

LAW OFFICES

HULSEY, OLIVER & MAHAR, LLP

200 E. E. BUTLER PARKWAY

P.O. BOX 1457

GAINESVILLE, GEORGIA 30503

JULIUS M. HULSEY
SAMUEL L. OLIVER
JAMES E. MAHAR, JR.
R. DAVID SYFAN
JANE A. RANGE
JOSEPH D. COOLEY, III
THOMAS L. FITZGERALD
THOMAS D. CALKINS
ARBOYT S. HAYES, JR.

E. D. KENYON
(800-1981)

TELEPHONE
(770) 532-6312
TELECOPIER
(770) 531-9230

September 19, 2000

VIA FACSIMILE & U.S. MAIL

Mr. Harold Cook
Sole Commissioner
Union County Courthouse
114 Courthouse Street, Box 1
Blairsville, GA 30512

Re: Union County Audit relative to Union County Tax Commissioner's Office

Dear Mr. Cook:

ENCLOSURES:

1. O.C.G.A. § 48-5-141
2. O.C.G.A. § 48-5-145

Receipt is acknowledged of your letter asking me to review the Union County audit and to issue an opinion as to those matters covered by the audit as it relates to the Union County Tax Commissioner's office.

According to Bates, Carter & Company, a reportable condition involves matters coming to the County's auditors relating to significant deficiencies in the design or operation of the internal control over financial reports that, in the auditors judgment, could adversely affect Union County, Georgia's ability to record, process, summarize and report financial data consistent with the assertions of management in financial statements. In this connection, the auditors reported four reportable conditions. While the reportable conditions are significant in regards to the internal control over financial reporting, they may not be a violation of law. On the other hand, \$30,000.00 of funds collected prior to December 31, 1998, that remain undisbursed would appear to be a violation of O.C.G.A. § 48-5-141. Generally, it is my understanding that tax commissioners shall every two weeks pay over to the proper county officials, county taxes including interests, penalties or other amounts due to the county which they have collected during the past two weeks.

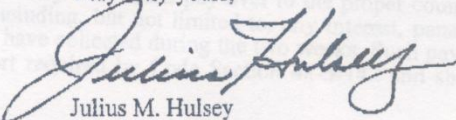
These issues are matters which I feel should be discussed with the tax commissioner directly. In the event a satisfactory understanding can not be obtained, then I would refer the matter to the district attorney in order to determine if any criminal laws have been violated.

Mr. Harold Cook
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Further, the failure or refusal of any tax commissioner to make payment to the county, required by law could subject the tax commissioner to removal from office. In this connection, see O.C.G.A. § 48-5-145.

If you have any further questions, please feel free to advise accordingly.

Very truly yours,



Julius M. Hulsey

Enclosures

JMH:mrt/8587/3802/W052403

JUDICIAL DECISIONS

OPINIONS OF THE ATTORNEY GENERAL

RESEARCH REFERENCES

Am. Jur. 2d -72 Am. Jur. 2d, State and Local Taxation, § 661

S.W.2d -844, 13, Taxation, § 661, 207

48-5-141. Periodic payment to proper officials of money collected by tax collector or commissioner, sheriff, or constable.

(a) The tax collector or tax commissioner, sheriff, and constables in each county having a population of 30,000 or more shall each week pay over to the proper county officials as required by law the county taxes including, but not limited to, any interest, penalties, or other amounts due the county which they have collected during the week. Such payment shall be made at the same time as the report required by Code Section 48-5-142 and shall be for the period covered by the report.

(b) The tax collector or tax commissioner, sheriff, and constables in each county having a population of less than 30,000 shall every two weeks pay over to the proper county officials as required by law the county taxes including, but not limited to, any interest, penalties, or other amounts due the county which they have collected during the two weeks. Such payment shall be made at the same time as the report required by Code Section 48-5-142 and shall be for the period covered by the report.

(Ga. L. 1890-91, p. 105, § 1; Civil Code 1895, § 955; Civil Code 1910, § 1222; Ga. L. 1925, p. 81, § 3; Code 1933, §§ 92-4910, 92-4913; Code 1933, § 91A-1340, enacted by Ga. L. 1978, p. 309, § 2; Ga. L. 1984, p. 962, § 1; Ga. L. 1986, p. 10, § 48.)

JUDICIAL DECISIONS

Fiduciary relationship not created. - A tax commissioner who pled guilty to violations of this section and §§ 48-5-142 and 48-5-148 was not a fiduciary of the county for purposes of deciding bankruptcy dischargeability. These sections created a bailor/bailee relationship, and did not designate the commissioner as a fiduciary, or impose fiduciary-like duties. *Utica Mut. Ins. Co. v. Johnson*, 203 Bankr. 1017 (Bankr. S.D. Ga. 1997).

OPINIONS OF THE ATTORNEY GENERAL

Distribution of accrued interest. - Interest accrued on delinquent taxes after collection by the tax commissioner but before they are remitted to the state or locality should be distributed to the same political subdivision for which the underlying tax, penalty and interest were collected from the taxpayer. 1987 Op. Atty Gen. No. U87-6.

RESEARCH REFERENCES

Am. Jur. 2d. - 72 Am. Jur. 2d, State and Local Taxation, § 881.

C.J.S. - 84 C.J.S., Taxation, §§ 663, 667.