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OFFICE OF THE ATTORNEY GENERAL
JUSTICE BUILDING, LITTLE ROCK 72201

January 10, 1986

(501) 371-2007

OPINION NO. 86-7

The Honorable Jimmie Lou Fisher
State Treasurer
State Capitol
Little Rock, AR 72201

Hand-Delivered

Dear Ms. Fisher:

You have requested an official opinion regarding Act 816 of 1983, codified as Ark. Stat. Ann. §13-523(3)(Supp.1985) and when the Treasurer's Office is required thereunder to withhold state turnback funds to various Arkansas cities. That statute provides:

(3) If any city or incorporated town shall fail to levy the full five [5] mill general tax on property for collection during the calendar year next preceding the date of distribution of any such "general revenues" and "special revenues", the amount of the "general revenues" otherwise distributed to any such city or incorporated town as aforesaid shall be reduced in the same proportion that its general millage rate levied for such preceding calendar year represents a reduction from said full five-mill rate. Provided, that no such reduction in the distribution of "general revenues" shall be made for a maximum of four (4) years subsequent to reappraisal as required by the Arkansas Supreme Court pursuant to Public Service Commission[v.]Pulaski County Equalization Board, 266 Ark. 64, if for each year the city or incorporated town levied a general tax millage rate which will produce an amount of revenues at least equal to the amount of revenues which would have resulted from a levy of five (5) mills on the assessed value of property immediately preceding the reappraisal.

Of course, the Arkansas Supreme Court ordered in Public Service Commission v. Pulaski County Equalization Board, 266 Ark. 64, S.W.2d (1980) that all 75 counties in Arkansas undergo the process of reappraisal and reassessment of real property to equalize ad valorem taxation rates throughout the State. For the first 15 counties in the cycle, that process occurred roughly as follows:

- 1980-reappraisal
- 1981-reassessment based on those reappraisals
- 1982-collection, based on the newly assessed values

Clearly, the intent of the Legislature in enacting Act 816 was to measure the good faith local effort of taxation subsequent to this process and to give those cities a four-year grace period to accomplish taxation at the rate of 5 mills. If those cities did not proceed to raise their millage rates after they had new assessed values, then state turnback monies would be withheld in exactly the proportional amount that city's tax rate was below 5 mills. In other words, if a city, 4 years subsequent to this process, had a millage rate of 2.5 mills, the State would withhold one-half of the city's turnback monies.

A reading of the term "reappraisal" the statute in question in its most technical sense would mean that turnback would have been withheld in 1985 as the years 1981, 1982, 1983 and 1984 are 4 years subsequent to that initial step.

However, in giving effect to the statute's meaning, "reappraisal" must be reasonably construed to mean the legally created process attendant to this first phase. A statute must be construed if possible, to give effect to its clear meaning. Steele v. Murphy, 279 Ark. 235, 650 S.W.2d 573(1983); Thompson v. Younts, 282 Ark. 524, 669 S.W.2d 471(1984).

It would not have been possible for cities in the affected counties to have taken any action or have made any effort to raise their millages until all facts--reappraisal, reassessment and rollbacks under Amendment 59 had been accomplished. Based on this information, the cities could have requested from 0% to 5% millage in November, 1982 of their respective quorum courts. This was the point at which cities could change their previously existing tax rates (obviously the primary purpose of Act 816) in order to qualify for continued turnback.

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Thus, it is my opinion that 1982, 1983, 1984 and 1985 were the four years subsequent to reappraisal as contemplated by Act 816. Therefore, if when the State Treasurer receives the necessary data in December, 1986, she determines that certain cities have not complied with the Act, she will be obligated to withhold state turnback to the delinquent cities in January, 1987.

The foregoing opinion, which I hereby approve, was prepared by Special Counsel to the Attorney General R.B. Friedlander.

Sincerely,

Steve Clark

STEVE CLARK
Attorney General

by R.B. Friedlander

SC/RBF/mo