

1983 WL 181806 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 18, 1983

***1 SUBJECT: Sales and Use Tax—Revocation or Suspension of License.**

A hearing to suspend or revoke a retail license pursuant to § 12-35-390 requires the exercising of quasi-judicial powers which, in the absence of statutory authorization, may not be delegated. However, § 12-35-1180 provides statutory authorization for deputizing such quasi-judicial matters to others so that a delegation is permissible.

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QUESTION:

Can the Commission appoint a deputy to hold and conduct a hearing pursuant to [§ 12-35-390, South Carolina Code of Laws, 1976](#), as amended, with such deputy to decide whether a license should be revoked or suspended?

APPLICABLE LAW:

[§§ 12-35-320, 12-35-390 and 12-35-1180, South Carolina Code of Laws, 1976](#), as amended.

DISCUSSION:

[Section 12-35-320](#) requires as a condition precedent to engaging or continuing in any business as a retailer, the obtaining of retail license from the South Carolina Tax Commission. [Section 12-35-390](#) provides the procedure for revoking or suspending such a license as follows:

‘Whenever any person fails to comply with any provision of this chapter relating to the sales tax or use tax or any rule or regulation of the Commission relating to the sales tax or use tax prescribed by this chapter, the Commission upon a hearing, after giving the person ten days’ notice in writing specifying the time and place of hearing and requiring him to show cause why his license should not be revoked, may revoke or suspend any one or more of the licenses held by such person. The notice may be served personally or by mail.’

This statute directs that a hearing be held by the Commission and that upon such hearing, the Commission may suspend or revoke the retail license. The question is whether a decision to suspend or revoke may be made by an appointed deputy of the Commission or whether such must be made by the Commissioners.

The ability of an agency to delegate authority has been found to have specific limitations. Although ministerial functions may be delegated, administrative agencies cannot delegate powers and functions which are discretionary or quasi-judicial in character without permissive constitutional or statutory provisions. 73 C.J.S., [Public Administrative Bodies and Procedure](#), § 57 and [107 A.L.R. 1482](#). An act is judicial where it is the result of judgment or discretion and ministerial when it is imperative involving

merely execution of a set task prescribed by law. [Dunbar v. Fant](#), 170 S. C. 414, 170 S. E. 460. Further, quasi-judicial is defined in [Black's Law Dictionary](#), 1411 (Rev. 4th Ed. 1968) as:

‘A term applied to the action, discretion, etc., of public administrative officers, who are required to investigate facts, or ascertain the existence of facts, and draw conclusions from them, as a basis of their official action, and to exercise discretion of a judicial nature.’

*2 The hearing held pursuant to [§ 12-35-390](#) involves discretion on the part of the Commission since such a hearing allows the taxpayer to explain why he failed to comply with appropriate provisions of the law and thus allows the Commission to decide upon facts and arguments presented if a suspension or revocation or neither is warranted. Since the hearing contemplated by [§ 12-35-390](#) is not ministerial but quasi-judicial, no delegation of authority is available unless such is allowed by statute.

The statutes governing the Tax Commission allow the delegation of quasi-judicial functions since the authority to appoint deputies is given to the Commission. [Section 12-35-1180](#) provides as follows:

‘The Commission may appoint and remove a person to be known as the Sales and Use Tax Director, who, under its direction, shall have the supervision and control of the assessment and collection of the license, sales and use taxes provided by this chapter. The Commission may also appoint such other officers, agents, deputies, clerks and employees as it may deem necessary, such persons to have such duties and powers as the Commission may from time to time prescribe.’

This statute specifically authorizes the Commission to ‘appoint * * * deputies [with] such duties and powers as the Commission may from time to time prescribe’. A deputy is one who, by appointment, exercises his office in another's right, doing all things in the principal's name and is one empowered to act for the principal, doing anything the principal may do in all matters in which the principal may act. [Sanchez v. Murphy](#), 385 F. Supp. 1362, 1364 and [Williams v. Ferrentino](#), 199 So. 2d 504, 511. If authority from the Legislature is granted to appoint a general deputy, such deputy may exercise discretionary or quasi-judicial powers. [State Tax Commission of Utah v. Katsis](#), 62 P. 2d 120, 107 A.L.R. 1477 and [Rigby v. Stone](#), 11 So. 2d 823. Since [§ 12-35-390](#) provides for appointment of deputies, the Commission may appoint a deputy to hold hearings and decide whether a retail license should be revoked or suspended.

CONCLUSION:

A hearing to suspend or revoke a retail license pursuant to [§ 12-35-390](#) requires the exercising of quasi-judicial powers which, in the absence of statutory authorization, may not be delegated. However, [§ 12-35-1180](#) provides statutory authorization for deputizing such quasi-judicial matters to others so that a delegation is permissible.

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