

1984 S.C. Op. Atty. Gen. 16 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-1, 1984 WL 159810

Office of the Attorney General

State of South Carolina

Opinion No. 84-1

January 4, 1984

***1 SUBJECT: Taxation and Revenue—Power of the South Carolina Tax Commission to delegate collection duty to independent contractors.**

The South Carolina Tax Commission is without authority to delegate the duty to collect delinquent taxes to independent contractors.

TO: Mr. A. B. Taylor
Director
Field Services Division
South Carolina Tax Commission

QUESTION:

May the Tax Commission by contract delegate the duty to collect delinquent taxes to an independent contractor?

APPLICABLE LAW:

§§ 12-3-90, 12-7-40, 12-7-50 and 12-35-1180, 1976 Code of Laws.

DISCUSSION:

Sections 12-3-90, 12-7-40 and 12-35-1180 provide for the personnel necessary for the Commission to carry out its statutory duties. Each is somewhat different, however, in language. Section 12-3-90 provides in part that the Commission:

‘* * * may appoint a secretary and stenographer and may employ such other persons as experts and assistants as may by it be deemed necessary to perform the duties and it may fix the compensation of such employees * * *.’ (Emphasis added)

Section 12-7-40 relates to income taxes and provides in part that the Commission:

‘* * * may appoint and remove a person to be known as the Income Tax Director, who, under its direction, shall have the supervision and control of the assessment and collection of the income taxes * * *. The Commission may also appoint such other officers, agents, deputies, clerks and employees as it may deem necessary to carry out the provisions of this chapter * * *.’

It is further significant to note the provisions of § 12-7-50 that provide in part that:

‘The salaries of all officers, agents and employees employed by the Commission to carry out the provisions of this chapter shall be such as it may prescribe, not to exceed such amounts as may be appropriated therefor by the General Assembly. * * *.’

[Section 12-35-1180](#) relates to sales taxes and is similar in text as [§ 12-7-40](#).

The power or authority of the Commission to act is granted by statute. The same are those expressly stated or necessarily implied. (See 1 Am.Jur.2d, [Administrative Law](#), § 69, et seq., and [South Carolina Electric & Gas Co. v. South Carolina Public Service Authority](#), 215 S.C. 193, 54 S.E.2d 777.)

It is well settled that in construing the above statutes the intent of the General Assembly controls. (For cases see 17 S.C.D., [Statutes](#), Key 180, et seq.) The statutes refer to an employee-employer relation. We find no legislative intent to confer authority to the Commission for it to delegate the responsibility of collecting taxes to an independent contractor. Should the Commission wish to do so, the authority should be by legislative act.

CONCLUSION:

The South Carolina Tax Commission is without authority to delegate the duty to collect delinquent taxes to independent contractors.

Joe L. Allen, Jr.
Chief Deputy Attorney General

1984 S.C. Op. Atty. Gen. 16 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-1, 1984 WL 159810