

The State of South Carolina

4833
Library



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE: 803-734-3970
FACSIMILE: 803-253-6283

May 6, 1992

The Honorable John Drummond
Senator, District No. 10
111 Gressette Building
Columbia, South Carolina 29202

Dear Senator Drummond:

By your letter of April 3, 1992, you have asked for an opinion of our Office clarifying the types of services which regional councils of governments can provide to their member local governments. Member-governments presently interpret the authority as permitting regional councils of governments to provide services or programmatic activities a unit of local government can engage in for itself, or any activity a local government requests the regional council of government to do (i.e., in-house engineering and architectural services). To respond to your inquiry, it is necessary to examine the relevant enabling provisions.

Constitutional provisions

The state Constitution, in Art. VII, § 15 has permitted the General Assembly to authorize the governing bodies of counties and municipalities to form regional councils of governments to

study and make recommendations on matters affecting the public health, safety, general welfare, education, recreation, pollution control, utilities, planning, development and such other matters as the common interest of the participating governments may dictate....

As stated in Op. Atty. Gen. No. 3498 dated March 27, 1973, such councils created thereunder were authorized "to receive almost unlimited powers from the Legislature."

The Honorable John Drummond
Page 2
May 6, 1992

Stated another way, the council of governments formulated under Art. VII, § 15 "may be vested with an almost unlimited range of powers by the Legislature." It is thus necessary to consider the statutes relative to councils of governments, S.C. Code Ann. § 6-7-110 et seq., to analyze these powers.

Establishment of regional councils of governments may also be accomplished pursuant to Art. VIII, § 13, which provides in relevant part:

(A) Any county, incorporated municipality, or other political subdivision may agree with the State or with any other political subdivision for the joint administration of any function and exercise of powers and the sharing of the costs thereof.

(B) Nothing in this Constitution may be construed to prohibit the State or any of its counties, incorporated municipalities, or other political subdivisions from agreeing to share the lawful cost, responsibility, and administration of functions with any one or more governments, whether within or without this State.

(C) The prohibitions against dual officeholding contained in Article VI of this Constitution do not apply to any elected or appointed official or employee who serves on a regional council of government created under the authority of this section. ...

In Opinion No. 3498, supra, it was stated that

the constitutional provision contemplates that political subdivisions may agree among themselves, without prior legislative authority, for the joint administration and costs "of any function." The quoted phrase, in the opinion of this Office, means any function which the various participating political subdivisions are authorized by law to undertake. ...

The Honorable John Drummond

Page 3

May 6, 1992

At the time this opinion was rendered, Art. X, § 6 of the state Constitution placed certain limitations on county functions; however, that restrictive language was eliminated with the adoption of present Art. X, § 11.

Thus, under either constitutional provision, a broad, almost unlimited range of powers to be exercised by regional councils of governments, might be envisioned.

Statutory provisions

The General Assembly has authorized the formation of regional councils of governments pursuant to § 6-7-110 et seq. It is helpful to examine this enabling legislation in considering your question.

Section 6-7-120 outlines the details to be included in the agreements creating the council of governments: the area to be served thereby, how the member-subdivisions are to be represented, financing, and "other matters not inconsistent with the provisions of this article." It is thus appropriate, in a given instance, to refer to the agreement creating a particular council, to determine whether, and to what extent, powers additional to those in § 6-7-110 et seq. may have been granted. As long as such are not inconsistent with the statutes in Article 3 of Chapter 7 of Title 6, such would most likely be viewed as permissible. See Kloster v. Region D Council of Governments, 36 N.C. App. 421, 245 S.E.2d 180 (1978). Because we do not know what these powers might be in a given agreement, we cannot comment further but suggest that an interested party may wish to review a particular council's agreement if any questions remain.

Powers and duties of regional councils of governments are specified in § 6-7-140 and include: preparing studies and making recommendations on appropriate matters; coordinating and promoting cooperative programs; studying and making recommendations on the matters outlined in Art. VII, § 15; providing technical assistance and information to member local governments, agencies, and individuals; carrying on planning activities; acquiring and disposing of real and personal property; and so forth. Section 6-7-150 authorized a council of governments to cooperate with, contract with, and accept funds from various sources and to spend funds. Employment of staff and experts is permitted by § 6-7-160.

The Honorable John Drummond
Page 4
May 6, 1992

Finally, § 6-7-190 provides that

[e]ach council of government established under authority of this article exists for nonprofit and public purposes and is a public agency, and the carrying out of the purpose of each council of government is exclusively for public benefit....

Construing this section, our Office noted in an opinion dated November 24, 1975:

The only limitations on the authority of a cog to engage in a cooperative program, perform under contract, or expend funds are: (1) the purpose of the program or activity must be public, and (2) the program or activity must be non-profit.

That opinion concluded that a regional council of governments would be authorized to engage in the operation of a multi-purpose computer center.

Other commentary

The range of powers to be exercised by regional councils of governments has been commented on in a well-recognized treatise on municipal government. In volume 1 of McQuillin on Municipal Corporation, § 1.54 notes the following:

The range of council activities is not limited to any particular subject matter, but encompasses the whole spectrum of old and new problems daily confronting those charged with governing urban areas in our increasingly complex society. ...

In addition,

such councils in smaller and less populated areas provide technical expertise and help to small counties and cities which otherwise would lack the ability to utilize new technology and better management practices, or the opportunity

The Honorable John Drummond

Page 5

May 6, 1992

or knowledge to take advantage of offers of assistance from the federal and state levels of government. Further, regional councils have increasingly been made responsible for helping to plan and coordinate important area-wide programs, such as highways and public transportation, solid waste management, water and air quality, and health care. Most councils are involved in HUD planning assistance programs, and a significant amount of them are involved in economic development assistance programs, criminal justice planning programs and aging programs. Other current council activities involve energy planning and conservation measures.

Conclusion

Due to the wide, practically unlimited range of powers which a regional council of governments may exercise in this State, it is difficult to detail a comprehensive, all-inclusive list. The provisions of Art. VII, § 15; § 6-7-150 and others; and the agreement creating a particular council of governments should be consulted to determine the scope of a particular council's powers. Certain generalizations may be made, however:

1. The purpose of the program or activity must be public.
2. The program or activity must be nonprofit.
3. From the terms of Art. VIII, § 13, this Office has concluded councils might undertake "any function which the various participating political subdivisions are authorized by law to undertake." Op. Atty. Gen. No. 3498.

Considering the enabling legislation and the enumerated generalizations, it is likely that the provision of programs by which regional councils of governments provide public engineers and architects to member-governments for technical assistance on specific projects would be permitted under those statutes and constitutional provisions.

The Honorable John Drummond
Page 6
May 6, 1992

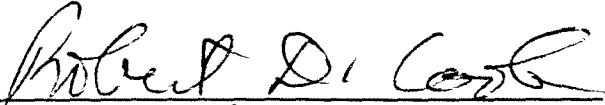
With kindest regards, I am

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP:sds

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions