



2010-068

STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

TROY KING
ATTORNEY GENERAL

500 DEXTER AVENUE
MONTGOMERY, AL 36130
(334) 242-7300
WWW.AGO.STATE.AL.US

May 18, 2010

Honorable Ellen Hilyer
Mayor, Town of Waverly
Post Office Box 115
Waverly, Alabama 36879

Municipalities – Audit – Funds – Examiners of
Public Accounts – Chambers County – Lee
County

The Town of Waverly cannot waive the
requirement of a yearly audit and must pay an
agreed upon sum for the services rendered by
an independent auditor or the Department of
Examiners of Public Accounts.

Upon request by the mayor, the Department of
Examiners of Public Accounts is required to
perform an audit of a city or town pursuant to
section 11-43-85 of the Code of Alabama.

Dear Mayor Hilyer:

This opinion of the Attorney General is issued in response to your request
on behalf of the Town of Waverly.

QUESTION

Is the Town of Waverly, a Class 8 municipality,
excused from the requirement of section 11-43-85 of
the Code of Alabama if the Department of Examiners of
Public Accounts refuses to do an examination?

FACTS AND ANALYSIS

In your opinion request, you state that the Town of Waverly (“Town”) has asked the Alabama Department of Examiners of Public Accounts to conduct an audit as required by the Code of Alabama. Section 11-43-85 of the Code of Alabama addresses the auditing of accounts of a municipality and states as follows:

In cities and towns, the mayor, at least once a year, shall appoint an independent public accountant or the Department of Examiners of Public Accounts to conduct an examination in accordance with generally accepted auditing standards of all books and accounts of the city or town since the preceding examination and to make a full report thereof in writing, under oath, to be submitted to the council at its first meeting after the completion of such report, and the same shall be spread upon the minutes of the council. For his services said independent public accountant or the Department of Examiners of Public Accounts shall be paid such sum as may be agreed upon.

ALA. CODE § 11-43-85 (2008). According to this provision, at least once a year, a town *shall* appoint either an independent public accountant or the Department of Examiners of Public Accounts to audit its books and accounts. The town *shall* also pay the auditor an agreed upon sum for the services rendered. *Id.*

It is well settled that when the courts are required to construe a statute, they first seek to ascertain the intent of the Legislature. *BPH, Inc. v. Cochrane*, 628 So. 2d 911, 913 (Ala. Civ. App. 1993). To discover that intent, the courts must look to the “natural, plain, ordinary, and commonly understood meaning” of the words used in the statute. *Daniels v. Bowers*, 518 So. 2d 736, 738 (Ala. Civ. App. 1987). Our Supreme Court has held that the word “*shall*” is *mandatory* unless it is used in a statutory context where it is plain that the Legislature intended a permissive meaning. *Smith v. Michelin N. Am., Inc.*, 785 So. 2d 1155, 1160 (Ala. Civ. App. 2000); *Prince v. Hunter*, 388 So. 2d 546, 548 (Ala. 1980).

Accordingly, the Town may not waive the statutory requirement that an audit be performed at least once a year. The Town must also pay an agreed upon sum for the audit whether it is performed by the Department of Examiners of Public Accounts or by an independent public accountant.

Honorable Ellen Hilyer
Page 3

Your opinion request also states that the Department of Examiners of Public Accounts ("Department") refuses to conduct examinations for the Town of Waverly. As noted earlier, section 11-43-85 of the Code of Alabama states that the mayor of a town may appoint an independent public accountant or the Department to conduct the required audit. ALA. CODE § 11-43-85 (2008). Moreover, this Office has previously stated that the Department is compelled or required to perform an audit upon the request of the mayor of a city or town pursuant to section 11-43-85 of the Code of Alabama. Opinion to Honorable Lowell Barron, State Senator, dated June 11, 1992, A.G. No. 92-00322; opinion to Honorable Ronald L. Jones, Chief Examiner, Department of Examiners of Public Accounts, dated April 18, 1988, A.G. No. 88-00263. Therefore, upon a request by the mayor of a city or town, the Department of Examiners of Public Accounts must perform the requested audit.

CONCLUSION

The Town of Waverly cannot waive the requirement of a yearly audit and must pay an agreed upon sum for the services rendered by an independent auditor or the Department of Examiners of Public Accounts. Furthermore, upon request by the mayor, the Department of Examiners of Public Accounts is to perform an audit of a city or town pursuant to section 11-43-85 of the Code of Alabama.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

TK/MMG/lcr
965268/141273