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Opinion No. 08-166

Authority of Board of Accountancy to Retain Investigator

QUESTION

Whether the authority to retain an investigator under Tenn. Code Ann. § 62-1-105(c) rests solely with the Tennessee State Board of Accountancy and is not subject to the approval of any other person or agency?

OPINION

Yes. The Tennessee State Board of Accountancy has the sole authority to retain an investigator under Tenn. Code Ann. § 62-1-105(c). The Board's authority to retain an investigator is not subject to the approval of any other person or agency.

ANALYSIS

This opinion addresses the authority of the Tennessee State Board of Accountancy to retain an investigator under Tenn. Code Ann. § 62-1-105(c). In 2004, this Office addressed a similar question regarding the authority of the State Board of Accountancy to hire and terminate its Executive Director and professional staff. *See* Op. Tenn. Att'y Gen. 04-060 (April 8, 2004). In our previous opinion, we concluded that the State Board of Accountancy has the sole authority under Tenn. Code Ann. § 62-1-105(c) to hire and terminate its Executive Director and professional staff.

Our previous opinion is determinative of the present question because under the statutory language "investigators" are a subset of professional staff. Tenn. Code Ann. § 62-1-105(c) provides, in pertinent part:

> The board shall have an Executive Director, who shall be a certified public accountant with an active certificate in the state. The Executive Director shall be appointed by the board, and compensation for the Executive Director shall be established by the board. The board shall retain, and establish the qualifications and compensation for investigators and other staff requiring professional qualifications. The Executive Director and all members of the board's staff requiring professional qualifications shall serve at the pleasure of the board.

The use of the phrase "investigators and other staff requiring professional qualifications" clearly indicates that investigators are a subset of professional staff. Therefore, since we previously concluded that Section 62-1-105(c) gives the Board sole authority to hire and terminate its professional staff, we must conclude now that the Board likewise has the sole authority to hire and terminate investigators.

Opinion No. 04-060 resolved an apparent conflict between Tenn. Code Ann. §§ 62-1-105(c), 56-1-302, and 4-3-1304. Section 56-1-302 gives the Director of the Division of Regulatory Boards the "power, duty and responsibility" to "employ all personnel necessary to staff and carry out the functions of the boards." Section 4-3-1304 authorizes the Division of Regulatory Boards to "administer all the administrative functions and duties of the regulatory boards." We noted that these two statutory provisions were in apparent conflict with Section 62-1-105(c), which gives the State Board of Accountancy the sole authority to hire and terminate its Executive Director and professional staff. We concluded that the portions regarding the hiring of staff in Sections 4-3-1304 and 56-1-302 were repealed by implication as they relate to the Executive Director and professional staff of the State Board of Accountancy. *See* Op. Tenn. Att'y Gen. 04-060 (April 8, 2004). The State Board of Accountancy thus has the sole authority to hire and terminate its Executive Director and professional staff, including investigators.

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