Tax Collector -- Sale of Tax Certificates

Number: INFORMAL

Date: June 16, 2014

The Honorable Doug Belden
Hillsborough County Tax Collector
601 East Kennedy Boulevard
14th Floor
Tampa, Florida 33602-4931

Dear Mr. Belden:

You have asked this office to determine whether section 197.432, Florida Statutes, authorizing a tax collector to sell tax certificates, prescribes detailed methods for conducting tax certificate sales. This office has been advised that your question involves a situation which is currently the subject of litigation and, accordingly, this office will decline to offer a formal opinion at this time out of deference to the judiciary.[1]

It would appear, however, that your question involves a determination of whether section 197.432, Florida Statutes, provides a tax collector discretion in the manner of conducting tax certificate sales. In Attorney General Opinion 2004-27, this office discussed the methodology of conducting a tax certificate sale pursuant to section 197.432, Florida Statutes, which specifically authorizes a tax collector to conduct the sale of tax certificates by electronic means and requires that such electronic means comply with the procedures provided in Chapter 197. The opinion recognized that the chapter does not specifically set forth how the tax collector is to implement the sale of tax certificates by electronic means.

This office observed the well-founded principal that the grant of a general power to a public officer or board, unaccompanied by definite directions as to how the power or authority is to be exercised, implies a right to employ the means and methods necessary to comply with the statute.[2] Recognizing that this office is unable to prescribe a method or procedure which must be followed in the electronic sale of tax certificates, it was concluded that the tax collector must take reasonable steps to ensure that the statute's requirements are met. The method of doing so rests in the sound discretion of the tax collector, who may effectively accomplish such by any reasonable means which comply with the procedures set forth in Chapter 197, Florida Statutes.[3]

I trust that these informal comments and direction to the previous opinion of this office will be of assistance to you in resolving the question you have raised.

Sincerely,

Lagran Saunders
Assistant Attorney General

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[1] *See* Frequently Asked Questions, IV. When Opinions Will Not Be Issued (in order not to intrude upon the constitutional prerogative of the judiciary, opinions generally are not rendered on questions pending before the courts), accessible on the web at www.myfloridalegal.com.

[2] *See* Op. Att'y Gen. Fla. 2004-27, citing Op. Att'y Gen. Fla. 79-59 (1979); and *In re Advisory Opinion to the Governor*, 60 So. 2d 285 (Fla. 1952) (well-settled rule in Florida is that if a statute imposes a duty upon a public officer to accomplish a stated governmental purpose, it also confers by implication every particular power necessary or proper for complete exercise or performance of the duty that is not in violation of law or public policy).

[3] The specific question in Op. Att'y Gen. Fla. 04-27 (2004) involved how the tax collector would ensure that a person or entity who is prohibited from participating in a tax certificate sale being conducted electronically where the identity of the person or entity is not readily apparent could not participate in the sale.