

# The Times-Picayune

## Firms can't collect N.O. Taxes, Judges Rule

### City fears setback in blight fight, criticizes high court's decision

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By Susan Finch

New Orleans' system of using private attorneys to collect overdue property taxes and charging delinquent taxpayers penalties and collection fees violates the state Constitution, the Louisiana Supreme Court said in a unanimous ruling Tuesday.

Voiding a practice begun in 1998 by Mayor Marc Morial's administration and continued under Mayor Ray Nagin, the justices said the Constitution prescribes tax sales as the lone method for collecting delinquent property taxes and does not allow for imposing penalties or a collection fee on such debts.

The owners of properties sold at tax sales have three years after the sales to redeem the properties by reimbursing tax sale purchasers what they paid the city for the properties and giving the buyers a 5 percent redemption fee.

A statement issued by City Attorney Penny Moses-Fields late Tuesday said the city is reviewing the decision to determine whether it will seek a rehearing from the Supreme Court.

The city's defender in the case, New Orleans lawyer Phil Wittmann, called the tax sale process cumbersome and said the city is having trouble using such sales to unload its "huge inventory" of blighted, abandoned and flooded properties. "There are no buyers," he said.

"What this decision does is limit the ability of the city to enforce collection of its taxes, which really puts a greater burden on people who abide by the law and pay their taxes," Wittmann said. "It's going to have statewide impact because any other city trying to use novel means or penalties of one sort or another to collect overdue taxes is going to be stymied by this case."

Henry Klein, who represented local lawyers A. Remy Fransen Jr. and Allain F. Hardin in challenging the city's use of private tax collectors, called Wittmann's claim nonsense. "This (tax sales) system worked for 250 years, perfectly, until the Morial administration gave this political plum to the defendants," Klein said.

He called the Supreme Court's ruling, which upheld similar conclusions by the 4th Circuit Court of Appeal, "an across-the-board victory for the citizens of the city of New Orleans."

The decision opens the way for asking Civil Court Judge Ethel Sims Julien to make the city's previous and current property tax collection contractors return what he estimates was \$40 million in penalties. In her previous ruling on the case, Julien said the collections contract was constitutional.

Klein said affected taxpayers also will be looking to the city for some reimbursement because the Supreme Court also invalidated the 3 percent collection penalty the city charged delinquent taxpayers. "We are going to ask the city to return the money or give people a credit on their tax bill," he said.

As Klein sees it, the high court's Tuesday ruling invalidated both the city's previous delinquent property tax collection contract with a Texas law firm, Linebarger Goggan Blair & Sampson, and its current collections pact with a consortium of four local law firms hired by the Nagin administration just before Hurricane Katrina.

Efforts to recoup the penalty money, Klein said, will focus on the entities that reaped the lion's share of it: Linebarger, which charged taxpayers a 30 percent penalty, and a local group with strong ties to Morial, United Governmental Services of Louisiana, with which Linebarger shared its fees until UGSL was dropped when Nagin renegotiated the contract in 2002.

In her statement, Moses-Fields said it is unlikely the ruling will result in money damages because the property owners failed to follow procedure in state law that requires owners to pay contested taxes under protest, then file suit. If damages are awarded, however, she said the city would seek payment from Linebarger under its contractual obligation.

The law firm consortium now holding the property tax collection contract gets a fee of 9.5 percent of all such taxes it brings in. The firms have a separate contract to collect the city's unpaid sales taxes.

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