



ALAN WILSON
ATTORNEY GENERAL

December 5, 2017

The Honorable Jim Beckert
Beaufort County Auditor
Post Office Box 458
Beaufort, SC 29901-0458

Dear Auditor Beckert:

Attorney General Alan Wilson has referred your letter dated July 27, 2017 to the Opinions section for a response. The following is this Office's understanding of your questions and our opinion based on that understanding.

Issues (as quoted from your letter):

- 1) *"Can the Administrator control an elected office albeit indirectly and alter the performed duties of the Auditor by excluding the Auditor from the renewed contract then assign those responsibilities to the Treasurer with the print vendor?"*
- 2) *"Can the Administrator prevent the Auditor from performing the legitimate business of the office when requesting an invitation for bid (IFB) to obtain a new vendor to provide tax bill/notice print and mailing contract that excludes the Auditor from performing the legitimate duties of the office? Knowing that when the Auditor has a new print vendor in place the printing and mailing of tax bills/notices would be completed by the Auditor as intended."*
- 3) *"Is the Auditor responsible for accurately and correctly charging taxes, state mandated penalties and determining sums to be levied on property, then determine that the assessments are equal on all real and personal property to the taxes?"*
- 4) *"Can the Administrator interpret, alter the responsibilities and/or direct how the Auditor is to deliver the tax bill/notices to the Treasurer?"*
- 5) *"Can the Administrator interpret, alter the responsibilities and/or direct how the Auditor bills (prints and mails) property taxes after having certified millage rates for the county, county school district and municipalities in the county?"*
- 6) *"If a duplicate is not approved/certified and no order to collect is given by the Auditor as intended can the Treasurer collect payments from citizens from those unauthorized documents?"*

Law/Analysis:

- 1) A county auditor has prescribed statutory duties. See, e.g., S.C. Code Ann. §§ 12-39-15 et seq; 4-15-150; 12-43-285. Additionally, the Department of Revenue has statutory authority over some aspects of an auditor's work, including training and compliance with prescribed standards. See, e.g., S.C. Code Ann. §§ 12-39-150, 12-39-190, 12-39-200, 12-39-15.¹ No public official or

¹ These are a few of the references within the South Carolina Code of Laws where an "auditor" is mentioned, though the Code mentions an "auditor" numerous other times. An auditor would be responsible to comply with all of his statutory duties, in addition to those duties prescribed by the South Carolina Department of Revenue.

person may interfere with the statutory duties of a county auditor as the Department of Revenue may “issue a department determination directing the appropriate county official to comply with all applicable state law relating to the valuation, assessment, or taxation of property.” S.C. Code Ann. § 12-4-535(A). Additionally, we advise attending a Department of Revenue training regarding an auditor’s duties and the manner the duplicate is to be prepared, as prescribed by the Department of Revenue. See S.C. Code Ann. §§ 12-39-150, 12-39-190, 12-39-200, 12-39-15. Regarding an auditor’s duties, this Office has previously opined that:

The General Assembly also has the authority to create the office of the county auditor and to prescribe the duties and powers of that office. Bank of Johnston v. Prince, 136 S.C. 439, 134 S.E. 387 (1926). Under Chapter 39 of Title 12, the office of the county auditor is created and specific duties are conferred upon the auditor.

Op. S.C. Att’y Gen., 1990 WL 599236, at *1 (S.C.A.G. Mar. 15, 1990). Further, the South Carolina Department of Revenue may “(3) direct proceedings, actions, and prosecutions to be instituted to enforce the laws relating to penalties, liabilities, and punishment of public officers and officers and agents of corporations for failure or neglect to comply with the provisions of the laws of this State governing the assessment and taxation of property and the rules of the department; and (4) cause complaints to be made against assessors, county boards of tax appeal, or other assessing and taxing officers to the proper authority for their removal from office for official misconduct or neglect of duty.” S.C. Code Ann. § 12-4-530. However, the duties and authority of county government depend on the type of government. It is this Office’s understanding from the Department of Revenue that some counties in South Carolina appoint their county auditor while others are elected. Regardless, the county auditor would need to be in compliance with his statutory duties and with the Department of Revenue’s trainings and prescribed duties for auditors.

- 2) Regarding procurement, we would defer to the South Carolina Procurement Code and would advise seeking the counsel of the South Carolina State Fiscal Accountability Authority for Procurement Services. This Office has previously opined that the South Carolina Procurement Code does not apply to counties but that a county must adopt procurement policies consistent with principles guided by the State Fiscal Accountability Authority and the Procurement Policy Council. Op. S.C. Att’y Gen., 2014 WL 1398599 (S.C.A.G. January 14, 2014) (citing S.C. Code Ann. § 11-35-40(2)); S.C. Code Ann. § 11-35-50.
- 3) Again, we believe a court would determine a county auditor is only responsible for his or her statutory duties and those duties prescribed by the Department of Revenue. See, e.g., S.C. Code Ann. §§ 12-39-15 et seq; 4-15-150; 12-43-285; 12-39-150; 12-39-190; 12-39-200. The duties of a county auditor include levying (“for the payment of principal and interest on such bonds ... and for the creation of such sinking fund ... there shall be levied annually by the county auditor and collected by the county treasurer ... a tax ... sufficient to pay the principal and interest of such bonds ... and to create such sinking fund...” S.C. Code Ann. § 4-15-150) and billing millage set by a governing body (“[t]he governing body of a political subdivision on whose behalf a property tax is billed by the county auditor shall certify in writing to the county auditor that the millage rate levied is in compliance with laws limiting the millage rate imposed by that political subdivision” S.C. Code Ann. § 12-43-285; “a local governing body may increase the millage rate imposed for general operating purposes ...” S.C. Code Ann. § 6-1-320) (emphasis added).

Additionally, we advise attending a Department of Revenue training regarding an auditor's duties and the manner the duplicate is to be prepared, as prescribed by the Department of Revenue. See S.C. Code Ann. §§ 12-39-150, 12-39-190, 12-39-200, 12-39-15. Regarding an auditor's duties, this Office has previously opined that:

The General Assembly also has the authority to create the office of the county auditor and to prescribe the duties and powers of that office. Bank of Johnston v. Prince, 136 S.C. 439, 134 S.E. 387 (1926). Under Chapter 39 of Title 12, the office of the county auditor is created and specific duties are conferred upon the auditor.

Op. S.C. Att'y Gen., 1990 WL 599236, at *1 (S.C.A.G. Mar. 15, 1990).

- 4) Please see our answer to question number 1.
- 5) Please see our answer to question number 1.
- 6) First and foremost, this Office was asked to answer a similar question by the Beaufort County Treasurer. Quoting from our 2016 opinion, this Office again emphasizes that:

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...

Op. S.C. Att'y Gen., 2016 WL 5820154, at *5 (S.C.A.G. Sept. 23, 2016). Additionally, one of the questions asked in the opinion was “[u]nder 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?” Id. We concluded that “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 dues as ‘his warrant for the collection of the taxes’ pursuant to § 12-39-150.” Id.

The law is clear in authorizing the county treasurer to proceed “upon receipt of the tax duplicate for the year from the county auditor.” S.C. Code Ann. § 12-45-40. The tax duplicate must be delivered to the treasurer by September thirtieth (30th) each year in the manner prescribed by the Department of Revenue pursuant to § 12-39-150. See also S.C. Code Ann. §§ 12-39-190, 12-39-200. As you are likely aware, a county treasurer may not collect any tax before it is entered on the tax duplicate or upon the county auditor's order. S.C. Code Ann. § 12-45-60. Furthermore, the Department of Revenue may “issue a department determination directing the appropriate county official to comply with all applicable state law relating to the valuation, assessment, or taxation of property.” S.C. Code Ann. § 12-4-535(A).

The Honorable Jim Beckert
Page 4
December 5, 2017

Conclusion:

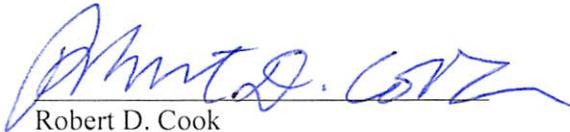
We hope the above answers will assist you in your duties as county auditor. However, this Office is only issuing a legal opinion based on the current law at this time and the information as provided to us. This opinion is not an attempt to comment on any pending litigation or criminal proceeding. Until 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. This opinion only addresses some of the sources in the subject area, but we can address other authority or additional questions in a follow-up opinion. 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.

Sincerely,



Anita (Mardi) S. Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General