.C.A.G. February 15, 1989) (“A county is not required to collect the clean-up cost for a lot under an agreement with a municipality to collect property taxes due the municipality because the clean-up cost is not a tax.”)), we believe a court will determine that county treasurers and tax collectors may not include solid waste fees and assessments on the county tax bill. This Office does not believe that the General Assembly intended for our 2014 opinion to be used to take advantage of taxpayers in a “broad” interpretation of § 12-43-350(9). See Op. S.C. Att’y Gen., 1989 WL 406099 (S.C.A.G. February 15, 1989) (“A county is not required to collect the clean-up cost for a lot under an agreement with a municipality to collect property taxes due the municipality because the clean-up cost is not a tax.”). Therefore, we overrule our prior opinions to the extent our prior opinions, specifically Op. S.C. Att’y Gen., 2014 WL 2757535 (S.C.A.G. June 2, 2014) are inconsistent with this opinion. The “any applicable fees” in § 12-43-350(9) we interpret to mean fees directly applicable to the real property tax bills unless there is separate statutory authority to place a fee or lien on the property tax bill. Nevertheless, while this is a “narrow” interpretation of “applicable fees” pursuant to South Carolina Code Ann. § 12-43-350(9), we generally defer to an administrative agency’s interpretation of the statutes it administers as long as its interpretation is reasonable. See, e.g., Op. S.C. Att’y Gen., 2005 WL 2250210 (S.C.A.G. September 8, 2005). Thus, we would defer our answer to the South Carolina Department of Revenue’s determination if they administer a “broad” interpretation. S.C. Code Ann. § 12-4-10 et seq.

**Conclusion:**

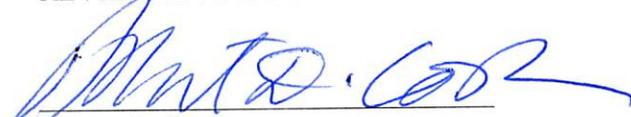
This Office believes a court will determine that based on the language in § 5-7-300(D), § 5-7-80, and § 12-51-170, the municipal lien in § 5-7-80 could be collected “in the same manner as municipal taxes” and a municipality’s “municipal taxes” and “delinquent municipal taxes” may be collected pursuant to a contract with the county subject to the condition that “the provisions of state law that prescribe the procedure for collection of property taxes by counties must be followed.” S.C. Code Ann. § 5-7-300(D); § 5-7-80; § 12-51-170. Likewise, we believe a court will determine that a municipal lien in § 5-7-80 could not be collected using the procedures in Title 12, Chapter 51 where the county does not have a contract with the municipality to collect the municipal lien in § 5-7-80. Additionally, as stated above, we overrule our prior opinions to the extent our prior opinions, specifically Op. S.C. Att’y Gen., 2014 WL 2757535 (S.C.A.G. June 2, 2014) are inconsistent with this opinion. The “any applicable fees” in § 12-43-350(9) we interpret narrowly to mean fees directly applicable to the real property taxes unless there is separate statutory authority to place a fee or lien on the property tax bill. Nevertheless, we generally defer to an administrative agency’s interpretation of the statutes it administers as long as its interpretation is reasonable. See, e.g., Op. S.C. Att’y Gen., 2005 WL 2250210 (S.C.A.G. September 8, 2005). Thus, we would defer our determination to the South Carolina Department of Revenue if it administers a “broad” interpretation of § 12-43-350(9) pursuant to its authority. See S.C. Code Ann. § 12-4-10 et seq. Moreover, this Office is only issuing a legal opinion based on the current law at this time and the information as provided to us. This opinion is not an attempt to comment on any pending litigation or criminal proceeding. Until a court or the General Assembly specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. This opinion only addresses some of the sources in the subject area, but we can address other authority or additional questions in a follow-up opinion. Additionally, you may also petition the court for a declaratory judgment, as only a court of law can interpret statutes and make such determinations. See S.C. Code Ann. § 15-53-20. If it is later determined otherwise, or if you have any additional questions or issues, please let us know.

Sincerely,



Anita (Mardi) S. Fair  
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REVIEWED AND APPROVED BY:



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