



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

August 31, 2020

Samuel T. Barber, Esq.
Board Attorney, DeSoto County Board of Supervisors
Post Office Box 346
Hernando, Mississippi 38632

Re: Collection of Delinquent Garbage Collection Fees

Dear Mr. Barber:

The Office of the Attorney General is in receipt of your request for the issuance of an official opinion.

Question Presented

1. May the DeSoto County Board of Supervisors (“the Board”) allow its third-party vendor to suspend garbage collection services to households that have delinquent accounts, in an effort to bring those accounts current?
2. May the county refuse to issue car tags to individuals who have delinquent garbage collection accounts with the third-party vendor?

Background

The Board has contracted with a third-party vendor for garbage collection services in the county. Pursuant to the contract, the third-party vendor also assesses and collects the fee for garbage collection services.

The contract was awarded pursuant to a Request for Bids (“RFP”), which included, among its specifications, that the vendor awarded the contract could not suspend or stop garbage collection services by reason of delinquent accounts.

Brief Response

1. In response to your first question, we find no authority for a county or third party-vendor that has undertaken billing for garbage collection services, pursuant to a contract with the county, to suspend garbage collection services to households with delinquent accounts.

See MS AG Op., *Hemphill* at *1 (Apr. 23, 2010). The statutory remedies by which a third-party vendor and/or the county may seek collection upon those delinquent accounts are set forth below.

2. In response to your second question, a county may refuse to issue or renew car tags based on the existence of a delinquent account, in accordance with Mississippi Code Annotated Section 19-5-22.

Applicable Law and Discussion

As acknowledged by your request, the Board has the obligation “to provide for the collection and disposal of garbage” pursuant to Mississippi Code Annotated Section 19-5-17. To defray the costs associated with that statutory duty, the county may levy an ad valorem tax not to exceed four (4) mills on all taxable property within the area served by the county garbage collection or disposal system, pursuant to Section 19-5-21(1)(a), except as otherwise provided therein at subsections (b), (c), (d) and (g).

Section 19-5-21(2) authorizes the Board to assess and collect fees or charges to further defray the costs of operating its garbage collection system, stating, in part:

The board of supervisors may assess and collect the fees or charges from each single family residential generator of garbage and/or rubbish. The board of supervisors also may assess and collect the fees from each industrial, commercial and multifamily residential generator of garbage or rubbish for any time period that the generator has not contracted for the collection of garbage and rubbish that is ultimately disposed of at a permitted or authorized nonhazardous solid waste management facility.

Section 19-5-21(6) empowers the Board to borrow money for the purposes of defraying the expenses of the system in anticipation of a tax levied pursuant to Section 19-5-21(1)(a), revenues resulting from the assessment of fees pursuant to Section 19-5-21(2), or a combination of both.

Special fund monies, which are not otherwise required by law to be dedicated for use for a particular purpose, may also be used to defray the costs of the county garbage collection or disposal system, pursuant to Section 19-5-21(7). *See* MS AG Op., *Webb* at *3 (Jan. 29, 2016); MS AG Op., *Haque* at * 1 (Aug. 2, 1996).

Finally, the Board may spend general fund monies in accordance with Section 19-5-109. These monies, however, may defray only those unanticipated costs of providing garbage collection services and offset shortfalls in anticipated revenue. MS AG Op., *Webb* at *5 (Jan. 29, 2016); MS AG Op., *Hall* at *2 (Aug. 30, 2012) (citing MS AG Op., *Hammack* (Sept. 28, 1994)). General funds should not be budgeted for these purposes. *Id.*

Terminating service to households with delinquent accounts owed to the county, or a third-party vendor that bills for those services pursuant to a contract with the county, is not an option available to the Board to defray the costs and expenses incurred by providing those services. It is, therefore,

our opinion that neither the county, nor a third party-vendor that bills for garbage collection services pursuant to a contract with the county, may suspend or terminate garbage collection services to households with delinquent accounts. *See* MS AG Op., *Hemphill* at *1 (Apr. 23, 2010); *see also* MS AG Op., *McNeal* *2 (Oct. 11, 2013).

Statutory remedies by which counties may pursue the payment of delinquent garbage collection accounts include (1) the initiation of a civil action, pursuant to Section 19-5-17; (2) collection by a county official or by contract with a public or private entity, pursuant to Section 19-5-18; (3) imposition of a lien upon the property, pursuant to Section 19-5-22(2); (4) withholding the issuance of a car tag, pursuant to Section 19-5-22; (5) levy of the garbage collection fees as a special assessment against the property in lieu of lien, pursuant to Section 19-5-22(5); and (6) filing a lis pendens notice against the property owner, pursuant to Section 11-47-1 *et seq.* *See* MS AG Op., *Webb* *2–4 (Jan. 29, 2016) (citing MS AG Op., *Turnage* at *2–3 (June 2, 2006)); MS AG Op., *Hemphill* at *1 (Apr. 23, 2010); MS AG Op., *Cadle* at *1–2 (Oct. 10, 2008).

With regard to withholding issuance of car tags, the third-party vendor, with which the county has contracted for the billing and/or collection of fees for garbage collection services, is obligated by Section 19-5-18(2) to provide monthly notice to the Board of any unpaid fees assessed under Section 19-5-21. Section 19-5-22 thereafter provides, in relevant part:

(4)(a) The board of supervisors may notify the tax collector of any unpaid fees assessed under Section 19-5-21 within ninety (90) days after the fees are due. Before notifying the tax collector, the board of supervisors shall provide notice of the delinquency to the person who owes the delinquent fees and shall afford an opportunity for a hearing, that complies with the due process protections the board deems necessary, consistent with the Constitutions of the United States and the State of Mississippi. The board of supervisors shall establish procedures for the manner in which notice shall be given and the contents of the notice; however, each notice shall include the amount of fees and shall prescribe the procedure required for payment of the delinquent fees. The board of supervisors may designate a disinterested individual to serve as hearing officer.

(b) *Upon receipt of a delinquency notice, the tax collector shall not issue or renew a motor vehicle road and bridge privilege license for any motor vehicle owned by a person who is delinquent in the payment of fees unless those fees in addition to any other taxes or fees assessed against the motor vehicle are paid. Payment of all delinquent garbage fees shall be deemed a condition of receiving a motor vehicle road and privilege license tag.*

(c) The tax collector may forward the motor vehicle road and privilege license tag renewal notices to the designated county official or entity that is responsible for the billing and collection of the county garbage fees. The designated county official or the billing and collection entity shall identify those license tags that shall not be issued due to delinquent garbage fees. The designated county official or the billing and collection entity shall stamp a message on the license tag renewal notices that the tag will not be renewed until delinquent garbage fees are paid. The designated

county official or the billing and collection entity shall return the license tag notices to the tax collector before the first of the month.

Miss. Code Ann. § 19-5-22 (emphasis added).

Based upon Sections 19-5-18(2) and 19-5-22(4), it is the opinion of this office that the issuance and renewal of a motor vehicle road and bridge privilege license—a car tag—may be withheld from an individual who is delinquent in the payment of his or her garbage collection fees, regardless of whether those fees are assessed and collected by the county or a third-party vendor with which the county has contracted for the billing and collection of garbage collection fees.

If this office may be of any further assistance to you, please do not hesitate to contact us.

Sincerely,

LYNN FITCH, ATTORNEY GENERAL

By: */s/ Phil Carter*

Phil Carter
Special Assistant Attorney General

OFFICIAL OPINION