



Lynn Fitch
ATTORNEY GENERAL
OPINIONS AND POLICY

November 23, 2022

Sharon Nash Barnett
Harrison County Tax Collector
1801 23rd Avenue
Gulfport, Mississippi 39502

Re: Errors in the Apportionment of Assessed Property Values

Dear Ms. Barnett:

The Office of the Attorney General has received your request for an official opinion.

Background

In your request, you provide the following background:

In June 2022, [the Mississippi Power Company (“MPC”)] submitted an assessment, with incorrect apportionment, of its Public Utility Property to [the Department of Revenue (“DOR”)]. After review and passage of the 20-day period for objection, DOR approved the assessment rolls and forwarded such to the clerks of the county boards of supervisors, including Harrison County, who then filed the assessment rolls and subsequently delivered the same to tax collectors. [See] Miss. Code Ann. §§ 27-35-313 and 27-35-315.

In late September 2022, and after the taxing districts had approved their individual budgets, MPC discovered it had made an error in its apportionment due to the implementation of a new enterprise-wide software platform. More specifically, while the total assessment of its public utility property within Harrison County was correct, such assessment contained errors in apportioning value between taxing districts within Harrison County . . . [and] across all the counties in which MPC owns property. . . .

Upon learning of this error, MPC notified DOR, which then placed the tax collectors in each county on notice that an error in the apportionment of MPC taxes had occurred and a solution was being sought. MPC, in fact, corrected its error and sent the information to DOR. . . . MPC, with the knowledge of both DOR and the

Office of the State Auditor, forwarded the new, corrected apportionment to the counties in which MPC owned property. . . .

Questions Presented

1. Is the Tax Collector authorized to correct known errors in the apportionment of the assessed value of property taxed pursuant to Sections 27-35-301 *et seq.*, so that each municipality and taxing district within Harrison County receives its just share of taxes?
2. If the Tax Collector is not authorized to correct such errors, is the Mississippi Department of Revenue authorized and/or obligated to do so?
3. If such errors cannot be corrected by the tax collector or DOR, is a court of competent jurisdiction authorized to make such correction through injunctive relief?

Brief Response

1. A county tax collector has no authority to unilaterally correct errors in the apportionment of assessed value of property assessed by the Mississippi Department of Revenue and apportioned pursuant to Section 27-35-309.
2. The Mississippi Department of Revenue assesses public service corporations pursuant to Sections 27-35-301 *et seq.*, and has the authority to determine whether a public service company has failed, refused, or neglected to render the required apportionment of assessed values. However, because this is a mixed question of fact and law and asks about the authority of another public official, we cannot opine on the obligations of the Mississippi Department of Revenue.
3. This office does not opine on the validity of a claim or the appropriate relief that should be given. Whether a court of competent jurisdiction has the authority to grant injunctive relief in your particular situation is a mixed question of fact and law on which this office cannot opine.

Applicable Law and Discussion

As an initial matter, Section 7-5-25 authorizes the Attorney General to issue official opinions to various public officials and bodies “upon any question of law relating to their respective offices.” Official opinions are not issued to advise one public officer about another public officer’s duties and responsibilities. MS AG Op., *Criswell* at *1 (Aug. 26, 2016). Official opinions neither validate nor invalidate past actions. *Id.* Further, this office does not interpret or approve local ordinances or agreements. MS AG Op., *Hill* at *1 (Sept. 30, 2021). Because DOR is the state assessor for public service corporations under Sections 27-35-301 *et seq.*, any discussion of the assessment process necessarily includes the statutory authority of DOR. However, we offer no opinion on the obligations of DOR in your specific situation, the validity of any action previously taken by the County or DOR, or the proposed agreement between the County, municipalities, and taxing districts. We offer the following for future guidance.

Section 112 of the Mississippi Constitution requires taxation to “be uniform and equal throughout the State” and further provides that “[t]he Legislature may provide for a special mode of valuation and assessment for . . . corporate property [and property belonging to corporations] not situated wholly in one county.” Based on the facts as provided, we understand that MPC is a public service corporation within the meaning and contemplation of Section 112 of the Mississippi Constitution and its implementing statutes, Sections 27-35-301 *et seq.*, of the Mississippi Code.

DOR is the state assessor for public service corporations and is statutorily required to assess the property of “electric power and light companies and other public service corporations liable to taxation in the state, affixing its value for the purposes of ad valorem taxation so that such property shall bear its just proportion of taxation, taking into consideration the value of the franchise and the capital engaged in the business in this state. . . .” Miss. Code Ann. § 27-35-301. Section 27-35-303 requires owners and operators of public service companies owning property in more than one county to file property schedules with DOR which, in turn, is required to assess all property of these companies in accordance with Section 27-35-309. DOR, previously the State Tax Commission, has the “exclusive authority and power” to assess public service corporations whose property is located in more than one county. *Mississippi Power Co. v. City of Laurel*, 28 So. 2d 750, 752 (Miss. 1947), *sugg. of error overruled*, 29 So. 2d 313 (Miss. 1947).

With respect to the assessment process, Section 27-35-309 provides, in part:

(1) The Department of Revenue shall, if practicable, on or before the first Monday of June of each year, make out for each person, firm, company or corporation listed in Section 27-35-303, Mississippi Code of 1972, an assessment of the company's property, both real and personal, tangible and intangible. The Department of Revenue shall apportion the assessment of value of each company's property according to the provisions of this article, except as provided in subsection (3) of this section, as follows:

(a) When the property of such public service company is located in more than one (1) county in this state, the Department of Revenue shall direct the company to apportion the assessed value between the counties and municipalities and all other taxing districts therein, in the proportion which the property located therein bears to the entire value of the property of such company as valued by the department, so that to each county, municipality and taxing district therein, there shall be apportioned such part of the entire valuation as will fairly equalize the relative value of the property therein located to the whole value thereof.

* * * * *

The assessment roll shall contain all the property of any such public service company, railroad, person, firm or corporation and the value thereof, and so made that each county, municipality, and taxing district shall receive its just share of taxes proportionately to the amount of property therein situated.

(2)(a) The assessment when made shall remain open for twenty (20) days in the Office of the Department of Revenue, and be for such time subject to the objections thereto which may be filed with the Executive Director of the Board of Tax Appeals. . . .

(b) The apportionment of the assessed value as required by this section shall be filed with the Department of Revenue by such public service company on or before the last day of the objection period established in paragraph (a) of this subsection (2). If such company shall fail, refuse or neglect to render the apportionment of assessed value as required by this section, such company shall be subject to the penalties provided for in Section 27-35-305. . . .

Section 27-35-305 provides:

If any company, corporation, firm or person, who is required by law to render schedules of its, their or his property to the Department of Revenue, as provided by Section 27-35-303, Mississippi Code of 1972, for the purposes of assessment for taxation, shall fail, refuse or neglect to render the schedules, as required, the Department of Revenue may impose on such company, corporation, firm or person a penalty of ten percent (10%) of the assessment as computed by the department, and in case of such failure, refusal or neglect, the department shall make out such schedules from the best information obtainable.

As soon as the 20-day deadline for objections has passed and any objections have been disposed of, “the assessment rolls shall be approved by the Department of Revenue, and a certified copy of the assessment rolls shall be sent immediately to the clerks of the board of supervisors of the respective counties, who shall file and preserve it as a record.” Miss. Code Ann. § 27-35-313. The chancery clerk, as the clerk of the board of supervisors, then makes a copy of the assessment rolls and must “certify and deliver the same to the tax collector which when done shall have the same force and effect as other certified copies of tax rolls placed in the hands of the tax collector.” Miss. Code Ann. § 27-35-315.

In summary, DOR assesses public service corporations pursuant to Sections 27-35-301 *et seq.*, and these assessments must apportion “the entire valuation as will fairly equalize the relative value of the property therein located to the whole value thereof.” Miss. Code Ann. § 27-35-309(1)(a). Under Sections 27-35-309(2)(b) and 27-35-305, it is DOR that has the authority to determine whether a public service corporation has failed, refused, or neglected to render the required apportionment of assessed values, and in such cases, DOR may impose a penalty and shall make out such schedules from the best information obtainable. The above cited statutes provide no mechanism for the county tax collector to independently alter or amend the apportionment of the assessed value approved by DOR pursuant to Section 27-35-309. Thus, it is the opinion of this office that absent a directive from DOR or a judicial determination authorizing such, the county tax collector has no authority to substitute an alternate apportionment for the apportionment approved by DOR.

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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/ Beebe Garrard*

Beebe Garrard
Special Assistant Attorney General

OFFICIAL OPINION