



ALAN WILSON
ATTORNEY GENERAL

May 20, 2021

Brittany L. Ward, Esq.
Deputy County Attorney
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Dear Ms. Ward:

You have requested an opinion of our Office regarding the positions of county treasurer and county auditor in a council-manager form of government. You are inquiring as to whether one position can be appointed and the other position can be elected or whether they have to be established in the same manner.

LAW/ANALYSIS

In a council-manager form of government, “[t]he council shall employ a manager who shall be the administrative head of the county government and shall be responsible for the administration of all the departments of the county government which the council has the authority to control.” S.C. Code Ann. § 4-9-820 (1976 Code, as amended). Included in the manager’s duties is the employment and discharge of county personnel who are not elected. S.C. Code Ann. § 4-9-830 (1976 Code, as amended).

The county council in this form of government determines whether the treasurer and auditor are elected or appointed. Section 4-9-860 provides that the county treasurer and county auditor “may be elected or appointed by council as the council determines by ordinance.” S.C. Code Ann. § 4-9-860 (1976 Code, as amended). Additionally, section 4-9-60 provides that “[u]nder the council-manager form the county treasurer and county auditor shall serve out their unexpired terms but shall thereafter be elected or appointed as council shall by ordinance prescribe.” S.C. Code Ann. § 4-9-60 (1976 Code, as amended).

Other forms of government are prohibited from making this choice:

[u]nder the council, council-supervisor and council-administrator forms of government provided for in this chapter the county treasurer and the county auditor shall be elected. Officials serving unexpired terms when a form of government provided for in this

chapter is adopted by a particular county shall continue to serve until successors are elected and qualify.

Id.

The county council and the county manager in a council-manager form of government generally do not exercise authority over the elected officials of the county. See S.C. Code Ann. § 4-9-850 (1976 Code, as amended). However, they do exercise control over a county treasurer and county auditor who are appointed. See S.C. Code Ann. § 4-9-860.

In the South Carolina Code of Laws, there are similarities between the positions of county treasurer and county auditor. Both of these positions serve four year terms. See S.C. Code Ann. § 12-45-20 (1976 Code, as amended); Beaufort County, SC Code of Ordinances § 2-81. Their terms coincide:

The time for the commencement of the terms of office of the various county officers is the first Tuesday in January next after their election, except that the terms of the county auditors and county treasurers shall commence the first day of July next following their election . . .

S.C. Code Ann. § 4-11-10 (1976 Code, as amended).¹

They are also suspended and removed from office in the same manner:

A county treasurer shall be subject to suspension and removal from office by the Governor upon the same grounds and in the same manner as prescribed in Section 12-39-30 in relation to county auditors, and all the provisions of said section are made applicable in cases of suspension and removal of county treasurers.

S.C. Code Ann. § 12-45-30 (1976 Code, as amended).

Additionally, the duties of county treasurers and county auditors overlap. County treasurers can only collect taxes which have been entered on the tax duplicate or ordered by the auditor. S.C. Code Ann. § 12-45-60 (1976 Code, as amended). If the taxes are not paid in a timely manner, the auditor adds a penalty which is collected by the treasurer. S.C. Code Ann. § 12-45-180 (1976 Code, as amended). All taxes, assessments and penalties which are not collected by the treasurer are entered on a delinquent list by the auditor. S.C. Code Ann. § 12-45-300 (1976

¹ In Florence Cty. v. Moore, 344 S.C. 596, 545 S.E.2d 507 n.4 (2001), the court explained that the term of office for county treasurers provided for in section 4-11-10 “reflects the General Assembly’s intent that treasurers’ and auditors’ terms coincide with the state’s fiscal year . . .”

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Code, as amended). Furthermore, a committee composed of the county auditor, county treasurer, and county assessor may, by a majority vote, waive, dismiss, or reduce a penalty levied against real or personal property if there is an error by the county. S.C. Code Ann. § 12-45-420 (1976 Code, as amended).

CONCLUSION

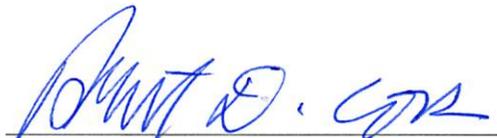
It is our opinion that county treasurers and county auditors in a council-manager form of government must be similarly elected or appointed; one position cannot be elected while the other is appointed. Both of these positions serve four year terms which commence at the same time. They can be suspended or removed from office in the same manner. Their duties overlap. Additionally, section 4-9-60 is clear that in other forms of government, both of these positions must be elected. These factors indicate legislative intent² that these positions should be established in the same manner, whether it is by election or by appointment. Moreover, appointing one position and electing the other would mean that one position would be controlled and subject to discharge by the county manager, while the other would be subject to the will of the voters. We do not believe that the Legislature intended such an absurd result. See State v. Johnson, 396 S.C. 182, 189, 720 S.E.2d 516, 520 (Ct.App. 2011) (“courts will reject a statutory interpretation that would lead to an absurd result not intended by the legislature or that would defeat plain legislative intention.”).

Sincerely,



Elinor V. Lister
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General

² “The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” Hodges v. Rainey, 341 S.C. 79, 86, 533 S.E.2d 578, 581 (2000).