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Opinion No. 06-032

Private Act Authorizing City of LaFollette to Assess Cleanup Costs Against Real Property Owners

QUESTION

Pursuant to Chapter 46 of the Private Acts of 2003, as amended by Chapter 25 of the Private Acts of 2005, if a property owner in the City of LaFollette is found to be in violation of the city ordinance relative to the growth of weeds, grass, brush, obnoxious vegetation and other rubbish control, and the city cleans the property and assesses the cost against the property, can the property be sold for non-payment of this assessment in the same manner as non-payment of the property taxes?

OPINION

Yes. Chapter 46 of the Private Acts of 2003, as amended by Chapter 25 of the Private Acts of 2005, authorizes the City of LaFollette to bill such costs assessed by the city as a designated item on the ad valorem tax notice issued by the city and to collect that assessment in the same manner as other city taxes are collected. The surrounding provisions of Chapter 46 make clear that the city's authority to collect delinquent taxes includes the authority to file delinquent tax suits whereby the assessed property is sold and the proceeds used to pay the assessment. This authority also exists for municipalities generally under Tenn. Code Ann. § 6-54-113(c).

ANALYSIS

As amended by Chapter 25 of the Private Acts of 2005, Chapter 46 of the Private Acts of 2003, relative to the charter of the City of LaFollette, contains the following provisions regarding real property taxes:

> Section 10. Property Taxes. All property subject to taxation shall be subject to the property tax levied by the city. The Council will use county assessments except property assessed by the Tennessee Regulatory Authority.
>
> Section 11. Tax Levy. The Council shall make a tax levy, expressed as a fixed rate per one hundred dollars ($100) of assessed

valuation, coincidental with the adoption of the appropriation ordinance. In event of the Council's failure to do so, the prior year's tax rate shall continue in effect.

Section 12. Tax Due Dates and Tax Bills. (a) The due dates of property taxes shall be October 1 each year, and provision may be made for equal semiannual installments. The city shall send tax bills to taxpayers, showing the assessed valuations, amounts of taxes due, tax due dates, and information as to delinquency dates and penalties. Failure to send tax bills shall not, however, invalidate any tax, penalty, or interest thereon. Property taxes shall become delinquent on March 1, at which time a penalty shall be added for each month thereafter and interest for each month or fraction thereof until paid. On and after the date when such taxes become delinquent, the tax records of the city shall have the force and effect of a judgment of a court of record. The penalty and interest referenced herein shall be in accordance with state law.

(b) In addition to the information required to be on tax bills in accordance with subsection (a), any reasonable costs assessed by the city for violations of ordinances properly adopted by the city relative to the growth of weeds, grass, brush, obnoxious vegetation and other rubbish control measures may be billed as a designated item on the ad valorem tax notice issued by the city and collected in the same manner as other city taxes are collected.

Section 13. Delinquent Taxes. The Council may provide by ordinance for the collection of delinquent real property taxes by the City Clerk as provided by state law, by the City Attorney acting in accordance with state law providing for the collection of delinquent city or county taxes, by garnishment, by distraint, by suits in chancery, or by any two (2) or more of the foregoing methods, or by the use of any other available legal processes and remedies. If not otherwise collected, the City Attorney, or other attorney designated by the Council, shall file suit for collection of all delinquent taxes in accordance with state law. Delinquent personal property taxes shall be collected by distress warrants issued by the City Clerk and placed in the hands of the Sheriff for collection or collected in any lawful manner as prescribed by state law.

Section 14. Taxes Not to be Excused. No officer or employee of the city shall have the authority to excuse taxes,

> penalties, interest, special assessments, or other charges due the city, but errors may be corrected when authorized by the Council.

2003 Tenn. Priv. Acts 46 § 1 (as amended by 2005 Tenn. Priv. Acts 25 § 1).

Chapter 25 of the Private Acts of 2005 added the language found in Section 12(b) above relative to assessments for property cleanup costs. Section 12(b) authorizes the City of LaFollette to include a property's cleanup costs on the ad valorem tax notice issued by the city and to collect these costs in the same manner as it collects other city taxes. The obvious intent of the Legislature in including this provision among the private act's property tax provisions is that the cleanup costs will be assessed and collected in the same manner as the city collects its city property taxes. Pursuant to Section 13, the city's authority to collect city property taxes includes the authority to file suit for collection of delinquent real property taxes in accordance with the state's general laws governing such collection. Among other provisions, these laws authorize the court to order a sale of the property to satisfy the taxes due on the property. *See* Tenn. Code Ann. §§ 67-5-2501 to -2515 (2003). The General Assembly has granted similar authority to all municipalities through Tenn. Code Ann. § 6-54-113. Under subsection (c), the municipal tax collector or county trustee may collect these costs "at the same time and in the same manner as property taxes are collected." *See also* Tenn. Code Ann. § 5-1-115 (granting similar authority to counties). Accordingly, if a property owner fails to pay cleanup costs assessed against the property, the City of LaFollette could collect the assessment by filing suit in this manner.

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