CAO 2013-013

To: Carmen Olazabal

From: Craig E. Leen, City Attorney for the City of Coral Gables

RE: Legal Opinion Regarding Rejection Of Payment Under Protest

Date: February 13, 2013

Yes, it is my opinion that the City may reject a payment of a fee made under protest. The attached Attorney General Opinions (see the one on page 251, and the last one on page 770) support this proposition. Although they are from the 1930s and involve the payment of taxes, they support the principle that payment under protest need not be accepted by the government. Ultimately, the City is entitled to its building permit fee without any attempt to place a reservation on that fee, as any such reservation could interfere with the City's ability to use the fee for its lawfully permitted purpose (here, the purposes for which the fee can be used are expressly established in the Florida Building Code). I have seen no provision in the governing statutes or the City Code that authorizes a payment under protest in these circumstances, so it is my view that the City may insist on a payment without any attempted reservation.

Please note, it is also my view that an attempt to pay under protest may not be effective, and that a claim for fees paid under protest may still be barred by the voluntary payment doctrine and other similar principles. I can elaborate on this opinion at a later time if you would like. For now, it is sufficient to state that any attempt to pay a building fee under protest, or place some other type of reservation on the payment of a building fee, may be rejected by the City.

Hernandez, Cristina

From: Leen, Craig
Sent: Wednesday, February 13, 2013 9:48 AM
To: Hernandez, Cristina
Subject: FW: Rejection of Payment Under Protest
Attachments: 2032_001.pdf

Please place in the opinion file.

Craig E. Leen
City Attorney
City of Coral Gables
405 Biltmore Way
Coral Gables, Florida 33134
Phone: (305) 460-5218
Fax: (305) 460-5264
Email: cleen@coralgables.com

From: Leen, Craig
Sent: Wednesday, February 13, 2013 9:48 AM
To: Olazabal, Carmen
Cc: 'bthornton@coralgables.com'; Figueroa, Yaneris
Subject: Rejection of Payment Under Protest

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Please note, it is also my view that an attempt to pay under protest may not be effective, and that a claim for fees paid under protest may still be barred by the voluntary payment doctrine and other similar principles. I can elaborate on this opinion at a later time if you would like. For now, it is sufficient to state that any attempt to pay a building fee under protest, or place some other type of reservation on the payment of a building fee, may be rejected by the City.

Craig E. Leen
City Attorney
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Fax: (305) 460-5264
Email: cleen@coralgables.com

From: Olazabal, Carmen
Sent: Wednesday, February 13, 2013 8:26 AM

To: Leen, Craig
Subject:

Craig,

Did you say that we don't have to accept payment under protest yesterday? I thought I recalled you saying that but could not find an email on the matter. so just wanted to verify....

Carmen Olazabal, P.E.

Assistant City Manager for Operations
City of Coral Gables
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colazabal@coralgables.com

TAX COLLECTORS

January 16, 1935.

TAX COLLECTORS NOT REQUIRED TO ACCEPT PAYMENT OF TAXES UNDER PROTEST

Dear Sir:

I have your letter in which you request my opinion as to whether or not the Tax Collector is required to accept the payment of liquor license taxes, or other taxes, under protest.

It is my opinion that neither a State officer nor a County officer charged with the duty of collecting taxes has authority to accept the payment of taxes under protest. This, of course, applies to liquor license taxes as well as to all other taxes. See opinion of July 10, 1931, page 770, Biennial Report of the Attorney General, 1931-32.

the civil rights of the offender would not be impaired under the Laws of Florida. We might state that there is a long line of decisions to the effect that where penal servitude is not imposed in the sentence by the Federal Court that the civil rights of the person convicted are not impaired. However, we suggest that you take this matter up with Mr. Finch, stating the facts to him, and he will no doubt inform you regarding what is necessary to be done in the premises.

Yours very truly,

CARY D. LANDIS,
Attorney General.

TAX COLLECTING AGENCY—LICENSE TAX REQUIRED

July 9, 1931.

Dear Sir:

Replying to your favor of the 7th instant relative to whether or not a tax collection agency is required to pay a State and county license in each county in which it does business, permit me to say:

By reference to Section 1338, Compiled General Laws, the same being Chapter 12414, Acts of 1927, you will see that the law clearly and definitely requires the payment of a State and county license by a tax collection agency in each county in which it does business.

Yours very truly,

CARY D. LANDIS,
Attorney General.

CORPORATION TAX—SECRETARY OF STATE WITHIN RIGHTS TO REFUSE TO REFUND PAYMENT

July 10, 1931.

Dear Sir:

This refers to your favor of July 9th. In your letter you enclose copy of letter from Hon. R. A. Gray, Secretary of State, addressed to you under date of July 7th. It appears that you undertook to pay certain corporation taxes under protest and that the Secretary of State refused to accept the payment of these taxes under your protest.

The Secretary of State, in my opinion, was clearly within his rights under the law and did what he should have done. I assume that you have accomplished your purpose in making such protest as you desired and that it is now a question of the execution of the law. It is my opinion that a State official cannot accept this money under protest and pay it into the State Treasury and, therefore, the Secretary of State was entirely within his rights and, on the other hand, I assume you have undertaken to avail yourself of whatever you had in mind by virtue of the protest.

Very respectfully,

CARY D. LANDIS,
Attorney General.