

1978 WL 35196 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 1, 1978

*1 The Honorable Carroll Davis
Mayor
Town of Cowpens
Cowpens, South Carolina 29330

Dear Mayor Davis:

An opinion has been requested by Mr. Robert L. Stoddard whether the Town Council has the authority to change the Town Auditor at some date other than during the thirty day period following the beginning of the fiscal year. In our opinion, the Town Council may relieve the Town Auditor for cause or fill a vacancy in the position of Town Auditor at any time. However, any other ordinary changes in the position of Town Auditor may be made only during the thirty day period set out in the statute.

The Home Rule Act, [§ 5-7-240, S.C. CODE](#), 1976 (as amended), requires a municipality to designate, during the first thirty days of the municipality's fiscal year, an individual or firm to perform the required audit and to make that designation effective for a period of up to four years. If the designated period expires and the Council does not make a new designation, the Auditor would hold over and continue in a de facto capacity. 63 Am.Jur.2d, 'Public Officers and Employees,' § 507.

Although a municipality is ordinarily free to make its own personnel employment decisions, subject only to general requirements of law not at issue here, this statute requires the municipality in this instance to designate the Auditor at the beginning of the fiscal year. This provision obviously anticipates that the Auditor should be available to oversee the municipality's financial transactions and recordkeeping throughout the fiscal year. Therefore, this statute restricts the municipality from making unwarranted changes of Auditors during the fiscal year. To effect this intent, the Legislature imposed the requirement that the Auditor be regularly designated at the beginning of the fiscal year. [§ 5-7-240, S.C. CODE](#), 1976 (as amended). This provision would make ineffective any regular change in Town Auditors outside that thirty day period. See [State ex rel. Deal v. Alexander](#), 77 N.W. 841 (Iowa, 1899).

This statute provides nothing which would restrict the prerogative of the municipality to remove an auditor for cause at any time. See, 56 Am.Jur.2d, 'Municipal Corporations,' § 314. Nor, of course, does it prevent the municipality from filling a vacancy which otherwise occurs at any time in the position of Auditor. Instead, this statute restricts the municipality, in making any ordinary change in the position of Auditor, to make that change during the thirty day period immediately following the beginning of its fiscal year.

With respect to the dismissal of the Town Attorney, that person serves at the pleasure of the municipal council, since no restrictions are imposed by law or the council concerning his employment. § 6-7-230, S.C. CODE, 1976. Since no new Town Attorney was appointed on July 1 of this year, the date on which a new term as prescribed by town ordinance would begin, then the existing Town Attorney would hold over in a de facto capacity until his successor be duly appointed and qualified. 63 Am.Jur.2d, 'Public Officers and Employees,' § 507 ff. Once a new Town Attorney is duly appointed and qualified he would immediately assume the position of Town Attorney, regardless of when the appointment and qualification should occur.

Sincerely yours,

***2** David C. Eckstrom
Staff Attorney

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