

1981 WL 158061 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 1, 1981

*1 Jack S. Mullins; Ph.D.

Director

Personnel Division

1205 Pendleton Street

Columbia, South Carolina 29201

Dear Dr. Mullins:

Your letter dated November 19, 1981, addressed to Mr. Sloan has been referred to be for response. You have requested this Office's opinion on two questions pertaining to the following proviso included in the General Appropriations Act for fiscal year 1982:

Provided, Further, Notwithstanding any other provision of law and upon approval of the Budget and Control Board, an employee, appointed to fill an original full-time position as a Tax Auditor with the South Carolina Tax Commission, shall serve a probationary period of not more than twelve (12) months.

The two questions concerning which you have requested an opinion are:

1. Can the term 'Tax Auditor' in the proviso of the General Appropriations Act be reasonably applied to the classes for which the Tax Commission has requested approval of an extended probationary period?
2. What effect does the proviso have on the provisions of Section 7.04B of the State Personnel Rules and Section 8-17-30 of the South Carolina Code, 1976, as they apply to the point in time at which an employee acquires permanent status and grievance rights?

1.

Your letter states that, pursuant to the quoted proviso, the Tax Commission has requested the Budget and Control Board's approval of an extended probationary period for the following Tax Auditor classes: Tax Auditor I, II, and III; Estate and Gift Tax Auditor I, II, and III; Non-Resident Corporate Auditor I and II. Your first question is whether the term 'Tax Auditor' used in the proviso can reasonably be applied to the positions submitted by the Tax Commission for the Budget and Control Board's approval. The answer to this question turns on whether the General Assembly intended the term 'Tax Auditor' to apply only to those positions formally classified Tax Auditor by the State Personnel Division or whether the term 'Tax Auditor' was intended to extend to auditing positions not formally classified Tax Auditor. Stated otherwise, the answer to your first question depends upon whether the General Assembly used the term 'Tax Auditor' in its technical sense or in its common and ordinary sense.

Under established rules of statutory construction, words used in a statute are to be given their ordinary and popular significance 'unless it clearly appears from the context that the Legislature intended to use such terms in a technical or peculiar sense[.]' [Weston et al. v. Board of Commissioners of Police Insurance Annuity Fund](#), 196 S.C. 491, 13 S.E.2d 600 (1941); see also [Worthington v. Belcher](#), 274 S.C. 366, 264 S.E.2d 148, 149 (1980); [Hays v. S.C. Tax Commission](#), 273 S.C. 269, 255 S.E.2d 837, 840 (1979), or unless the words have a well-recognized meaning in law different from their ordinary meaning in which case it is presumed that the words were used in their legal meaning. [Hughes v. Edwards](#), 265 S.C. 529, 220 S.E.2d 231, 234 (1975). And, where the term used has both a common and a technical meaning, the term is presumed to have its common meaning in

the absence of contrary legislative intent or other manifested meaning. 2A Sands, Sutherland Statutory Construction, § 47.29 (1973). See Cummings et al. v. Coleman, 7 Rich.Eq. (28 S.C.L.) 509, 518 (1852).

*2 As there is nothing to indicate that the General Assembly intended the term 'Tax Auditor' to have a narrow, technical meaning, it is my opinion that the term 'Tax Auditor' includes not only those positions formally classified as such but also includes those positions in which tax auditing is the principal function. This interpretation gives to the term 'Tax Auditor' its ordinary and popular, not technical, meaning.¹

As a review of the specifications on the positions for which the Budget and Control Board's approval has been requested reveals that the principal function of each is auditing for purposes of ascertaining compliance with the state's tax laws and regulations, it is my opinion that the term 'Tax Auditor' in the proviso to the General Appropriations Act can reasonably be applied to each of the classes for which approval has been requested.

2.

Concerning your second question, if the Budget and Control Board approves the Tax Commission's request for an extended probationary period for any or all of the classes for which approval has been sought, appointees to the class or classes approved can lawfully be required to serve a probationary period of not more than twelve (12) months. To the extent that there is a conflict between the proviso and Section 7.04B of the State Personnel Rules concerning the maximum duration of a probationary appointment, the proviso prevails by its express terms (i.e., 'Notwithstanding any other provision of law . . .') See Board of Education v. Maple Heights Teachers Association, et al., 41 Ohio Misc. 27, 322 N.E.2d 154, 157-158 (1973); Dover v. Dover, 15 Cal.App.3d 675, 93 Cal. Rptr. 384, 385. It should be noted, however, that the proviso does not require that an appointee to an approved position serve a twelve (12) month probationary period before attaining permanent status; rather, the proviso merely extends by three (3) months what would otherwise (i.e., under Section 7.04B) be the maximum probationary period. In other words, the proviso authorizes but does not require the withholding of permanent status to an appointee to an approved position for a period not to exceed twelve (12) months.

Finally, concerning the effect of the proviso on the right to appeal grievances to the State Employee Grievance Committee, Section 8-17-30, South Carolina Code, 1976 (Cum.Supp. 1980) provides:

Permanent state employees who have completed six months of satisfactory service or who, after an official extension not to exceed three months for marginal performance are given a satisfactory performance appraisal shall have the right to appeal to the State Employee Grievance Committee any grievances involving those issues specified in § 8-17-20 after all administrative remedies to secure acceptable adjudication within their own agency or department have been exhausted. If an employee does not receive an appraisal on the official appraisal date, he shall be considered to have performed in a satisfactory manner and to have grievance rights under this article.

*3 Thus, the statute confers the right to appeal grievances to the State Employee Grievance Committee only on permanent employees. An appointee to an approved position who has not attained permanent status, therefore, is ineligible to appeal to the Committee. If the Tax Commission requires an appointee to serve the full twelve-month probationary period as the proviso authorizes, the appointee would be ineligible to appeal a grievance to the Committee at any time within the twelve-month period.

I trust the above sufficiently answers your questions. If I may be of further assistance please let me know.

Sincerely,

Vance J. Bettis
Assistant Attorney General

Footnotes

- 1 'Auditor' has been defined as '[a]n officer who examines accounts and verifies the accuracy of the statements therein.' Black's Law Dictionary (Rev.4th Ed. 1968) A 'tax auditor', in common parlance, then, is an officer who examines accounts and verifies the accuracy of the statements therein for purposes of ascertaining whether tax laws and regulations are being complied with.
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