

STATE OF MISSISSIPPI



JIM HOOD
ATTORNEY GENERAL

OPINIONS
DIVISION

July 7, 2017

Shelton Vance, County Administrator
Madison County
P.O. Box 608
Canton, MS 39046

Re: Distribution of additional privilege tax payments in accordance with Miss. Code Ann. Section 27-19-11

Dear Mr. Vance:

OFFICIAL OPINION
Attorney General Hood is in receipt of your request for an official opinion, and it has been assigned to me for research and reply.

Background and Questions Presented

Your request relates to an earlier opinion¹ this office issued to you regarding the distribution of additional privilege tax payments paid to Madison County pursuant to Miss. Code Ann. Section 27-19-11. Your current request asks this office to confirm your understanding of the earlier opinion and asks whether additional privilege tax payments paid in accordance with Section 27-19-11 should be distributed to the Madison County School District and Madison County's general fund.

Applicable Law

Section 27-19-11 states, in part:

On each carrier of property, for each motor vehicle, truck-tractor or road tractor, and on each bus, there is hereby levied an annual highway privilege tax in accordance with the following schedule, except that the gross vehicle weight of buses shall be the gross weight of the vehicle plus one hundred fifty (150) pounds per each regular seat.

¹ MS AG Op., *Vance* (January 20, 2017).

During the first year only, the privilege tax monies collected under the provisions of this paragraph shall be distributed to the various counties of the state on the basis of the ratio of the last year of annual ad valorem taxes collected by such counties on such vehicles to the total ad valorem taxes collected by all counties on such vehicles in the same year. In all subsequent years, the distribution to the counties shall be made on the basis of the ratio of the number of motor vehicles registered in excess of ten thousand (10,000) pounds, in each taxing district in each county, to the total number of such vehicles registered statewide. **The counties shall then distribute these proceeds as they would if these collections were ad valorem taxes.**

(Emphasis added.)

Addressing the general authority of the county to levy and distribute ad valorem taxes, Section 27-39-303 reads, in part:

~~The board of supervisors of any county is hereby empowered to levy ad valorem taxes on taxable property in the respective counties in any one (1) year, as shown by the assessment roll containing assessments of property made as of January 1 of the year, and the assessment of motor vehicles as made according to the provisions of the Motor Vehicle Ad Valorem Tax Law of 1958 (Section 27-51-1 et seq.) for all general county purposes, exclusive only of levies for schools at the rate necessary to fund such purposes.~~

The board of supervisors of any county is further empowered to expend the proceeds of this levy for any purpose authorized for any other levy which the board of supervisors is authorized to make. The board of supervisors may authorize general fund expenditures for road and bridge construction; provided that the expenditures do not exceed thirty percent (30%) of the general fund in any one (1) fiscal year; provided that any general fund expenditures shall be subject to the requirements of Section 65-15-21, Mississippi Code of 1972; and the board may authorize general fund expenditures for school purposes when necessary to meet the minimum local ad valorem tax effort required by Section 37-57-1, Mississippi Code of 1972.

(Emphasis added.)

Response

Miss. Code Ann. Section 27-19-11 requires Madison County to distribute the privilege

Shelton Vance, County Administrator
July 7, 2017
Page 3

tax proceeds in the same manner as ad valorem tax proceeds. As stated in our earlier opinion, "Madison County is authorized to levy ad valorem taxes for support of the county and the county school district... Consequently, the privilege tax proceeds received pursuant to Section 27-19-11 must be distributed only to the county and the county school district." MS AG Op., *Vance* (January 20, 2017).

Please let us know if this office can be of further assistance.

Sincerely,

JIM HOOD, ATTORNEY GENERAL

By:



Elizabeth S. Bolin
Special Assistant Attorney General

OFFICIAL OPINION



MADISON COUNTY BOARD OF SUPERVISORS

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June 12, 2017

Honorable Attorney General Jim Hood
Attorney General's Office
PO Box 220
Jackson, MS 39205

General Hood:

Madison County appreciates your response to our prior request related to Additional Privilege Tax payments paid to us in accordance with MCA 27-19-11.

Prior to your letter, Madison County was distributing these receipts, based on the county tax district where the taxed vehicle was registered, using the following formula:

1. Municipality (if applicable),
2. School District (either municipal district or county district), and
3. County (to all funds applicable to that county tax district).

The privilege tax would be calculated using each components percentage of ad valorem tax to the entire ad valorem tax collected for that county tax district.

Thus, a vehicle registered in the City of Canton would have resulted in a settlement to:

1. City of Canton
2. Canton Municipal Separate School District
3. Madison County
 - a. General Fund
 - b. Re-appraisal Trust Fund
 - c. Library Fund (To benefit Madison County Library System)
 - d. Mapping & Re-appraisal Fund
 - e. Economic Development Fund (to benefit Madison County Economic Development Authority)
 - f. Road Maintenance Fund
 - g. Bridge & Culvert Fund
 - h. Countywide Interest & Sinking Fund
 - i. Holmes Community College Maintenance
 - j. Holmes Community Collect Enlargement & Improvement

A vehicle registered outside of any municipality would have resulted in a settlement to:

1. Madison County School District
2. Madison County
 - a. General Fund
 - b. Re-appraisal Trust Fund

- c. Library Fund (To benefit Madison County Library System)
- d. Mapping & Re-appraisal Fund
- e. Countywide Fire Protection Fund
- f. Economic Development Fund (to benefit Madison County Economic Development Authority)
- g. Road Maintenance Fund
- h. Bridge & Culvert Fund
- i. Countywide Interest & Sinking Fund
- j. Holmes Community College Maintenance
- k. Holmes Community College Enlargement & Improvement

After considering your opinion, Madison County now concludes that, regardless of county tax district association with the registration, the formula should change to the following distribution for all receipts:

- 1. Madison County School District
- 2. Madison County
 - a. General Fund

Again, the distribution between these components would be calculated using each components percentage of ad valorem tax to the entire ad valorem tax collected for that county tax district.

This approach eliminates sharing of these receipts with a municipality, municipal school district, the community college, and all county funds. Additionally, while other privilege tax receipts are dedicated for purposes of road maintenance, this formula would not direct these Additional Privilege Tax receipts to road maintenance.

Please confirm that our understanding of your opinion is correct.

Respectfully Submitted,



Shelton Vance,
County Administrator

THOMSON REUTERS

WESTLAW Mississippi Attorney General Opinions

Shelton Vance

Office of the Attorney General

January 20, 2017

2017 WL 663867 (Miss.A.G.)

Office of the Attorney General

State of Mississippi

*1

Opinion No. 2016-00547

*1 January 20, 2017

Re: Distribution of Privilege Tax Proceeds Pursuant to Section 27-19-11***1 Shelton Vance*****1 County Administrator*****1 Madison County*****1 P. O. Box 608*****1 Canton, MS 39046**

Dear Mr. Vance :

1** Attorney General Jim Hood received your request and assigned it to me for research and response.**Issues Presented**1** (1) Should Madison County distribute privilege tax proceeds received pursuant to Section 27-19-11 to (1) the county, county school district, separate municipal school districts and municipalities; or, should distribution be only to the county and the county school district?***1 Response:** Section 27-19-11 requires Madison County to distribute the privilege tax proceeds in the same manner as ad valorem tax proceeds. Madison County is authorized to levy ad valorem taxes for support of the county and the county school district. We are aware no authority for Madison County to levy ad valorem taxes for the support of municipalities or municipal school districts. Consequently, the privilege tax proceeds received pursuant to Section 27-19-11 must be distributed only to the county and the county school district.***1** (2) Should the county's portion of this tax be divided among all county tax levies (funds) for the tax district where the privilege tax originated?***1 Response:** Absent specific direction otherwise in Section 27-19-11, the county's portion of the tax should be deposited in the county general fund.**Background*****1** In your letter of request, you state, in part:***1** Madison County receives periodic payments from the Department of Revenue (DOR) that are identified as Additional Privilege Tax payments under MCA 27-19-11. This money is a county-collected privilege tax that is remitted to the state for distribution among several Legislatively-defined purposes, including two portions that are returned to each county.***1** Prior to July 1, 2004, the law instructed that "counties should then distribute these proceeds as they would if these collections were ad valorem taxes."***1** In October 2003, an opinion was issued regarding this distribution - Roy Noble Lee, Jr., October 20, 2003. The opinion, referencing of opinions, indicates that "we interpreted that statutory language to give authority for the county board of supervisors, in its discretion, to distribute funds to municipalities and municipal separate school districts located within the county." Further, the opinion reads, "Here, the Legislature has used 'should.' We continue to interpret this to mean that although counties are not required to distribute the proceeds, the legislature strongly suggests that such be done."***1** After July 1, 2004, the law was changed to instruct that "counties shall then distribute these proceeds as they would if these collector were ad valorem taxes."***1** When Madison County is paid the monthly distribution of this tax, we are provided (By DOR) with a report indicating the tax district in which the registration occurred. The tax district reflects the location within the county - i.e. school district and / or municipality - applicable the registration.***2** In an inquiry (April 26, 2016) to the Office of the State Auditor, Madison County was advised to only distribute these taxes to the coun

and the county's school district. This would exclude sharing this money with municipalities and municipal separate school districts.

Applicable Law

*2 Section 27-19-11 reads, in part:

*2 On each carrier of property, for each motor vehicle, truck-tractor or road tractor, and on each bus, there is hereby levied an annual highway privilege tax in accordance with the following schedule, except that the gross vehicle weight of buses shall be the gross weight the vehicle plus one hundred fifty (150) pounds per each regular seat.

*2 During the first year only, the privilege tax monies collected under the provisions of this paragraph shall be distributed to the various counties of the state on the basis of the ratio of the last year of annual ad valorem taxes collected by such counties on such vehicles to total ad valorem taxes collected by all counties on such vehicles in the same year. In all subsequent years, the distribution to the county shall be made on the basis of the ratio of the number of motor vehicles registered in excess of ten thousand (10,000) pounds, in each ta district in each county, to the total number of such vehicles registered statewide. The counties shall then distribute these proceeds as th would if these collections were ad valorem taxes.

*2 (Emphasis added.)

Conclusion

*2 Section 27-19-11 requires Madison County to distribute the privilege tax proceeds in the same manner as ad valorem tax proceeds. Madison County is authorized to levy ad valorem taxes for support of the county and the county school district. We are aware of no auth for Madison County to levy ad valorem taxes for the support of municipalities or municipal school districts. Consequently, the privilege ta proceeds received pursuant to Section 27-19-11 must be distributed only to the county and the county school district.

*2 The fact that a county may, by agreement, collect ad valorem taxes for municipalities would not authorize the county to distribute the privilege tax proceeds to municipalities or municipal school districts.

*2 Absent specific direction otherwise in Section 27-19-11, the county's portion of the tax should be deposited in the county general fund
Very truly yours,

*2 Jim Hood
*2 Attorney General
*2 By: Chuck Rubisoff
*2 Assistant Attorney General

2017 WL 663867 (Miss.A.G.)

END OF DOCUMENT

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MADISON COUNTY BOARD OF SUPERVISORS

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December 22, 2016

Honorable Attorney General Jim Hood
Attorney General's Office
PO Box 220
Jackson, MS 39205

General Hood:

Madison County desires to obtain your opinion on the following matter.

Madison County receives periodic payments from the Department of Revenue (DOR) that are identified as Additional Privilege Tax payments under MCA 27-19-11. This money is a county-collected privilege tax that is remitted to the state for distribution among several Legislatively-defined purposes, including two portions that are returned to each county.

There is an annual \$3,732,403.11 distribution to counties, distributed under MCA 27-19-159 and is directed to paying a county's road and bridge bonds and then to other road construction, and maintenance activities.

Additionally, there is a smaller monthly distribution of these funds. This distribution to counties is based on the ratio of vehicles over 10,000 pounds in the county to the total number of such vehicles registered statewide. The county is directed to distribute this money in the paragraph following the tax rate schedule shown in MCA 27-19-11.

Prior to July 1, 2004, the law instructed that "counties should then distribute these proceeds as they would if these collections were ad valorem taxes."

In October 2003, an opinion was issued regarding this distribution – Roy Noble Lee, Jr, October 20, 2003. The opinion, referencing older opinions, indicates that "we interpreted that statutory language to give authority for the county board of supervisors, in its discretion, to distribute funds to municipalities and municipal separate school districts located within the county." Further, the opinion reads, "Here, the Legislature has used 'should.' We continue to interpret this to mean that although counties are not required to distribute the proceeds, the legislature strongly suggests that such be done."

After July 1, 2004, the law was changed to instruct that "counties shall then distribute these proceeds as they would if these collections were ad valorem taxes."

When Madison County is paid the monthly distribution of this tax, we are provided (By DOR) with a report indicating the tax district in which the registration occurred. The tax district reflects the location within the county – i.e. school district and / or municipality - applicable to the registration.

In an inquiry (April 26, 2016) to the Office of the State Auditor, Madison County was advised to only distribute these taxes to the county and the county's school district. This would exclude sharing this money with municipalities and municipal separate school districts.

Please provide clarification on the county's distribution of the portion of the tax levied and distributed under MCA 27-19-11.

Should Madison County distribute these privilege tax proceeds between the county, county school district, separate municipal school districts and municipalities? Or, should distribution be only to the county and the county school district?

Additionally, of the portion retained by the county under either option, should the county's portion of this tax be divided among all county tax levies (funds) for the tax district where the privilege tax originated? Your response to this inquiry will be appreciated.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Shelton Vance".

Shelton Vance,
County Administrator