

March 6, 2008

The Honorable Raymond E. Cleary III
Senator, District No. 34
Post Office Box 142
Columbia, South Carolina 29202

Dear Senator Cleary:

In a letter to this office you referenced that the Myrtle Beach International Airport, the Horry County Airport, is located in Myrtle Beach and is operated by Horry County but funding comes to a degree through Myrtle Beach. You indicated that there is now a movement to create an independent airport authority to administer funding and operations. You have questioned whether the local legislative delegation has the authority to create the airport authority and at what cost. You stated that it is the contention of the county attorney, Mr. John Cleary, that the State would be obligated to purchase the airport facilities from the local entities.

In association with my research of these issues, I contacted Mr. Cleary. He indicated that the Federal Aviation Authority would not permit a change such as suggested by you unless Horry County is paid for the property. I have checked but have been unable to find any FAA statutes or regulations regarding such and so as to that point, contact should be made with the FAA directly for their interpretation of such issue as this office inasmuch as consistent with the policy of this office, we do not interpret federal statutory law or regulations.

As to State statutory provisions, Act No. 1096 of 1974 provides for the creation of the Horry County Airport Commission and establishes their duties and responsibilities. Among such duties and powers, it is stated that the Commission has "...general authority concerning the land now owned or hereafter acquired by the county for airport or aeronautical purposes and shall generally assist the Federal Government and the officials of the county in all matters affecting the airports now located or hereafter to be located in the county." It is further provided that

[t]he commission is constituted an agency of Horry County and it shall accept for and on behalf of the county deeds from the Federal Government, State Government or any of their agencies, or of any other person, to any property to be used for airport purposes and may hold, lease and convey such property in its discretion to further the interests of the county.

It is also stated that

[a]ny deed of property or any other instrument creating an interest in the Horry County Airport Commission prior to the effective date of this act is ratified and validated.

As to any legislative action regarding the airport, in considering the constitutionality of an act of the General Assembly, it is presumed that the act is constitutional in all respects. Moreover, such an act will not be considered void unless its unconstitutionality is clear beyond all reasonable doubt. Thomas v. Macklen, 186 S.C. 290, 195 S.E. 539 (1937); Townsend v. Richland County, 190 S.C. 270, 2 S.E.2d 777 (1939). All doubts of constitutionality are generally resolved in favor of constitutionality. While this office may comment upon potential constitutional problems, it is solely within the province of the courts of this State to declare an act unconstitutional.

Nevertheless, as to the creation of an airport authority particular only to Horry County, Article VIII, Section 7 of the State Constitution prohibits the adoption of an act for a specific county by the General Assembly. However, if the legislation would go toward the creation of a regional authority, such would probably be upheld against a constitutional challenge. See: Kleckley v. Pulliam, 265 S.C. 177, 217 S.E.2d 217 (1975). Kleckley dealt with an airport district, a special purpose district, in two counties, the Richland-Lexington Airport District, which comprised the territories of Richland and Lexington Counties. The Court stated that

[t]he record here clearly establishes that the function of this airport is not peculiar to a single county or counties...It, therefore, follows that since the governmental purpose under the Act establishing the District is not one peculiar to a county, the power of the General Assembly to legislate for this purpose continues, despite Article VIII, Section 7.

265 S.C. at 185. The Court further stated

[t]he important principle is that if the subject matter of the legislation is not peculiar to the political subdivision dealt with by the applicable constitutional provision, the existing plenary power of the General Assembly continues.

265 S.C. at 187.

As to the authority of the General Assembly regarding the airport generally, in the opinion of this office, the General Assembly could require the airport to turn over the property to another entity inasmuch as a county has no property right vis-a-vis the State. As stated in a prior opinion of this office dated May 29, 1979, “[c]ounties are subdivisions of the state and are subject to the plenary control of the General Assembly, except as such control is limited by constitutional provision.” See

The Honorable Raymond E. Cleary III
Page 3
March 6, 2008

also: Parker v. Bates, 216 S.C. 52, 56 S.E.2d 723 (1949). As particularly stated at 16D C.J.S. Constitutional Law, Section 1957,

[w]hether an annexation or detachment of territory to or from political subdivisions constitutes a taking or deprivation of property without due process depends in part on the reasonableness of the annexation or detachment. As between a state and its political subdivisions, the state may, without violating the due process guaranties, take a subdivision's property and hold it, or vest it in other agencies, or expand or contract its territory, or unite the whole or a part of it with some other subdivision.¹

Consistent with the above, in the opinion of this office, the General Assembly could create a regional airport authority which would encompass the present Horry County Airport. As to any federal regulations or statutes which would govern such taking, consideration should be given to a review of such question by the Federal Aviation Authority.

With kind regards, I am,

Very truly yours,

Henry McMaster
Attorney General

By: Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Deputy Attorney General

¹Such would contrast with the authority of a government to take possess or control over property not publicly owned. For instance, in an opinion of this office dated September 19, 2007, it was determined that a county would not be allowed to assume the assets of existing fire districts operating within the county where the volunteer fire departments were private organizations, most of which operated as nonprofit entities. Also, of course, as stated in that opinion, a government could not acquire property through eminent domain without the payment of just compensation.