

7820 Liberty



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

August 17, 2004

The Honorable Johnny C. Allen
Horry County Treasurer
Post Office Box 1237
Conway, South Carolina 29526

Dear Mr. Allen:

In a letter to this office you requested an opinion regarding S.C. Code Ann. Section 12-45-300 (2000) which provides as follows:

The auditor shall take from the duplicate previously provided to the treasurer for collection a list of all taxes, assessments, and penalties the treasurer has been unable to collect, describing the property as described on the duplicate, and shall note on it in a marginal column the reasons assigned by the treasurer why the taxes or other charges could not be collected. This list is the delinquent list and must be signed and sworn to by the treasurer before the auditor, who shall record it in a book to be provided for the purpose. In making this list, the delinquencies in each taxing entity must be stated separately. After deducting the amount of taxes, assessments, and penalties returned delinquent, the treasurer shall stand charged with the remainder of the taxes, assessments, and penalties charged on the duplicate.

You referenced the situation where the Treasurer turns in an uncollectable tax or taxes ten years or older to the Auditor to remove from the receivable files. You indicated that you had delivered a report to your Auditor but received the report back with her refusal to approve it.

When interpreting the meaning of a statute, certain basic principles must be observed. The cardinal rule of statutory interpretation is to ascertain and give effect to legislative intent. State v. Martin, 293 S.C. 46, 358 S.E.2d 697 (1987). Typically, legislative intent is determined by applying the words used by the General Assembly in their usual and ordinary significance. Martin v. Nationwide Mutual Insurance Company, 256 S.C. 577, 183 S.E.2d 451 (1971). Resort to subtle or forced construction for the purpose of limiting or expanding the operation of a statute should not be undertaken. Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). Courts must apply the clear and unambiguous terms of a statute according to their literal meaning. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1991). Statutes should be given a reasonable and practical construction which

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is consistent with the policy and purpose expressed therein. Jones v. South Carolina State Highway Department, 247 S.C. 132, 146 S.E.2d 166 (1966).

Based upon my reading of Section 12-45-300, the auditor's responsibilities with regard to the list provided by the treasurer are mandatory and without discretion on the auditor's part. As provided in the quote provision, "(t)he auditor shall take from the duplicate previously provided to the treasurer for collection a list of all taxes, assessments, and penalties the treasurer has been unable to collect". As referenced in prior opinions of this office dated October 4, 1994 and October 26, 1987, the word "shall" typically means mandatory and therefore, the action referred to is mandatory. In my opinion, the auditor is not given discretion as to accepting the duplicate provided by the treasurer but must accept it and act accordingly.

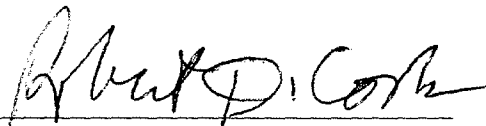
If there are any further questions, please advise.

Sincerely,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General