



STATE OF ARKANSAS
THE ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2015-009

April 2, 2015

The Honorable Charlene Fite
State Representative
Post Office Box 7300
Van Buren, Arkansas 72956-0262

Dear Representative Fite:

You have requested my opinion on several questions concerning A.C.A. § 14-20-108, which addresses volunteer fire department dues. As background for your questions, you state that an election was held on July 9, 2013, in the unincorporated part of Washington County served by the Prairie Grove-Farmington Rural Fire Association (“Association”) on the question of the levy of the Association’s dues on each residence and business with an occupiable structure.¹ You report that the voters approved the measure, which also provided that the dues were to be listed annually on real property tax statements and collected in the same manner as ad valorem taxes.²

¹ The election was held pursuant to A.C.A. § 14-20-108(a)(1)(B)(i)(a) (Repl. 2013), which provides as follows:

When a quorum court receives a request for the levy of volunteer fire department dues and the request has been signed by the fire chief and the chair and secretary of the board of directors, if any, of a volunteer fire department and filed with the county clerk, the quorum court by ordinance shall call for an election on the issue of the levy of the volunteer fire department dues on each residence and on each business having an occupiable structure.

² Section 14-20-108 provides as follows regarding dues collection after voter approval:

If the levy is approved by a majority of those voting on the issue, the dues shall be listed annually on real property tax statements and collected by the county collector at the same time and in the same manner as real property taxes.

Id. at (a)(1)(B)(i)(c)(1).

With this background in mind, you ask:

1. Is the non-payment of fire association dues collected by the county collector handled in the same manner as the non-payment of property taxes? For instance:
 - (a) If a property owner in a fire association district pays his assessed property taxes but does not pay the fire association dues to the county collector, may the county collector record his property taxes as being delinquent?
 - (b) If the county collector can record the property taxes as being delinquent, may the county place a lien on the property in an attempt to collect the delinquent fire association dues?
 - (c) If a lien may be placed on the property, can the property be turned over to the Land Commissioner and sold at auction?
2. If the answer to Question 1 is no, what is the proper manner for a county collector or fire association to collect delinquent dues?

RESPONSE

With regard to Question 1(a), if recording the taxes as delinquent would mean the property is subject to forfeiture proceedings for nonpayment, I believe the answer is “no.” The answer to Question 1(b) is “no,” in my opinion. Question 1(c) is therefore moot. It is my opinion in response to Question 2 that delinquencies are to be reported to the Association for collection and that the Association may enforce collection through court proceedings.

DISCUSSION

This office has previously issued several opinions addressing the available remedies for nonpayment of volunteer fire department dues. The following

excerpt reflects the opinions' conclusion that the legislature has not clearly provided for the collection of delinquent dues through forfeiture proceedings:

The language requiring collection of the dues “at the same time and in the same manner” as real property taxes^[3] likely includes the 10% penalty under A.C.A. § 26-36-202(b) that applies with respect to delinquent real property taxes....***This phrase cannot, however, in my opinion, reasonably be construed to include the certification procedures under A.C.A. § 26-37-101 et seq....These procedures involve the forfeiture and sale of tax-delinquent property to enforce the state’s lien for taxes.*** The lien arises from the time state taxes are assessed. *See* A.C.A. § 26-34-101(b) (Repl. 1997) (“[a]ll taxes assessed shall be a lien upon and bind the property assessed from the first Monday of January of the year in which the assessment shall be made....”) The legislature has, similarly, given liens for taxes in favor of municipal improvement districts (A.C.A. § 14-90-805(a)) and other various types of improvement districts. *See, e.g.,* A.C.A. § 14-92-228 (suburban improvement districts), 14-93-119 (property owners’ improvement districts), 14-123-409 (drainage improvement districts). Additionally, the legislature has clearly identified those instances in which collection may be enforced through certification to the state for redemption or sale. *See* A.C.A. § 14-92-232 (suburban improvement districts). ***Unlike these taxes and assessments, however, volunteer fire department dues do not become a lien against the property.*** Nor is there any other language in A.C.A. § 14-20-108 suggesting that the state certification procedures apply. ***Although there was previous authority under § 14-20-108 for imposing a lien, a subsequent amendment removed this authority.*** *See* Acts 2001, No. 984. Had the legislature intended for the certification procedures to apply in case of delinquent volunteer fire department dues, it could easily have so indicated.⁴

Section 14-20-108 has not been amended to give a lien for volunteer fire department dues. I agree with the previous opinions of this office that the

³ A.C.A. § 14-20-108(a)(1)(B)(i)(c)(1), *supra* n. 2.

⁴ Op. Att’y Gen. 2004-224 (emphases added) (internal citation omitted). *See also* Op. Att’y Gen. Nos. 2008-141; 2002-032.

legislature has not clearly expressed its intent for the collection of delinquent dues to be enforced through forfeiture and sale proceedings.

It is therefore my opinion that the answer to Question 1(a) above is “no” if recording the taxes as delinquent would subject the property to forfeiture proceedings for nonpayment.

The answer to Question 1(b) is “no,” in my opinion, for the reasons explained above. This renders moot Question 1(c).

With regard to Question 2 concerning the proper manner of collecting delinquent dues, delinquencies are to be reported to the Association for collection and the Association may pursue collection through court proceedings.⁵ I cannot opine further in this regard absent legislative clarification.⁶

Deputy Attorney General Elisabeth A. Walker prepared the foregoing opinion, which I hereby approve.

Sincerely,



LESLIE RUTLEDGE
Attorney General

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⁵ A.C.A. § 14-20-108(a)(1)(B)(i)(c)(2)(A) and (B).

⁶ *Accord* Op. Att’y Gen. 2008-141 (opining that forfeiture proceedings are unavailable for nonpayment and observing that legislative clarification will be necessary to address the matter of other available remedies).