

**SOLICITOR-GENERAL OF THE FEDERATION
AND PERMANENT SECRETARY**

**FEDERAL MINISTRY OF JUSTICE
PLOT 71B,
SHEHU SHAGARI WAY
MAITAMA ABUJA NIGERIA**

P.M.B. No 192
Telegram SOLICITOR
Telephone 09-6720170
Telex:



Ref. NMJ/DSD/EMF/329/1.

The Permanent Secretary,
Federal Ministry of Finance,
P.M.B 14, Cadastral Zone A3,
Garki, Abuja.

**RE: REQUEST FOR LEGAL OPINION ON THE PROPRIETY OF NON-
REMITTANCE OF REVENUE BY SOME GOVERNMENT AGENCIES**

Please refer to your letter dated 16th August 2021 ref no. F.12090/T4/553 on the above subject matter requesting for the Honourable Attorney-General of the Federation's legal opinion on the refusal and or failure of certain Government Agencies to remit revenues belonging to the Federal Government.

2. In this connection, the Ministry has reviewed your request vis-à-vis the provisions of the Constitution as well as judicial pronouncements on the subject matter and wishes to state as follows:

a. On the creation of the Federation Account under the Constitution

i. Section 162 (1) of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) provides that:

The Federation shall maintain a special account to be called "the Federation Account" into which shall be paid all revenues collected by the Government of the Federation, except the proceeds from the personal income tax of the personnel of the armed forces of the Federation, the Nigeria Police Force, the Ministry or department of government charged with responsibility for Foreign Affairs and the residents of the Federal Capital Territory, Abuja.

ii. "Revenue" is defined in section 162 (10) as:

any income or return accruing to or derived by the Government of the Federation from any source and includes—

(a) any receipt, however described, arising from the operation of any law ;

(b) any return, however described, arising from or in respect of any property held by the Government of the Federation ;

(c) any return by way of interest on loans, and dividends in respect of shares or interest held by the Government of the Federation in any company or statutory body.

iii. The revenue in the Federation Account shall be distributed between the Federal Government, State Government and Local Governments of the Federation in accordance with the provisions of section 162 of the Constitution and the Allocation of Revenue (Federation Accounts Etc) Act LFN 2004.

iv. However, with respect to the cost of collection of duties and taxes by the Federal Government Agencies, section 165 of the Constitution provides that:

Each State shall in respect of each financial year pay to the Federation an amount equal to such part of the expenditure incurred by the Federation during that financial year for the purpose of collection of taxes or duties which are wholly or partly payable to the State pursuant to the provisions of this Part of this Chapter or of any Act of the National Assembly as is proportionate to the share of the proceeds of those taxes or duties received by the State in respect of that financial year.

b. On the Power of MDAs to retain their proceeds and income pursuant to their Establishment Act

i. From the above Constitutional provisions it is clear that all revenue generating Agencies of Government are constitutionally mandated to remit all income, revenue or returns to the Federation Account. The Constitution does not make provision for the retention of any sum by any MDA, rather the States in the Federation are by virtue of section 165 of the Constitution mandated to refund the cost of collection of duties and taxes to the Federation.

ii. However, this is without prejudice to the constitutional powers of the National Assembly to make laws, and the powers of the judiciary to interpret same under Section 4 of the Constitution. In other words, all laws made by the National Assembly remain valid until they are either amended, repealed or declared null and void by a Court of competent jurisdiction.

iii. It is however pertinent to note that the Court has held that with respect to accruals and disbursement of the Federation Account, no Government Agency has *locus standi* to institute proceedings against the Federal Government. The Court of Appeal held that the only proper parties that can institute proceedings in respect of the Federation Account are the Federal Government, State Governments or the Local Governments, as these are the only constitutional beneficiaries of the Federation Account. See **RMFAC V. AG FEDERATION (2014) LPELR 24105 (CA)**

c. On funding of Agencies created by the three tiers of Government

The Supreme Court has also held that it is the responsibility of any tier of Government which creates an Agency to fund same from its own share of allocation and not the Federation Account. In **AG Abia State v. AG Federation (2003) LPELR 610 (SC)** the Supreme Court held that as follows:

"...one thing that stands clear from our decision in ATTORNEY-GENERAL OF THE FEDERATION V. ATTORNEY-GENERAL OF ABIA STATE & 35 ORS (supra) is that, if any of the three tiers of Government decides to form, create or constitute new bodies, or things whatsoever, the tier and that tier of Government alone, must be prepared to fund such things or bodies from its own share of allocation and not any more directly from the Federation Account."

Per KUTIGI J.S.C (Pp. 39-40, paras. E-A)

3. Conclusion

In conclusion it is my considered opinion that while the relevant provisions of the respective enabling Acts relied on by the various Agencies may not be in line with the Constitution with regards to the remittances of Federal Government Agency's

revenues to the Federation Account, the said Acts of the National Assembly remain in force until repealed by the National Assembly or declared null and void by a Court of competent jurisdiction. Further, in this regard it is only the Federal, State or Local Government that can bring an action in Court to challenge the unconstitutional retention of revenue by Government Agencies.

4. Please accept the assurances of the warm regards of the Honourable Attorney-General of the Federation and Minister of Justice.



MOHAMMED, U.E.

Ag. Solicitor-General of the Federation
and Permanent Secretary