

Dishonored checks given to state

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Subject:
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FINANCIAL MATTERS--DISHONORED CHECKS OR DRAFTS GIVEN TO STATE--
IMPOSITION OF SERVICE CHARGE BY LOCAL OFFICIAL OR AGENCY ACTING AS
STATE'S AGENT--PROCEEDINGS TO COLLECT UNDER s. 832.07, F. S.

To: J. Ed Straughn, Executive Director, Department of Revenue, Tallahassee

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QUESTIONS:

1. Must a county or municipal official or agency add a \$5 service fee to the amount due when acting on behalf of the Department of Revenue in collecting a dishonored check or draft pursuant to s. 215.34(3), F. S.?
2. Must the Department of Revenue, or a county or municipal official or agency when acting on behalf of the Department of Revenue, first attempt to collect a dishonored check, draft, or other order for payment under s. 215.34, F. S., prior to proceeding under s. 832.07, F. S., as created by Ch. 75-189, Laws of Florida?

SUMMARY:

When a county or municipal official or agency is acting on behalf of the Department of Revenue pursuant to s. 215.34(3), F. S., it is mandatory that a \$5 service fee be added to the amount due.

The Department of Revenue, or a county or municipal official or agency when acting on behalf of the Department of Revenue, may attempt to collect a dishonored check, draft, or other order for payment by proceeding under s. 832.07, F. S., if all requirements thereof have been met, without first proceeding under s. 215.34, F. S.

Your first question is answered in the affirmative, and the second question in the negative.

AS TO QUESTION 1:

Chapter 75-56, Laws of Florida, as evidenced by the title of said chapter, is "AN ACT relating to state and local governments," amending s. 215.34, F. S., by adding subsection (2) to *require* state officials and state agencies to *collect* a \$5 service fee whenever a check, draft, or other order for payment of money is dishonored and to provide for the distribution of collected service fees and by adding subsection (3) providing that local officials acting for state officials or

agencies in the collection of charges due the state shall retain the \$5 service fee collected under s. 215.34.

Section 215.34(2) and (3), F. S., provides:

(2) Whenever a check, draft or other order for the payment of money is returned by the State Treasurer to a state officer or state agency for collection, the officer or agency shall add a \$5 service fee to the amount due. The \$5 service fee shall be in addition to all other penalties imposed by law. Proceeds from this fee shall be deposited in the same fund as the collected item.

(3) When a county or municipal official or agency is acting for a state official or agency in the collection of fees or other charges, the service fee collected under this section shall be retained by the collector of the fee."

Checks, drafts, or other orders for the payment of money made payable to the State of Florida and initially collected by a county or municipal official or agency acting on behalf of the Department of Revenue are transmitted by the local official or agency to said department which then deposits the instruments in the State Treasury.

If the check, draft, or other order for the payment of any licenses, fees, taxes, commissions, or charges authorized to be made pursuant to state law is returned for any reason by the bank or other payor upon which it was drawn, said check, draft, or other order will be returned by the State Treasurer to the Department of Revenue. See s. 215.34(1), F. S. Such charges are not actually paid and may be considered delinquent. The Department of Revenue is then required to collect payment for the dishonored check, draft, or other order.

When the Department of Revenue collects payment on the dishonored instrument, s. 215.34(2), F. S., provides that "the officer or agency *shall* add a \$5 service fee." (Emphasis supplied.) Section 215.34(3), F. S., which states that "the service fee collected under this section shall be retained by the collector of the fee," must be construed with s. 215.34(2) to require county or municipal officials or agencies, when acting for the Department of Revenue, to charge and collect said service fee also but to allow said county or municipal officials or agencies to retain the fee for their services in the collection procedure.

This interpretation is consistent with general principles of law which state that a statute should be construed to accord significance and effect to each of its parts, 30 Fla. Jur. *Statutes* s. 116 (1960), and that a statute should be interpreted in a manner which leads to a logical conclusion, *Gracie V. Deming*, 213 So.2d 294 (2 D.C.A. Fla., 1968).

The interpretation of s. 215.34(3), F. S., requiring county or municipal officials or agencies when acting on behalf of the Department of Revenue to collect the \$5 service fee is consistent with general principles of agency law. Since the local official or agency is an agent of the state official or agency for the purpose of collecting money due on a dishonored check, draft, or other order and remitting said money to the Department of Revenue, said local official or agency, as an agent, is acting *ex officio* as a state official or agency and should logically and legally be held to the same requirement as said state official or agency, to wit, adding a \$5 service fee to the

amount due.

AS TO QUESTION 2:

Section 832.07(1)(a), F. S., as created by Ch. 75-189, Laws of Florida, states in pertinent part:

"In any prosecution or action under this chapter, the making, drawing, uttering, or delivery of a check, draft, or order, payment of which is refused by the drawee because of lack of funds or credit, shall be prima facie evidence of intent to defraud or knowledge of insufficient funds in, or credit with, such bank, banking institution, trust company, or other depository, unless such maker or drawer, or someone for him, shall have paid the holder thereof the amount due thereon, together with a service charge not to exceed \$5, or 5 percent of the face amount of the check, whichever is greater, within 20 days after receiving written notice that such check, draft, or order has not been paid to the holder thereof. . . ."

It must be noted that the above-quoted statute and s. 215.34, F. S., serve two distinct purposes. As stated in AGO 076-62, Chs. 75-56 and 75-189, Laws of Florida, are acts relating to the same subject matter, i.e., dishonored checks, but Ch. 75-56 is "AN ACT relating to state and local governments," while Ch. 75-189 is "AN ACT relating to worthless checks . . . [and] prima facie evidence of intent to issue a worthless check" and is silent concerning the authority of a public official to charge a fee for collecting a dishonored check.

Statutes must be construed to effectuate the intent of the Legislature and to maintain a reasonable and harmonious body of law. See 82 C.J.S. *Statutes* s. 368 (1953). With this principle in mind, it is important that legislation serving distinct purposes not be construed to cause inconsistencies in the law.

Your question suggests a need for a procedural priority in the utilization of these statutes when the Department of Revenue or a county or a municipality is the holder of a dishonored instrument. However, there is no necessity for such, since ss. 832.07 and 215.34(2) and (3), F. S., were enacted as original and independent legislation and each is complete in itself, allowing an officer to proceed under Ch. 75-189, Laws of Florida, independently of Ch. 75-56, Laws of Florida.

However, it is important to note that, prior to proceeding under Ch. 75-189, Laws of Florida, to collect upon a dishonored instrument, certain requirements must be met [s. 832.07(2)(a), (b), and (d), F. S.]. Assuming that the enumerated requirements are complied with, the Department of Revenue or a county or municipal official or agency acting on behalf of said department will be limited to a service fee of \$5 as prescribed by Ch. 75-56, Laws of Florida. Attorney General Opinion 076-62. Assuming that said requirements are not complied with, thereby precluding utilization of Ch. 75-189, the Department of Revenue or a county or municipal official or agency acting on behalf of said department would be obligated to attempt collection pursuant to s. 215.34, F. S. Otherwise, there is no repugnancy between Chs. 75-56 and 75-189.

Therefore, since Ch. 75-189, Laws of Florida, serves the purpose, in certain situations, of allowing a dishonored check to establish prima facie evidence of criminal intent in a subsequent

prosecution or action, it is not necessary that the Department of Revenue or a county or municipal official or agency, when acting on behalf of said department, attempt to collect a dishonored check, draft, or other order under s. 215.34, F. S., prior to proceeding under s. 832.07, F. S., if all requirements of the latter statute have been met and satisfied.