

Opinion No. 2012-009

May 2, 2012

Mr. Artee Williams, Director
Department of Workforce Services
Post Office Box 8040
Little Rock, Arkansas 72203-8040

Dear Mr. Williams:

This is my opinion on your question about when the Department of Workforce Services (the “Department”) must pay a circuit clerk’s costs and fees to file a certificate of assessment.

The Department of Workforce Services Law, A.C.A. §§ 11-10-101 to -1018 (Repl. 2002 and Supp. 2011), requires employers to pay contributions to the Unemployment Compensation Fund. A.C.A. § 11-10-701 (Repl. 2002). The law requires the Department to assess an employer’s delinquent contributions and certify the delinquent amounts to the circuit clerk. A.C.A. § 11-10-720(a) (Repl. 2002). Certificates of assessment amount to judgments, bear interest, and may result in the sheriff’s levy on the employer’s property. *Id.*

The law provides that “[n]o deposits of advance costs shall be required of the [Department] in any suit or proceedings. . . .” A.C.A. § 11-10-301(f)(2) (Supp. 2011). You state that “all circuit clerks . . . bill the Department for all costs associated with the filing of Certificates of Assessment. . . .” I understand your request to mean that circuit clerks do not require the Department to pay costs or fees when certificates of assessment are filed; rather, the clerks issue statements of account that are payable later.

Your request indicates that the Pulaski County circuit clerk, in particular, interprets the statutory prohibition on “advance costs” to mean merely that the Department need not pay costs and fees at the time of filing. You, on the other

hand, interpret the law to mean that the Department need not pay until the delinquent contributions are collected.

The issue thus is how to construe the term “advance costs” contained in A.C.A. § 11-10-301(f)(2). In other words, in advance of what event, exactly, may costs not be required of the Director: the filing of a certificate of assessment, or the collection of delinquent contributions?

RESPONSE

In my opinion, the statute means that Department cannot be required to pay costs and fees for filing a certificate of assessment at the time of filing, as a condition to the clerk’s accepting the filing. But the statute does not mean, in my opinion, that the Department is liable to pay such amounts only if it ultimately collects the delinquent contributions.

Statutes are construed just as they read, giving the words their ordinary and usually accepted meanings, and legislative intent is gathered from the plain meaning of the language used. *E.g.*, *Magness v. State*, 2012 Ark. 16, *3-*4, ___ S.W. 3d ___, 2012 WL 149765.

A general statute, not part of the Department of Workforce Services Law, provides that “[n]o action shall be entered upon the docket of any court . . . , except in . . . cases where the state is plaintiff, until the fees for entering the case upon the docket . . . are paid. . . .” A.C.A. 16-58-101(a) (Repl. 2005). This statute establishes a general rule that a plaintiff must pay fees in advance of filing; the clerk’s acceptance of an action is contingent on the plaintiff’s payment of applicable fees. The exception excuses the state from paying fees in advance of filing. But the statute does not purport to excuse the state from eventually paying fees that are otherwise due; it merely addresses timing of payment.

Likewise, the plain language of the statute that excuses the Department from paying “deposits of advance costs” addresses the timing of payment but does not purport to make payment contingent on later events.¹

¹ You did not inquire, and this opinion should not be interpreted as making any statement, about precisely what costs or fees are payable in connection with the Department’s filing of a certificate of assessment under A.C.A. § 11-10-720.

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Assistant Attorney General J. M. Barker prepared this opinion, which I approve.

Sincerely,

DUSTIN McDANIEL
Attorney General

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