

1977 S.C. Op. Atty. Gen. 135 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-167, 1977 WL 24509

Office of the Attorney General

State of South Carolina

Opinion No. 77-167

June 1, 1977

***1** The West Columbia City Council's designation on March 1, 1977, of a CPA firm to conduct its annual audit for the 1976–1977 fiscal year is valid, even though the designation was after the time proscribed in § 47–53.

TO: City Attorney
City of West Columbia

QUESTION:

Is the designation of an accountant to perform a municipality's annual audit subsequent to thirty days after the beginning of the fiscal year to be audited is invalid?

CITATION OF AUTHORITIES:

[Beaufort County v. Jasper County](#), 220 S. C. 469, 68 S. E. 2d 421 (1951);

[Gasque, Inc. v. Nates](#), 191 S. C. 271, 2 S. E. 2d 36 (1939);

[Greer v. City of Asheville](#), 114 N. C. 678, 19 S. E. 635 (1894);

[Gwyne v. Coffey](#), 117 N. C. 469, 23 S. E. 331 (1895);

[State ex rel. McLeod v. Montgomery](#), 244 S. C. 308, 136 S. E. 2d 788 (1964);

Section 47–53, South Carolina Code of Laws (1962), as amended;

McQuillan, [The Law of Municipal Corporations](#), § 10.32 (3rd Ed. 1966).

Sutherland, [Statutory Construction](#) §§ 45.12 & 57.08 (4th Ed. 1973)

DISCUSSION:

Section 47–53, South Carolina Code of Laws (1962), as amended, provides inter alia, that in making an independent audit of its financial records—

The council may, without requiring competitive bids, designate such accountant or firm annually or for a period not exceeding four years, provided, that the designation for any particular fiscal year shall be made no later than thirty days after the beginning of such fiscal year.

In the instant case, the West Columbia Council did not designate an accounting firm to conduct its annual audit for the 1976–77 fiscal year until March 1, 1977. The question which you have posed is whether the designation made on March 1, 1977, is invalid?

Section 47–53 requires a municipality to provide for an annual audit of its financial records by an accountant or an accounting firm. The City Council may designate its accountant without requiring competitive bidding; however, the city's authority to designate is qualified by a proviso that ‘the designation for any particular fiscal year shall be made no later than thirty days after the beginning of such fiscal year.’ This latter clause, while providing some limitation, must be construed with the main provision of the section in order to carry into effect the whole purpose of the law. [Gasque, Inc. v. Nates](#), 191 S. C. 271, 2 S. E. 2d 36 (1939). The purpose of Section 47–53 is to require municipalities to have an annual audit of their financial records (‘[t]he council shall provide for an independent annual audit . . .’ (Emphasis added)). The duty to provide for such an audit continues to exist after the thirty day period has passed. An old North Carolina case amply illustrates such a duty. In [Greer v. City of Asheville](#), 114 N. C. 678, 19 S. E. 635 (1894), the court determined that the failure of the alderman of Asheville to appoint a marshall at the first meeting after their election, as required by their charter, did not render the appointment of the marshall at the second meeting invalid. This duty was further explained in a subsequent decision, [Gwyn v. Coffey](#), 117 N. C. 469, 23 S. C. 331 (1895), in which the North Carolina court stated—‘If the Board failed to discharge its duty at its first meeting, it did not relieve itself of the legal obligation to do so at the next meeting, for it owed the duty at all times during their term of office to furnish the city with a proper police head . . .’

*2 Similarly, the city council has a continuing duty to designate an accountant after the first thirty days of the fiscal year. While the Legislature has directed that this should be done during the first thirty days of the fiscal year, the council's failure to do so does not obviate the council of the requirement to designate an accountant or to have an annual audit. ‘[S]tatutes relating merely to matters of convenience, or to the orderly, and prompt conduct of business, and not to the essence of the thing to be done, are generally considered directory only.’ McQuillan, [The Law of Municipal Corporations](#). § 10.32 (3rd Ed. 1966). Furthermore, Section 47–53 does not provide for an alternative course of action by the city council in case of non-compliance with the proviso, which would lead to the anomalous result, if the proviso is construed as mandatory, that an annual audit could not be conducted. ‘[U]nreasonableness of the result produced by one among alternative possible interpretations of a statute is reason for rejecting that interpretation in favor of another which would produce a reasonable result.’ Sutherland, [Statutory Construction](#), § 45.12 (4th Ed. 1973). See, also, [State ex rel. McLeod v. Montgomery](#), 244 S. C. 308, 136 S. E. 2d 788 (1964). Moreover, between two possible constructions of a statute, that one should be adopted which effectuates rather than defeats the legislative purpose. [Beaufort County v. Jasper County](#), 220 S. C. 469, 68 S. E. 2d 421 (1951). The legislature's intent in this legislation was to require a municipality to have an independent annual audit and the council's duty to designate an accountant to accomplish this purpose would continue even after the first thirty days of the fiscal year.

CONCLUSION:

The West Columbia City Council's designation on March 1, 1977, of a CPA firm to conduct its annual audit for the 1976–77 fiscal year is valid.

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