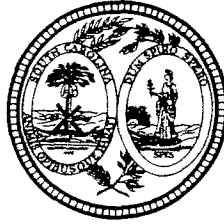


7953 Liberty



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

April 15, 2005

John M. Tolar, Esquire
Georgetown County Attorney
715 Prince Street
Georgetown, South Carolina 29442

Dear Mr. Tolar:

By letter, you requested that this Office issue an opinion as to whether Georgetown County can assign the duties of delinquent tax collection to the County Treasurer. In your letter, you note that currently the duties of delinquent tax collection are being executed by the Georgetown County Delinquent Tax Collector. Although you note that this Office has previously advised that a County Treasurer may not assume the duties of County Tax Collector, you argue that Section 12-45-400 authorizes the County Treasurer to assume delinquent tax collecting duties. Following review of this matter, we continue to be of the opinion that pursuant to existing state law, a County Treasurer may not assume the duties of a delinquent Tax Collector.

Law / Analysis

We have previously advised that a County Treasurer may not assume the duties of the tax collector. Specifically, we concluded that the Edgefield County Treasurer could not voluntarily or by direction of County Council assume the duties of the office of County Tax Collector. See, *Op. S.C. Atty. Gen.* July 13, 1988. In that same opinion, we also concluded that Edgefield County Council could not require the County Treasurer to perform the duties of the County Tax Collector. *Id.* In part, our reasoning was as follows:

[t] he treasurer's office is created by general state law and the County Council is without authority to enact ordinances in conflict therewith. Neither, in our view, does the above provision confer authority to merge the delinquent tax collecting duties with those of the treasurer.

Statutes relating to the same subject must be considered together and harmonized when possible. (For cases see 17 S.C.D., Statutes, Key 223, et seq.)

It is logical to conclude under this rule of construction that Section 4-9-30(6) does not confer authority upon the County Council to regulate, modify or abolish the

office of the county treasurer. Exceptions to the authority of a Council under this provision are those offices held by elected persons.

After the county treasurer issues his execution against a defaulting taxpayer in his jurisdiction, as provided in § 12-45-180, signed by him or his agent in his official capacity, directed to the officer authorized to collect delinquent taxes, assessments, penalties, and costs, requiring him to levy the execution by distress and sale ... (Emphasis added)

This language further reflects legislative intent that the treasurer and the tax collector be two separate county officials. It would be illogical to conclude that the General Assembly, by use of the underscored language, intended the treasurer to issue the exemption to himself.

When all the provisions are considered together, the reasonable conclusion is that the duty to collect delinquent taxes cannot be merged with the other duties of the treasurer that are provided by general law.

Thus, we are of the opinion that a County Treasurer may not assume the duties of a County Delinquent Tax Collector. We note, however, that you reference § 12-45-400, which speaks of the Treasurer collecting delinquent taxes. Section 12-45-400 specifically reads:

[w]hen a county treasurer or tax collector is charged by law with the collection of delinquent taxes, the county treasurer or tax collector may delegate in writing to the deputy county treasurer, to the deputy tax collector, or to the county sheriff the duty and responsibility to seize and take possession of so much of the property of a defaulting taxpayer as may be necessary to secure payment of the taxes.

In our view, it is most likely that the phrase "charged by law" as contained in § 12-45-400, refers to legislative action by the General Assembly, rather than an ordinance of county council. In an opinion dated May 20, 1961, former Attorney General McLeod concluded that the Legislature could abolish the duties of the Spartanburg County Tax Collector and devolve them "upon any other officer whom the Legislature might select ..." including the County Treasurer. And in *Op. S.C. Atty. Gen.*, Op. No. 3710 (February 11, 1974), it was recognized that "[f]or certain counties, recent legislation has transferred these duties and responsibilities to county treasurers and abolished the office of tax collector." In that same opinion, we noted that "[i]t will, of course be necessary to trace the specific legislation for each county to determine what duties have been transferred," commenting that "[t]he General Assembly has made the office of Kershaw County Treasurer responsible for the duties formerly held by the county tax collector and has abolished that office." Thus, it seems evident that the phrase "charged by law" refers to exceptions made in certain counties by the Legislature wherein the duties of Tax Collector are transferred by statute to the County Treasurer.

Mr. Tolar
Page 3
April 15, 2005

Moreover, other opinions of this Office reinforce the conclusion that only the General Assembly may assign the duties of the Tax Collector to the County Treasurer. In an opinion dated August 21, 1978, we concluded that while the Aiken County Council is empowered to abolish the Aiken County Tax Collector, it could not assign the duties of that Office to the County Treasurer. There, we stated:


[a]s to your second inquiry concerning whether or not Aiken County Council, after January 1, 1980, can combine the position of Tax Collector with the office of Aiken County Treasurer, my opinion is that it can neither add to, take from, or otherwise alter the statutory duties of county officials whose offices are created by general law or by the Constitution.

And, in *Op. S.C. Atty. Gen.*, Op. No. 82-14 (March 12, 1982), we concluded that “[i]t is the opinion of this office that the Treasurer of Aiken County cannot voluntarily assume the duties of the office of the Aiken County Tax Collector.”

Conclusion

We reaffirm our earlier opinions which conclude that county council does not possess the authority to assign the duties of the Delinquent Tax Collector to the County Treasurer. The Office of County Treasurer is created by general law and thus only the General Assembly may alter the duties of that Office. In the July 13, 1988 opinion, we advised that “it is further recommended that should the consolidation be desired, that such be done pursuant to general state law. In the absence of such a law, an action to determine the legality of the consolidation should be pursued. If this clarification is not had, any execution and sale of property for nonpayment of tax would be suspect and subject to “invalidation.”

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General