



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Kenneth T. Cuccinelli, II
Attorney General

August 30, 2013

900 East Main Street
Richmond, Virginia 23219
804-786-2071
FAX 804-786-1991
Virginia Relay Services
800-828-1120
7-1-1

The Honorable Barbara O. Carraway, CPA
Chesapeake City Treasurer
Post Office Box 16495
Chesapeake, Virginia 23328-6495

Dear Ms. Carraway:

I am responding to your request for an official advisory opinion in accordance with § 2.2-505 of the *Code of Virginia*.

Issues Presented

You inquire whether a city treasurer can enter into an agreement with the local Commonwealth's Attorney for the collection of delinquent court debt and, if so, whether the city treasurer may claim a percentage of amounts collected in this manner as a contingent collection fee. You further ask whether there is a limit on the percentage that may be charged as a contingent collection fee and whether the treasurer also may claim an administrative fee under § 58.1-3958.

Response

It is my opinion that a city treasurer is authorized to enter into an agreement with the local Commonwealth's Attorney for the collection of delinquent court debt. It is my further opinion that the city treasurer is authorized to receive a contingent collection fee provided the percentage amount of this fee is no higher than 35 percent of any amounts recovered. Finally, it is my opinion that the city treasurer may receive an administrative fee under § 58.1-3958 in addition to the contingent collection fee.

Applicable Law and Discussion

Section 19.2-349 establishes procedures for the collection of delinquent court debt. Specifically, it provides that:

It shall be the duty of the attorney for the Commonwealth to cause proper proceedings to be instituted for the collection and satisfaction of all fines, costs, forfeitures, penalties and restitution. The attorney for the Commonwealth shall determine whether it would be impractical or uneconomical for such service to be rendered by the office of the attorney for the Commonwealth

If the attorney for the Commonwealth does not undertake collection, he shall contract with (i) private attorneys or private collection agencies, (ii) enter into an agreement with a local governing body, (iii) *enter into an agreement with the county or city treasurer*, or (iv) use the services of the Department of Taxation, *upon such terms and conditions as*

may be established by guidelines promulgated by the Office of the Attorney General, the Executive Secretary of the Supreme Court with the Department of Taxation and the Compensation Board

The fees of any private attorneys or collection agencies shall be paid on a contingency fee basis out of the proceeds of the amounts collected. However, in no event shall such attorney or collection agency receive a fee for amounts collected by the Department of Taxation under the Setoff Debt Collection Act (§ 58.1-520 et seq.). *A local treasurer undertaking collection pursuant to an agreement with the attorney for the Commonwealth may collect the administrative fee authorized by § 58.1-3958.*^[1]

Section 58.1-3958, in turn, provides in relevant part that,

The governing body of any county, city or town may impose, upon each person chargeable with delinquent taxes or other delinquent charges, fees to cover the administrative costs and reasonable attorney's or collection agency's fees actually contracted for. The attorney's or collection agency's fees shall not exceed 20 percent of the taxes or other charges so collected. The administrative costs shall be in addition to all penalties and interest, and shall not exceed \$30 for taxes or other charges collected subsequent to 30 or more days after notice of delinquent taxes or charges pursuant to § 58.1-3919 but prior to the taking of any judgment with respect to such delinquent taxes or charges, and \$35 for taxes or other charges collected subsequent to judgment. If the collection activity is to collect on a nuisance abatement lien, the fee for administrative costs shall be \$150 or 25 percent of the cost, whichever is less; however, in no event shall the fee be less than \$25.^[2]

The plain language of § 19.2-349 makes clear that the city treasurer can enter into an agreement with the local Commonwealth's Attorney to collect delinquent court debt and that the treasurer also may receive the administrative fee authorized by § 58.1-3958. The availability of a contingent fee arrangement under the collection agreement is controlled by the guidelines referred to under § 19.2-349. The guidelines currently in place provide that the percentage charged as a contingent collection fee will be an amount, negotiated between the Commonwealth's Attorney and the collections contractor, which "shall not exceed 35 percent of all monies owed and actually collected through the contractor's efforts for unpaid fines, court costs, forfeitures, statutory interest, and penalties."³ The current guidelines do not distinguish between private and local government agents when setting forth the terms of the collection contract.⁴

¹ VA. CODE ANN. § 19.2-349(B) (Supp. 2013) (emphasis added).

² VA. CODE ANN. § 58.1-3958 (2009) (emphasis omitted).

³ MASTER GUIDELINES GOVERNING COLLECTION OF UNPAID DELINQUENT COURT-ORDERED FINES & COSTS PURSUANT TO VIRGINIA CODE § 19.2-349 at 2-3 (July 9, 2013), *available at* <http://www.scb.virginia.gov/guidelinesfinesandfees.PDF>. Please note that the city treasurer may not deduct a contingent fee against any restitution it recovers. The amount of restitution recovered must be disbursed to the victim or court-ordered recipient in its entirety. *See id.* at 3.

⁴ *See id.* at 1 ("These Master Guidelines are mandatory and apply to all contracts for the collection of all fines, court costs, forfeitures, penalties, statutory interest, restitution, and restitution interest entered into by the attorneys for the Commonwealth and contractors, local governing bodies, county or city treasurers, or the Department of Taxation.").

Conclusion

Accordingly, it is my opinion that a city treasurer is authorized to enter into an agreement with the local Commonwealth's Attorney for the collection of delinquent court debt. It is my further opinion that the city treasurer is authorized to receive a contingent collection fee provided the percentage amount of this fee is no higher than 35 percent of any amounts recovered. Finally, it is my opinion that the city treasurer may receive an administrative fee under § 58.1-3958 in addition to the contingent collection fee.

With kindest regards, I am

Very truly yours,

A handwritten signature in black ink, appearing to read "Ken C II". The signature is stylized and written in a cursive-like font.

Kenneth T. Cuccinelli, II
Attorney General