



VERNON BARNETT
Commissioner

State of Alabama Department of Revenue

(www.revenue.alabama.gov)
50 North Ripley Street
Montgomery, Alabama 36132

JOE W. GARRETT, JR.
Deputy Commissioner

CURTIS E. STEWART
Deputy Commissioner

BRENDA R. COONE
Deputy Commissioner

MICHAEL D. GAMBLE
Deputy Commissioner

March 1, 2018

MEMORANDUM

2018-003

TO: License Plate Issuing Officials

FROM: Sherry Helms, Assistant Director
Motor Vehicle Division

SUBJECT: Attorney General Opinion 2018-012 on Credit Card Fees

The Motor Vehicle Division has been asked to ensure licensing officials are made aware of the Attorney General Opinion 2018-012 regarding credit card fees related to the additional annual registration fees required for distinctive license plates under Section 32-6-68, Code of Alabama 1975.

If you have any questions concerning this Opinion, please contact the Examiners of Public Accounts.

Attachment

cc: James Hall, Examiners of Public Accounts
Mike Gamble, Deputy Commissioner
Jay Starling, Director



2018-012

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

STEVEN T. MARSHALL
ATTORNEY GENERAL

501 WASHINGTON AVENUE
P.O. BOX 300152
MONTGOMERY, AL 36130-0152
(334) 242-7300
WWW.AGO.ALABAMA.GOV

December 18, 2017

Honorable Oline Price
Lee County Revenue Commissioner
Post Office Box 2413
Opelika, AL 36803

Revenue Commissioners – Motor Vehicle
Tags – License Plates – Distinctive Tags –
Credit Cards

When a county commission authorizes the use of credit cards to pay the additional annual registration fees required for distinctive license plates under section 32-6-68 of the Code of Alabama and elects not to impose a convenience fee, the county may not withhold a percentage of the cost of the fee charged by the credit card issuer from private entities entitled to the proceeds from the payment.

Dear Ms. Price:

This opinion of the Attorney General is issued in response to your request.

QUESTIONS

(1) When a county commission authorizes the use of credit cards to pay the additional annual registration fees required for distinctive license plates under section 32-6-68 of the Code of Alabama and elects not to impose a convenience fee, do the credit card payment procedures set out in section 11-103-1 of the Code of Alabama allow the county to withhold a

percentage of the cost of the fee charged by the credit card issuer from private entities entitled to the proceeds from the payment?

(2) Can enacted local legislation change the statutory distribution for funds as provided for in Title 32 or Title 40 in regards to registration and or other fees therein provided?

FACTS AND ANALYSIS

Local governments are granted authority to establish procedures to accept payment by credit card under section 11-103-1(a) of the Code of Alabama. Specifically, this provision allows county and municipal governing bodies to authorize the use of credit cards to make payments to a “county or municipal office, department, agency, board, or commission.” ALA. CODE § 11-103-1(a) (2008). A county or municipality that authorizes the use of such credit card payments shall promulgate rules and regulations, which “shall include specific procedures for the acceptance of credit card payments, including, but not limited to, provision for the payment of any discount or administrative fee charged by the credit card issuer or processor.” *Id.* The section additionally provides as follows:

The county or municipal governing body is authorized, but not required to impose the assessment of a surcharge or convenience fee from the person paying by credit card in an amount not greater than the transaction fee charged by the credit card issuer or processor. If no such election is made, the county or municipal governing body may ***withhold the cost of*** any discount or administrative ***fee*** charged by the credit card issuer or processor ***from each governmental entity*** entitled to the proceeds from the payment made by the credit card issuer. In this event, ***each governmental entity shall be assessed*** the percentage of the cost equivalent to its ***pro rata share*** of the payment.

Id. (emphasis added). According to the statute, when the credit card issuer charges a convenience fee, the governing body is authorized to take one of two actions to recoup the cost of the fee – it may either impose a convenience fee no greater than the amount charged by the credit card issuer or withhold the fee and assess the cost to each governmental entity based on its share of the payment.

The required fees for distinctive license plates are governed by section 32-6-68 of the Code of Alabama. Under section 32-6-68(a), when a distinctive license plate is issued, an “additional annual fee” of fifty dollars is required to be added to the standard registration fee applicable to license plates. ALA. CODE § 32-6-68(a) (Supp. 2016). Section 32-6-68(b), in relevant part, governs the distribution of this fee as follows:

(1) Two and one-half percent commission, provided by Section 40-12-269(a)(1).

(2) Manufacturing costs of one dollar and fifty cents (\$1.50) to the Department of Corrections.

(3) Administrative costs of one dollar (\$1) to the Department of Revenue.

(4) A state share of five dollars (\$5) shall be transmitted to the state Comptroller for deposit in an account maintained by the Department of Senior Services to be used by the department to provide meals to senior citizens under a program to be known as the “John L. Buskey Senior Meals Program.”

. . . .

(5) The *remainder of the additional fee shall be distributed to the sponsoring organization* or as otherwise provided under the terms of the application approved by the legislative oversight committee. . . .

ALA. CODE § 32-6-68(b) (Supp. 2016) (emphasis added).

When the additional fee required for a distinctive license plate is paid for by credit card and the credit card issuer charges a convenience fee for the transaction, the local governing body may recoup the cost of such fee either by charging a convenience fee in an amount no greater than that charged by the credit card issuer or by withholding the cost of the fee from the governmental entities entitled to payment from the transaction. If the local governing body

decides not to charge a convenience fee, the question arises regarding how the disbursements directed by section 32-6-68(b) are processed, particularly considering that section 11-103-1(a) only allows the withholding of such payments from “governmental entities.” While sections 32-6-68(b)(1) through 32-6-68(b)(4) contain only disbursements to governmental entities, section 32-6-68(b)(5) directs the distribution of fees to both private and public entities, depending on the nature of the sponsoring organization. This Office has been informed by the State Comptroller’s Office that both governmental and private entities sponsor distinctive license plates and that, in fact, private entities receive most of the revenue under section 32-6-68(b)(5).

Although section 11-103-1(a) provides express authority to withhold the cost of a convenience fee from governmental entities, it does not do so regarding private entities. Inherent in its definition, the plain meaning of the term “governmental entity” does not include “private entities.” See opinion to Honorable David G. Bronner, Secretary-Treasurer, Retirement Systems of Alabama, dated August 22, 2014, A.G. No. 2014-00088, *citing Ex parte T.B.*, 698 So. 2d 127, 130 (Ala. 1997) (“In interpreting a statute, words used in the statute must be given their ordinary, plain meaning, and where plain language is used, a court is bound to interpret that language to mean exactly what it says.”). According to Black’s Law Dictionary, “governmental” means “of, relating to, or involving a government.” BLACK’S LAW DICTIONARY 811 (10th ed. 2014). “Private” refers to “[o]f, relating to, or involving an individual, as opposed to the public or the government.” *Id.* at 1389. Because the terms “governmental” and “private” are mutually exclusive, the Legislature’s use of the term “governmental entities” in section 11-103-1(a) excludes private entities. Accordingly, withholding the cost of convenience fees from private sponsors of distinctive license plates is not authorized under section 11-103-1(a).

Your second question involves whether the statutory distribution of funds set out in Titles 32 and 40 may be changed by enacted local legislation. Because this question implicates the constitutionality of hypothetical local laws, a definitive answer can only be given after such legislation has been passed and a court of competent jurisdiction has made a determination on its constitutionality.

Section 105 of article IV of the Recompiled Constitution of Alabama states that “[n]o special, private, or local law . . . shall be enacted in any case which is provided for by general law.” According to the Alabama Supreme Court in *Opinion of the Justices*, 630 So. 2d 444, 446 (Ala. 1994), the enactment of a local act is prohibited if the subject of the act is “subsumed” by the general act, meaning that “the effect of the local law is to create a variance from the provisions of the general law.” This Office, however, has stated that local laws

“may be enacted on matters covered by general law if the local laws are substantially different to meet local needs.” Opinion to Honorable Stanley A. Martin, Attorney, Lee County Commission, dated May 27, 2005, A.G. No. 2005-140 at 2, *citing Mathis v. State*, 280 Ala. 16, 19, 189 So. 2d 564, 569 (1966) and opinion to Honorable Jim Woodward, Sheriff, Jefferson County, dated June 7, 2000, A. G. No. 2000-163 at 4. This Office has a longstanding policy of refraining from issuing an opinion on the constitutionality of legislation. Opinion to Honorable John F. Porter, III, Attorney, Jackson County Commission, dated March 25, 2011, A.G. No. 2011-00048.

CONCLUSION

When a county commission authorizes the use of credit cards to pay the additional annual registration fees required for distinctive license plates under section 32-6-68 of the Code of Alabama and elects not to impose a convenience fee, the county may not withhold a percentage of the cost of the fee charged by the credit card issuer from private entities entitled to the proceeds from the payment.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact John Porter of my staff.

Sincerely,

STEVE MARSHALL
Attorney General
By:


G. WARD BEESON, III
Chief, Opinions Section