

THE STATE OF SOUTH CAROLINA  
OFFICE OF THE ATTORNEY GENERAL  
COLUMBIA

OPINION NO. \_\_\_\_\_

October 29, 1992

SUBJECT: Public Officers and Employees.

- SYLLABI:
1. An employee can work for both the Edgefield County Treasurer and the County Tax Collector.
  2. The Edgefield County governing body is responsible for establishing the employee's work schedule.
  3. The Edgefield County Council can reduce the salary budget for the County and thereby reduce the staff of the Treasurer's Office. Whether such reduction will cause the Treasurer's Office to function improperly is a question for the electorate to decide and resolve.
  4. The Edgefield County Council cannot reduce the County Treasurer's salary for duties no longer performed.

TO: The Honorable James W. McCord  
Edgefield County Treasurer

FROM: Ronald W. Urban *RWU*  
Deputy Attorney General

QUESTIONS:

1. Can an employee work for both the Edgefield County Treasurer and the County Tax Collector?
2. Who is responsible for establishing the employee's work schedule?
3. Can the Edgefield County Council reduce the salary budget for the County and thereby reduce the staff of the Treasurer's Office to the point where it cannot function properly? Who makes the determination as to whether the office can function properly?
4. Can the Edgefield County Council reduce the County Treasurer's salary for duties no longer performed?

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APPLICABLE LAW: S.C. Code Ann. § 1-7-110 (Revised 1986), S.C. Code Ann. § 4-9-30 (Supp. 1991) and Act 1465, Acts of 1972.

DISCUSSION Question 1:

An Edgefield County employee's work hours are divided on an equal basis between the Treasurer's and Tax Collector's Offices. The question posed is whether such employment is permissible. There are two separate factors giving rise to this question. The first is an unpublished Attorney General's Opinion dated July 13, 1988. The second concerns the employee's access to the records of both the Treasurer's and Tax Collector's Offices.

The July 13, 1988 Opinion is not applicable to the instant situation and thus does not preclude the employment in question. That Opinion determined the Edgefield County Treasurer could not perform the duties of the Tax Collector in that such would be an unlawful assumption of powers vested by the General Assembly in the Tax Collector. Here, the powers of the public officials involved are not being unlawfully assumed or transferred. Rather, the employee is merely an assistant performing the duties assigned her. Moreover, as an assistant, she is not clothed with any of the powers conferred upon either the Treasurer or Tax Collector.

. . . A municipal corporation may, however, under its general powers provide assistants to a public officer, since an assistant's position as distinguished from that of a deputy is ordinarily a mere employment. A mere assistant cannot, however, act in the absence of his principal in his stead. The word "assistant" is universally defined as one who aids, helps, or assists: whereas the word "deputy" is defined to be a person appointed to act for another, a substitute, a delegate, an agent. In the absence of any statutory provision, the assistant never acts officially for the principal. He is not required to be sworn or to give bond. His capacity is more clerical than otherwise. . . .

56 Am Jur.2d, Municipal Corporations, Etc., Sec. 242.

The employee's access to both the Treasurer and Tax Collector's records is also not a basis for prohibiting the

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employment. The General Assembly has implemented a system of checks and balances in county tax matters by creating the separate offices of the Assessor, Auditor and Treasurer.

Although the Tax Collector is also often a separate office, it appears that the Legislature does not consider it to be part of this system. This is evident in that some county Tax Collectors have been legislatively merged into the office of the County Treasurer.<sup>1</sup>

CONCLUSION Question 1:

An employee can work for both the Edgefield County Treasurer and the County Tax Collector.

DISCUSSION Question 2:

The work schedule for the employee in question is set by the County Administrator. The question here is whether such is proper inasmuch as the Treasurer is an elected official.

Section 4-9-30 (7) clearly gives the Edgefield County Treasurer the authority to employ or discharge all personnel within his office. That section further indicates, however, that once an employee is hired by the Treasurer, he or she becomes subject to all personnel systems and procedures established by the county governing body.<sup>2</sup> In other words, the county governing body is the party responsible for setting the work schedule for the employee in question.

CONCLUSION Question 2:

The Edgefield County governing body is responsible for establishing the employee's work schedule.

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<sup>1</sup>See for example Act 1465, Acts of 1972, where the General Assembly merged the Kershaw County Tax Collector's duties into the office of the Treasurer.

<sup>2</sup>An exception exists where employees serve at the pleasure of an elected official. In those instances, the elected official, not the governing body controls work hours, schedules, leaves, etc. See Heath v. County of Aiken, 295 S.C. 416, 368 S.E.2d 904 (1988).

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DISCUSSION Question 3:

This question has been previously addressed by the Circuit Court in Lester R. Waddell, Auditor of Florence County v. The Florence County Council, et al., 83-CP-21-1387. In that matter, the Florence County Auditor sought a Writ of Mandamus against County Council to require it to appropriate sufficient funds to satisfy the auditor's staffing requirements. The Court denied the Writ. In doing so, the Court held County Council had the sole discretion to determine what amounts should be appropriated for the operations of the various County offices. The Court also held that circumstances such as these were legislative in nature and thus outside the domains of the Court.<sup>3</sup>

The decision in Waddell indicates the Edgefield County Council does have the authority to reduce the county salary budget and thus indirectly reduce the staff of the Treasurer's Office. Inasmuch as County Council is a legislative entity, the question of whether such reduction will cause the Treasurer's Office to function improperly is ultimately a question for the electorate to decide and resolve.<sup>4</sup> Crow v. McAlpine, 277 S.C. 240, 285 S.E.2d 355 (1981).

CONCLUSION Question 3:

The Edgefield County Council can reduce the salary budget for the county and thereby reduce the staff of the Treasurer's Office. Whether such reduction will cause the Treasurer's Office to function improperly is a question for the electorate to decide and resolve.

DISCUSSION Question 4:

In June, 1987, the Edgefield County Treasurer assumed the duties of the Tax Collector. At that time, County Council and the Treasurer agreed upon a set salary to compensate the Treasurer for his increased responsibilities. Approximately one year later, this arrangement was terminated when

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<sup>3</sup>A copy of the Court's Order is attached to this Opinion.

<sup>4</sup>Such question would also be factual in nature and thus not an appropriate question for an Attorney General's Opinion. See § 1-7-110 (Revised 1986).

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it was determined the Treasurer could not legally assume the duties of the Tax Collector. The Treasurer is now asking whether his salary can be reduced because of his diminished duties.

The Treasurer is an elected official. Thus, while it is not free from doubt, it appears any reduction in his salary during the term in question would be precluded by § 4-9-30 (7). The relevant portion of that statute states

The salary of those officials elected by the people may be increased but may not be reduced during the terms for which they are elected, . . .

The Treasurer's diminished duties would not affect the application of the above statute. A prohibition against changes in compensation of an official applies even in instances where the official's duties have been decreased.

[A] prohibition against changing the compensation of public officers during their terms of office operates upon the office and the official, and not upon the duties of the office. If the duties of the office are diminished, for what remains the officer is entitled to the same salary, if it is a salaried office, or to the same scale of fees for what he may do, if the compensation is based on that plan. . . .

63A Am Jur.2d, Public Officers and Employees, Sec. 447.

CONCLUSION Question 4:

The Edgefield County Council cannot reduce the County Treasurer's salary for duties no longer performed.

RWU:acw  
Enclosures