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License Enforcement

The municipal privilege license is one of the most important sources of revenue for Alabama cities and towns. A large percentage of the total revenue upon which Alabama municipalities budget their activities is derived from some form of license tax levied under the authority of Sections 11-51-90 and 11-51-91, Code of Alabama 1975. These levies include the general license tax schedule, the gasoline tax, the tobacco tax, the amusement tax, the gross receipts tax in the nature of a sales tax, the occupational tax, the lodgings tax and others.

In *Van Hooks v. Selma*, 70 Ala. 361 (Ala. 1881), the court stated: "The power of the state to authorize the license of all classes of trades and employments cannot be doubted and there is just as little doubt of the power to delegate this right to municipalities, either for the purpose of revenue, or that of regulation." Numerous subsequent cases have confirmed this authority.

Due to limited personnel, the complexity of modern commerce and borderline questions relating to the taxing power, a municipality is certain to lose some revenue through license escapes. Nevertheless, there are steps which a municipality may take to enforce its privilege licenses that will limit those losses. Strict license enforcement is the fairest license enforcement because it closes the door on the competitive advantage which "escapees" enjoy over others in the same license classification.

The following article reviews the powers which cities and towns have to enforce their license taxes and points out a few steps which may make this job easier.

Job of the Clerk

The municipal clerk is required by statute to issue all licenses unless otherwise provided by ordinance. Any part of this duty may be devolved upon the auditor by ordinance. Section 11-43-103, Code of Alabama 1975. It is the clerk, or officer appointed in his or her stead for this job, who forms the nucleus around which good license enforcement is built. In keeping the license records, if the clerk sets up a cross file on licensees and license classifications, he or she can tell who is licensed in each classification each year, who was licensed in a classification last year but does not hold a current year license, who has been chronically delinquent in procuring licenses in past years, who are the agents representing nonresident firms which do business in the municipality, the amount each licensee paid in each year over past years and other vital information to ensure success in license enforcement.

The clerk is the official custodian of the license ordinance and is the employee who knows if a person has procured a license to engage in a particular activity classified in the ordinance. Testimony of the clerk is necessary in any action to enforce the license ordinance, both to provide the ordinance and to certify that the defendant has not procured a particular license. Since the clerk will be the principal witness for the municipality, it is essential that all license records be kept as accurately and as securely as possible. Procedures used by the clerk must reveal exactly what licenses have been issued in each category (classification). The records should be maintained for at least a five-year period.

After the final day for payment of licenses, the clerk should compile a list of persons and firms which have procured licenses in each classification to give to the license inspector or police officer charged with the duty of enforcing the license ordinance. Along with this list, the clerk might prepare another list showing persons and firms which procured licenses in past years but have not purchased a license in the current year. This procedure gives the enforcement officer a lead as to possible escapees.

Information from Competitors

It is generally true that local businesses do not object to paying their fair share of the local tax burden provided the program is administered in a nondiscriminatory manner. Businesses do object strenuously to unlicensed competition. A municipality can benefit substantially from information given by licensees about competitors, especially outside competitors who enter

the municipality for the first time. License enforcement personnel should encourage such reports which should be carefully investigated. We recommend that a report of successful results be made to licensees.

Enforcement by Prosecution

When a license enforcement officer discovers a person doing business in the municipality without a proper license, several alternatives are available. Section 11-51-93, Code of Alabama 1975 provides: "It shall be unlawful for any person, firm or corporation, or agent of a firm or corporation to engage in businesses or vocations in a city or town for which a license may be required without first having procured a license therefor. A violation of this division or of an ordinance passed hereunder fixing a license shall be punishable by a fine fixed by ordinance, not to exceed the sum of five hundred dollars ($500) for each offense, and by imprisonment, not to exceed six months, or both, at the discretion of the court trying the same, and each day shall constitute a separate offense."

Most license ordinances contain a provision similar to this statutory license enforcement aid. When the enforcement officer discovers resident businesses doing business without a license, it is customary to cite the proprietor to appear before the clerk on or before a certain day to show cause why the license should not be paid. If the person fails to appear and pay the required license, the enforcement officer should cause an arrest warrant to be issued for doing business without a license, and the case would be tried in the municipal court. When the officer discovers non-residents doing business in the municipality without a license, it is customary to arrest the person for doing business without a license if the person refuses to procure it when confronted with the allegation. Prior to any arrest, the appropriate municipal officials should investigate the matter. In *Tuscaloosa County v. Henderson*, 699 So.2d 1274 (1997), the Alabama Court of Civil Appeals held that a license inspector was not protected by qualified immunity when he had the plaintiff arrested for conducting business without a license without first conducting an investigation.

The agent of a person, firm or corporation may be arrested for doing business for a principal who is not properly licensed. In making arrests for doing business without a license, the license enforcement officer must maintain close contact with the municipal clerk to ensure that, before an arrest is made, the person has not recently procured a license.

This is the simplest method of enforcing the municipal license ordinance. It does not require the services of the municipal attorney. It does not require lengthy, drawn-out litigation. For these reasons, this method of enforcement is used more than the other methods which are discussed below.

Civil Action

At times, a municipal governing body might not wish to make an arrest but would like to ensure collection of the proper license. Occasionally it is learned that a person has been escaping licenses for a number of years. The limitation for arrest and prosecution for license violation is one year. Section 11-51-96, Code of Alabama 1975, states:

> "On all property both real and personal, used in any exhibition, trade, business, vocation, occupation, or profession for which a license is or may be required, municipal corporations shall have a lien for such license, which lien shall attach as of the date the license is due and shall be superior to all other liens, except the lien of the state, county and municipal corporations for taxes and the lien of the state and county for licenses. Such lien may be enforced by attachment."

Based on this authority, the municipal attorney may be directed to prepare the necessary complaint and attachment papers for the establishment of the lien and the sale of property for satisfaction of the past due license or licenses. A municipality does not have to provide sureties on its bond filed in an attachment suit. Section 11-43-83, Code of Alabama 1975. Consideration should be given to the court in which an action of this nature will be brought. If the amount to be recovered is small, the action might be brought in an inferior court of the county. Conversely, if the amount is large, it would probably have to be brought in the circuit court because of jurisdictional limitations of inferior courts. The municipal attorney should be consulted on this question.

Enforcement by Injunction

The most comprehensive method of enforcing license ordinances is found in Sections 11-51-150 through 11-51-161, Code of Alabama 1975. Under the procedure authorized by these sections, a municipality may enjoin the further operation of the business within its corporate limits or police jurisdiction, procure an accounting for license payments and penalties due and secure any equitable attachment in aid of the license collection. This procedure requires the services of the municipal attorney since it is brought in a court of equity. Regarded as the most drastic enforcement procedure, an injunction is probably the only procedure which will provide the proper results in cases where an established business adamantly refuses to procure the required license.

Section 11-51-160, Code of Alabama 1975, authorizes equitable attachment in aid of the municipality's suit and no bond is required. However, the bill of complaint must be verified as provided by Section 11-51-150 of the Code.

On a number of occasions, the Supreme Court of Alabama has upheld the results of findings for cities and towns in actions under this authority. Good examples are found in the cases of *Talladega v. Ellison*, 262 Ala. 449, 79 So.2d 551 (Ala. 1955) and *Bush v. Jasper,* 247 Ala. 359, 24 So.2d 543 (Ala. 1946).

Again, adequate license records kept by the clerk are essential. In prosecutions for license enforcement and in civil actions for this purpose, the clerk will have to certify that the defendant has not procured the required license. The license enforcement officer will be required to certify that the defendant did engage in business without the required license within the municipality or its police jurisdiction.

Statute of Limitations

While prosecutions for doing business without a license are quasi-criminal actions subject to the one-year statute of limitations, both civil remedies mentioned above may be brought to recover escaped licenses as provided for in Section 11-51-191, Code of Alabama 1975.

Section 11-51-191(c)(2) provides the following with regard to time frames for preliminary assessments for unpaid license fees:

Any preliminary assessment shall be entered within four years from the due date of the business license form, or four years from the date the form is filed, whichever is later, except as follows:

a. A preliminary assessment may be entered at any time if no license form is filed as required, or if a false or fraudulent license form is filed with the intent to evade the business license tax.

b. A preliminary assessment may be entered within six years from the due date of the license form or six years from the date the license form is filed with the taxing jurisdiction, whichever date occurs last, if the taxpayer omits or fails to report an amount in excess of 25 percent of its gross receipts or other applicable business license tax base.

c. A preliminary assessment may be entered within five years from the due date of the license form, or five years from the date the form is filed, whichever is later, if the taxpayer or its authorized agent fails or refuses to execute and return to the taxing jurisdiction or its agent a written extension of the statute of limitations on issuing preliminary assessments for up to eight months, as requested by the taxing jurisdiction or its agent, within 30 days after receipt of the request for extension by the taxpayer or its authorized agent.

Each situation should be studied and considered to determine the best procedure to be used. A prosecution is much faster, but a civil procedure may result in the collection of more revenue.

Citizen's Appeal Process

Alabama Code Section 11-51-191(e) through (f) sets forth the appeals process for a citizen to appeal a business license final assessment by a municipality. Additionally, Act 2025-408 expanded the Alabama Tax Tribunal's jurisdiction to include appeals of business license tax decisions from counties and municipalities. The Alabama Tax Tribunal is governed by Title 40 Article 2B.

Police Jurisdiction Licenses

The same remedies used for the enforcement of licenses within the corporate limits of the municipality apply to the enforcement of licenses due for business operations within the police jurisdiction. See, *Talladega v. Ellison*, supra.

Amount of Fee

The clerk has no authority to accept a different fee from that established by the council by ordinance for a particular license classification. While the council has the authority to amend the license ordinance at any time relating to fees and regulations for business classifications, the clerk must abide by the license ordinance as established by the council.

Information from the State

Since 1951, cities and towns in Alabama have had access to sales tax information filed by local merchants with the State Department of Revenue in remitting their sales taxes. This authority is found in Section 11-51-181, Code of Alabama 1975, and originated as legislation drawn up by the League to make such information available to municipalities for license enforcement purposes. While this information will not help a city or town find persons who are doing business without a license, it is an invaluable aid in determining if licensees have paid the proper amount to the municipality. For information on how to procure

this assistance from the State Department of Revenue, please see the article entitled "The Municipal Sales Tax" found on the League legal team's Selected Readings page, here: *https://almonline.org/SelectedReadingsfortheMunicipalOfficial.aspx*.

The Attorney General has ruled that municipalities may enter into reciprocal written agreements providing for the exchange of local tax returns and other information similar to that received from the Alabama Department of Revenue. AGO 1995-0196. Care must be exercised to ensure that any sales or use tax information provided does not violate the confidentiality provisions of Section 40-2A-10 of the Code.

Caution

License codes should be reviewed from time to time so that new trades and business may be included. Further, ordinances should be carefully drawn to avoid doubtful application or ambiguity. In *Gotlieb v. Birmingham*, 243 Ala. 579, 11 So.2d 363 (Ala. 1943), the court held: "The rule that taxing statutes are to be strictly construed against the taxing power is applicable to municipal ordinances imposing license taxes."

Moratorium

The Attorney General advised that a city could declare a moratorium on the collection of penalties and late fees from city licensees and taxpayers who voluntarily present themselves to the city to pay any outstanding license tax obligations owed to the city during the period in which the moratorium was in effect. However, it was pointed out that interest on such amounts cannot be waived by the city. AGO 1984-0276.

Conclusion

Strict license enforcement is essential both to increase revenue and to avoid unfair competition from escapees. Clerks should keep accurate records and work closely with inspection and enforcement personnel. Clerks can be of invaluable assistance in spotting delinquent taxpayers.

Attorney General's Opinions on License Enforcement

- If the city does not levy and collect license fees in its police jurisdiction, it may seek to collect insurance proceeds from applicable policies held by individuals who reside in the police jurisdiction pursuant to the costs of fire, emergency management services ("EMS"), hazardous material, and rescue services rendered by the city's fire department. Because the city levies and collects taxes to fund the services of its fire department, the city may not seek to collect insurance proceeds from applicable policies held by individuals who reside in the corporate limits pursuant to the costs of EMS, hazardous material, and rescue services rendered by the fire department. The city is not allowed to collect insurance proceeds from applicable policies held by commercial/industrial occupants located in the corporate limits pursuant to the costs of hazardous material mitigation or remediation because the city collects taxes and fees to fund these services. If the city does not levy and collect license fees in its police jurisdiction, it may collect insurance proceeds from applicable policies held by commercial/industrial occupants located in the police jurisdiction pursuant to the costs of hazardous material mitigation or remediation. AGO 2019-0012.