



ALAN WILSON
ATTORNEY GENERAL

September 23, 2016

The Honorable Maria Walls, Treasurer
Beaufort County
P. O. Drawer 487
Beaufort, South Carolina 29901-0487

Dear Treasurer Walls:

Attorney General Alan Wilson has referred your letter dated August 26, 2015 to the Opinions section for a response.¹ The following is this Office's understanding of your questions and our opinion based on that understanding.

Issues (as quoted from your letter):

In an age when technology is utilized and depended upon to execute the duties of an office, it is difficult at times to apply current South Carolina State Statute which has not evolved with our County's business practices. We would like clarification on the items below as they have evolved into fully-electronic processes, and the hardcopy lists and documents referenced in South Carolina State Statute no longer exist.

Through a series of steps, our County's taxation software permits the import of valuation and taxpayer data, the assignment of the values to the asset being taxed, and the application of the millage rates for each taxing authority by the Auditor's Office which determines the taxes due for the asset being taxed. By the conclusion of these steps, the tax roll has been created and is an electronic listing that includes the assets being taxed, owner information, values, and taxes due. South Carolina Code §12-39-150 defines the county duplicate list as a complete list or schedule of all taxable property in the county, arranged line by line opposite the names of the owner, the value of the property, and the taxes due. Under South Carolina Code §12-39-150 is it appropriate to consider the tax roll as defined above, as the county duplicate?

Once the tax roll, as defined above, has been created, the Auditor's Office must then post the tax roll in the County's taxation software in order to make it available for the Treasurer's Office to accept payment. Under South Carolina Code § 12-39-150, is it appropriate to consider the posting of the tax roll as the Auditor's delivery of the county duplicate and the Treasurer's warrant to collect?

Assuming it is appropriate to consider the tax roll and it's posting as the Auditor's delivery of the county duplicate, and taking into consideration South Carolina Code §12-45-60, if the tax roll as posted by the

¹ We originally reviewed your question and attempted to resolve the issues based on S.C. Code § 12-39-200. However, it is our understanding you are now asking for further clarification regarding the questions in your letter so we will attempt to further address them in this opinion. Please feel free to ask any additional questions by letter requesting a follow-up opinion.

Auditor is then utilized by the Treasurer's Office, without alteration, to populate the tax bill, would the tax bill then be considered a method of pursuing collection and, as disseminated by the Treasurer pursuing collection of the taxes due, be in compliance with South Carolina Statute?

Law/Analysis:

It is this Office's understanding you take the position that the "county duplicate" listed in South Carolina Code § 12-39-150 is the tax roll and that once the county auditor processes and duplicates the data in electronic form to the "accounts receivable" where it is accessible to the Treasurer, it becomes the tax roll and can be used as the Treasurer's duplicate to collect taxes. Based on your letter, we understand you are asking multiple questions. We interpret the first question as asking whether an auditor may present an electronic tax roll. We interpret the second question as asking whether an auditor fulfills his statutory duty to make a list for the county treasurer that he must deliver by September 30th of each year by completion of an electronic tax roll to the accounts receivable portion. The third question, which is listed as an assumption in your last question, is whether the electronic posting of the tax roll is the auditor's delivery of the county duplicate pursuant to South Carolina Code § 12-39-150. The last question we interpret as asking whether the treasurer may use the electronic tax roll, if it is the auditor's delivery of the county duplicate pursuant to South Carolina Code § 12-39-150 and if used to populate the tax bill, to collect the taxes due.

You mention two statutes in your letter: South Carolina Code § 12-39-150 and §12-45-60. Let us begin by examining both statutes. South Carolina Code §12-45-60 states that "[c]ounty treasurers are prohibited from collecting any tax except such as has been first entered upon the tax duplicates of their respective counties or upon the order of the auditors of such counties." South Carolina Code §12-39-150 states that:

The auditor shall enter into a book prepared for that purpose, in a manner as the department prescribes, a complete list or schedule of all taxable property in his county and the value of it as equalized. The list or schedule must be arranged so that each separate parcel of real property in each district, other than city, village, and town property, is contained in a line or lines opposite the names of the owners, arranged in numerical or alphabetical order, and so that each lot or parcel of real property in cities, villages, and towns is contained in a line or lines opposite the name of the owner of it, respectively, arranged in alphabetical order. The value of all personal property must be set down opposite the name of the owner of it, respectively, and, if listed by another person representing the owner, the name of that person and the character in which he acted. The list or schedule must be retained in his office and another made for the county treasurer, delivered to him annually on or before September thirtieth, annually, as his warrant for the collection of the taxes, assessments, and penalties charged on it. Each list must be denominated the county duplicate.

S.C. Code § 12-39-150 (1976 Code, as amended). The 1965 Code version of this statute has almost identical language as our current version last changed by a 2006 amendment. S.C. Code § 65-1768 (1965 Code). Other than a few stylistic changes to the wording, the 2006 amendment changed "in such manner as the Comptroller General shall describe" to "in a manner as the department prescribes." Act No. 386,

2006 S.C. Acts 3025. The “department” in the current version of the statute, as changed by the 2006 amendment, refers to the South Carolina Department of Revenue. S.C. Code § 12-2-210. Certainly in 1965 the language was written well before computers were used for typing and storing taxable property information. Even the 1881 version used some of the same language as the current version. See 1881 (17) 1010 [S.C. Code §§ 212-219 (1881 Acts)]. For example, the 1881 version reads:

Sec. 218. Each County Auditor shall, on or before the 30th day of September in each year, make out and transmit to the Comptroller General and the County Commissioners an abstract of the real property of each district in his County in which he shall set forth:

1. The number of acres, exclusive of town lots, returned by said Auditor, with such additions as shall have been made thereto.
2. The aggregate value of such real property, other than town lots, as returned by said Auditor, inclusive of such additions as shall have been made thereto under the provisions of this Chapter.
3. The aggregate value of the real property in each town, city and village in his County, as returned by said Auditor, inclusive of such additions as shall have been made thereto.
4. The various kinds and descriptions of personal property returned for taxation.

Sec. 219. Each County Auditor shall make out, in a book to be prepared for that purpose, in such manner as the Comptroller General shall prescribe, a complete list or schedule of all taxable property in his County, and the value thereof, as equalized, so arranged as that each separate parcel of real property in each district, other than city, village, and town property, shall be contained in a line or lines opposite the names of the owners, arranged in numerical or alphabetical order, and so that each lot or parcel of real property in cities, villages, and towns shall be contained in a line or lines opposite the names of the owners thereof, respectively arranged in alphabetical order. ...

1881 (17) 1010 [S.C. Code §§ 212-219 (1881 Acts)].

The 2006 amendment is clear in authorizing the South Carolina Department of Revenue to prescribe the manner in which the auditor is to enter into a book the list and values of all taxable property within the county. Act No. 386, 2006 S.C. Acts 3025. In this situation, we would defer to Department of Revenue’s prescription, if any, regarding the manner of entry into the book. It is this Office’s understanding that you have checked with them and are asking for this opinion as further clarification. In any future event where the Department of Revenue prescribes otherwise, please conform to their statutory authority to prescribe. See S.C. Code § 12-39-150. Moreover, South Carolina Code § 12-39-190 specifies that the county auditor:

[S]hall enter the taxes on the duplicate retained in his own office. On the duplicate for the county treasurer, he shall enter the taxes against each parcel of real and personal property on one or more lines, opposite the name of the owner or owners.

The next section states that “[i]n all respects except as otherwise prescribed by Section 12-39-190, the department may prescribe the types of acceptable format for county duplicates as may seem most convenient for the public and county auditors.” S.C. Code § 12-39-200 (emphasis added). Please note the 2015 amendment to this section substituted “the types of acceptable format” for “forms”, and deleted “shall conform to those forms” from the end. Section 27, Act No. 87 of 2015. We interpret the 2015 amendment as incorporating modern technology as the format instead of a paper form. Id.

As other courts have noted regarding technology:

Statutory interpretation must be prepared to accommodate technological innovation, if the technology is otherwise consistent with the statutory scheme. (See, e.g., *O’Grady v. Superior Court* (2006) 139 Cal.App.4th 1423, 1461, 1464–1466, 44 Cal.Rptr.3d 72 [considering whether Web site blog could constitute a “‘periodical publication’ ” for purposes of the journalism shield law, even though “digital magazines” did not exist when the statute was enacted].) As discussed below, however, this particular technology is not entirely consistent with the present statutory scheme

Ni v. Slocum, 196 Cal. App. 4th 1636, 1652, 127 Cal. Rptr. 3d 620, 631 (2011). However, even as the Court in Ni acknowledged statutory interpretation should accommodate technology, it did not find electronic signatures consistent with the statutory scheme. Id. Thus, we would caution using technological innovation in statutory interpretation. A court in another state chose to leave the question of interpretation of a statute considering modern-day advances in dental technology to its legislature to change. See Bridgestone Retail Tire Operations v. Industrial Commission of Arizona, 227 Ariz. 453, 258 P.3d 271 (Ct. App. 2011). As you may know regarding statutory interpretation, the cardinal rule of statutory construction is to ascertain the intent of the General Assembly and to accomplish that intent. Hawkins v. Bruno Yacht Sales, Inc., 353 S.C. 31, 39, 577 S.E.2d 202, 207 (2003). The true aim and intention of the legislature controls the literal meaning of a statute. Greenville Baseball v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942). The historical background and circumstances at the time a statute was passed can be used to assist in interpreting a statute. Id. An entire statute’s interpretation must be “practical, reasonable, and fair” and consistent with the purpose, plan and reasoning behind its making. Id. at 816. Statutes are to be interpreted with a “sensible construction,” and a “literal application of language which leads to absurd consequences should be avoided whenever a reasonable application can be given consistent with the legislative purpose.” U.S. v. Rippetoe, 178 F.2d 735, 737 (4th Cir. 1950). The dominant factor concerning statutory construction is the intent of the legislature, not the language used. Spartanburg Sanitary Sewer Dist. v. City of Spartanburg, 283 S.C. 67, 321 S.E.2d 258 (1984) (citing Abell v. Bell, 229 S.C. 1, 91 S.E.2d 548 (1956)).

After examining the plain language of the statute (“the auditor shall enter into a book prepared”), one remaining question is whether the statutory intent would include an electronic book. This Office answered a similar question for a probate judge regarding whether South Carolina Code § 14-23-1130 requires a paper index book or allows for an electronic index. See Op. S.C. Att’y Gen., 2014 WL 1398582 (S.C.A.G. January 31, 2014). In that opinion we concluded that unless and until Court Administration or the General Assembly stated otherwise, a probate court could maintain an electronic index book of its records “as long as the index records are properly stored electronically with the ability to print a hard copy at any time with the caveat that the electronic storage should have a backup copy stored and that

otherwise complies with standards of the South Carolina Department of Archives and History.” Id. Thus, this Office, like most courts, has a history of recognizing that most statutes did not take into consideration electronic storage when they were written.

Conclusion:

It is for all of the above reasons we advise the following:

- 1) We believe a court will interpret South Carolina Code § 12-39-200 and § 12-39-150 to authorize a county auditor to present the tax roll duplicate to the county treasurer in electronic form.²
- 2) We believe a court could find delivery by the county auditor to the county treasurer pursuant to South Carolina Code § 12-39-150 to be completion of an electronic tax roll in the accounts receivable portion available to the treasurer.³
- 3) Whether the electronic posting of the tax roll is the auditor’s delivery of the county duplicate pursuant to South Carolina Code § 12-39-150 is a question of fact, not law. This Office will not answer such a hypothetical factual question in this opinion, as we leave determination of an auditor’s intent based on the facts, subject to judicial review.⁴
- 4) We believe a court will find the treasurer may use the electronic tax roll, if it is the auditor’s delivery of the county duplicate pursuant to South Carolina Code § 12-39-150 and if used to populate the tax bill, to collect the taxes due as “his warrant for the collection of the taxes” pursuant to § 12-39-150.⁵

The Attorney General’s Office does not want to get involved in a dispute between elected officials, especially at the local government level. We encourage cooperation among elected officials and believe a court would do so too. In answering your questions, we are merely advising how we believe a court will interpret the General Assembly’s intent in § 12-39-150 in spite of the literal language of the statute originally written in the 1800’s.⁶ This Office is only issuing a legal opinion based on the current law at this time and the information as provided to us.⁷ Until a court or the General Assembly specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. Additionally, you may also petition the court for a declaratory judgment, as only a court of law can interpret statutes and make such determinations. See S.C. Code § 15-53-20. If it is later determined otherwise, or if you have any additional questions or issues, please let us know.

² Please note all other rules and laws must be complied with regarding electronic records, retention, etc. and this is subject to the Department of Revenue’s authority in S.C. Code §12-39-200. We also advise storing backup copies, whether in electronic format or not, with S.C. Department of Archives even where not statutorily mandated.

³ Again noting this conclusion is subject to the Department of Revenue’s authority to specify an “acceptable format” pursuant to S.C. Code §12-39-200.

⁴ As you may be aware, S.C. Code §12-45-60 prohibits a county treasurer from collecting taxes unless listed on the tax duplicate. See also Op. S.C. Att’y Gen., 1984 WL 249894 (S.C.A.G. May 22, 1984) (opining that the law does not allow for pre-payment of taxes in installments or at a discount).

⁵ See Op. S.C. Att’y Gen., 1987 WL 245422 (S.C.A.G. February 3, 1987) (opining that the tax duplicate is the treasurer’s authority for the collection of taxes).

⁶ Unless and until the South Carolina Department of Revenue or the General Assembly prescribes otherwise. See 1881 (17) 1010 [S.C. Code §§ 212-219 (1881 Acts)].

⁷ This written opinion was requested to be completed quickly, so we were not able to thoroughly review the law and history thereof, nor were we able to address all relevant statutes and rules. Thus, if we have not addressed anything of significance we ask you to please request a follow-up opinion and allow us additional time to research all of these issues.

The Honorable Maria Walls, Treasurer
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Sincerely,



Anita S. Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
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