



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

March 25, 2002

Janie A. Davis, Executive Director
South Carolina Commission for Minority Affairs
6904 North Main Street, Suite 107
Columbia, South Carolina 29203

Re: "State Recognition" to Native American Organizations

Dear Ms. Davis:

In a letter to this Office, you have requested an opinion "... regarding proposed legislative changes to the statute of the South Carolina Commission for Minority Affairs." You indicate that you are "... requesting an opinion regarding adding language to our statute that authorizes our Board to issue 'State Recognition' to Native American organizations." Specifically, you indicate that:

... the question [you] must answer to the satisfaction of the Members of the General Assembly is whether using the term "State Recognition" obligates the State to any thing other than a certificate acknowledging that they have met a specific criteria or threshold as a Native American entity in this State.

While the current statutes related to the State Commission for Minority Affairs (hereinafter the "Commission") refer to "minorities" and the "minority community" in general, which would appear to include Native Americans and other minority groups, you indicate that you have been advised that the statutes only authorize the Commission to assist the African American population.¹ Accordingly, you indicate that "... the enabling language of [the] statute needs to be revised"

In a prior opinion, this Office recognized that, in South Carolina, it is well-established that:

The General Assembly is a creature of the Constitution ... [t]he legislature, under its plenary powers, may enact any law not specifically, or by implication prohibited [by the Constitution]. It must enact those laws mandated in the Constitution itself.

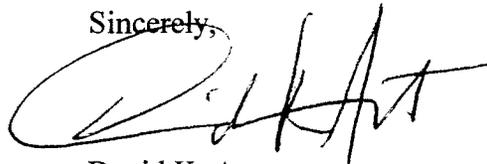
¹ Apparently, this interpretation is based on the preamble to 1993 Act No. 164, Part II, §110, which created the Commission.

Ms. Davis
Page 2
March 25, 2002

See OP. ATTY. GEN. (Dated August 18, 1983). In my research, I have uncovered no constitutional provision in South Carolina relative to the State recognition of Native American organizations. Therefore, it is left to the General Assembly, through its plenary powers, to decide whether Native American organizations should be recognized, the criteria for recognition and the benefits, responsibilities, authority, consequences, obligations, etc. that go along with such recognition. For example, in S.C. Code Ann. §11-35-5010, *et seq.* (South Carolina Consolidated Procurement Code, Assistance to Minority Businesses), the General Assembly defined "Minority person" and set forth the "assistance" that a business owned or controlled by such a person would receive from the State.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. K. Avant', written over the word 'Sincerely,'.

David K. Avant
Assistant Attorney General

DKA/an