

The State of South Carolina



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

June 6, 1989

Thomas F. Dugas, Esquire
Horton, Drawdy, Ward & Johnson, P.A.
Post Office Box 10167
Greenville, South Carolina 29603

Dear Mr. Dugas:

By your letter of April 20, 1989, you have asked for the opinion of this Office as to whether the City of Anderson may become a member of the Greenville Transit Authority without regard to whether the County of Anderson is a member. Because the Greenville Transit Authority was established pursuant to statutes existing prior to 1985, it is necessary to examine both the older and the newer statutes as the Greenville Transit Authority may opt to follow either statute in adding members. 1/

The potential areas of service of regional transportation authorities are established by the General Assembly in Section 58-25-20(2), Code of Laws of South Carolina (old law) or amended Section 58-25-20(13) (1985 amendment). In either case, reference is made to Section 6-7-110 of the Code; thus, the counties comprising the regional transportation area in question (the potential service area) are Anderson, Cherokee, Greenville, Oconee, Pickens, and Spartanburg. Clearly, Anderson County and the City of Anderson are within the regional transportation area already in existence to serve Greenville County and the City of Greenville. The question remains whether the City of Anderson may participate in the Greenville Transit Authority irrespective of Anderson County's participation.

1/ See Section 4 of Act No. 169, 1985 Acts and Joint Resolutions as to such option. See also Op. Atty. Gen. No. 85-83 dated August 15, 1985.

Thomas F. Dugas, Esquire
Page 2
June 6, 1989

Statutes Prior to 1985 Amendment

Establishment of a regional transportation authority pursuant to the former law was governed by Section 58-25-40 (old law). Subsection 1 provided:

Any two or more counties, municipalities, other political subdivisions, or combinations thereof within a regional transportation area are authorized by a majority vote of its governing body to implement a regional transportation authority, to be constituted and operated as provided for in this chapter. No county, municipality or other political subdivision may be a member in more than one authority.

Establishment of an authority under the former law did not entail nearly the detailed planning or agreements or consent of the electorate by referendum as is required by the 1985 amendments.

Addition of new members to regional transportation authorities in existence at the time of the 1985 amendments may be accomplished by following Section 58-25-40 (old law), if the authority wishes to follow the older law. Subsection (2) provides:

Subsequent to the activation of the authority, contiguous counties, municipalities, or other political subdivisions not participating initially may become members of the authority with the same benefits as the initial members, upon approval by a majority vote of the authority.

The service area of a regional transit authority established under the old law is unclear at best; presumably, the service area is comprised of the territories of the member counties, municipalities, and other political subdivisions. The question which remains unanswered by old Section 58-25-40(2) is to what the additional county, municipality, or political subdivision must be contiguous.

1985 Amendments

Establishment of a regional transportation authority subsequent to the 1985 amendments is governed by new Section 58-25-30 of the Code. A plan of service must be prepared, in which the area to be served is specified. A majority of general purpose local governments within the service area must adopt the plan. An agreement to

Thomas F. Dugas, Esquire
Page 3
June 6, 1989

create the authority must then be executed by the governing bodies of the cities and the counties which include at least ninety percent of the proposed service area within their jurisdictions. Then, the executed agreement must be ratified by the qualified electors within the proposed service area. Should it become necessary or desirable to revise the adopted agreement or referendum, the process is repeated.

Members of the authority thus created are governed by Section 58-25-35 (new law), which provides the following:

The members of a regional transportation authority created under authority of this chapter must be the cities within the service area as defined by this chapter and the counties within the unincorporated areas or the service area of the authority.

This statute has been interpreted in Op. Atty. Gen. No. 86-28 dated February 28, 1986 to mean that "cities or counties within the service area which wish to do so may become members of an RTA created under the 1985 act." It was noted in that opinion that "[i]f Section 58-25-35 were interpreted to mean that every county and municipality within the regional transportation area...must be members at the outset, then these additional statutes would be meaningless." 2/ Doubt was expressed in that opinion as to the interpretation intended by the General Assembly and legislative clarification was suggested; to date, we are unaware of any legislation clarifying the statute.

Addition of members to an existing regional transportation authority may be achieved by following new Section 58-25-40, which provides in subsection (3):

Subsequent to the activation of the authority, contiguous counties or cities not participating initially may become members of the authority with the same benefits as the initial members after a majority vote of their electors voting on the question in the procedure set forth in Section 58-25-30 and with the approval by a majority vote of the board of the authority.

2/ The additional statutes are new Sections 58-25-40 and 58-25-30(4).

Thomas F. Dugas, Esquire

Page 4

June 6, 1989

As noted with respect to old Section 58-25-40(2), the new Section 58-25-40(3) does not address the issue of to what an incoming member county or city must be contiguous. Even though new Section 58-25-35 has been interpreted as not requiring every county and city within the regional transportation area to be members of the authority at the outset, this statute must be examined in terms of contiguity and of addition of new members.

Contiguity

The term "contiguous" is defined as "in close proximity; neighboring; adjoining; near in succession; in actual close contact; touching at a point or along a boundary; bounded or traversed by." Black's Law Dictionary 290 (5th Ed. 1979); See also 9 Words and Phrases, "Contiguous." Generally, an actual touching of lands is required to fulfill the requirement of contiguity in a given instance. In the context of extending the territorial jurisdiction of a city housing authority, this Office opined that "the requirement of contiguity may be met if one tract of land is contiguous to the municipality and the other tracts are contiguous to that tract and to each other." Op. Atty. Gen. dated December 21, 1988.

Similarly, in the context of contiguous counties, construing the phrase "any two or more contiguous counties or municipalities," the Supreme Court of Appeals of West Virginia stated that

it was clearly the intention of the legislature to permit two or more counties to join in the formation of a regional airport authority if they were a compact territorial unit wherein at least one territorially bounded one other such county, but that it was not necessary that each of such counties border upon or touch all of the counties which might enter into an agreement for such purpose.

State ex rel. Farley v. Brown, 151 W. Va. 887, 157 S.E.2d 850, 856 (1967). If the requirement is only that counties be contiguous under old Section 58-25-40(2) or new Section 58-25-40(3), reference to a South Carolina map reveals that the counties of this regional transportation area are contiguous, though each county is not contiguous to every other county in the area. It must be noted that under either the old or the new statutes, there is no requirement that counties desiring to form the authority initially must be contiguous.

As noted in your memorandum, it is most difficult to find contiguous cities or municipalities, though a few are in existence in this State, since proximity (or, actually, lack thereof) to another

Thomas F. Dugas, Esquire
Page 5
June 6, 1989

municipality is a factor to be considered when incorporating a new municipality. See Section 5-1-30 of the Code. While a few exist, it is also difficult to identify many municipalities in this State whose boundaries are contiguous in some part with a county's boundaries. Whether the term "contiguous" is meant to modify the term "cities" or "municipalities" in addition to the term "counties" is a difficult question, as well. As with counties, there is no requirement that cities or municipalities desiring to form an authority initially be contiguous.

Contiguity to the service area is a third possibility. We are advised that Greenville County (presumably the unincorporated areas) and the City of Greenville are the current members of the Greenville Transit Authority. Reference to the state map reveals that Anderson County, Pickens County, and Spartanburg County would be contiguous to Greenville County; possibly some municipalities or cities in those counties could meet the requirement of contiguity to Greenville County, as well. If the service area is currently comprised of the areas unincorporated in Greenville County and the City of Greenville, then only the remaining municipalities in Greenville County, the three counties named above, and any other municipalities touching the border of Greenville County would be eligible to become members subsequently. Again, contiguity of initial members vis-a-vis the service area is not a requirement and may not even be a possibility, depending on location of the municipalities or cities.

Under either the old or the new statutes, the most reasonable interpretation is that the requirement of contiguity pertains to counties rather than municipalities. Each of the counties in the regional transportation area, in relation to the other counties, meets the test of contiguity as discussed in Op. Atty. Gen. dated December 21, 1988 and in State ex rel. Farley v. Brown, supra. Though certain requirements must be met under the new statutes to establish a regional transportation authority (such as population of at least fifty thousand in the service area and so forth), no requirements of contiguity for cities exist to establish the authority initially, under either statute. While an argument could be made that contiguity of a county or municipality (old law) or city (new law) to the service area is required (to conserve financial resources, for example), the express language of the statute does not support this interpretation. It is therefore concluded that contiguity of counties is all that is required, under either the old or the new statutes, if a county is to become a member of an established regional transportation authority. Contiguity is probably not required of cities (new law) or municipalities (old law), though this conclusion is not free from doubt due to the lack of clarity in the language used. To remove the doubt completely, legislative clarification or a declaratory judgment might be helpful. Thus, the City of Anderson

Thomas F. Dugas, Esquire
Page 6
June 6, 1989

probably could become a member of the Greenville Transit Authority notwithstanding its lack of contiguity to Greenville County, the City of Greenville or the Authority's service area.

Section 58-25-35 of the Code

Having disposed of the issue of contiguity, it is necessary to consider the effect of Section 58-25-35, supra, on the membership of the City of Anderson should Anderson County not desire to become a member of the Greenville Transit Authority. As noted previously, this Office has interpreted Section 58-25-35 to mean that cities or counties within the service area which wished to do so might become members of a regional transportation authority, assuming population and referendum requirements and so forth would be met. While Section 58-25-35 uses the word "and," "and" may be construed as "or" when necessary to effectuate legislative intent. State v. Grimes, 292 S.C. 204, 355 S.E.2d 538 (1987). In addition, though some doubt was expressed as to our interpretation of this statute several years ago, no legislative or judicial modification has been forthcoming. Thus, it remains the opinion of this Office that a city or a county may participate in a regional transportation authority as it may desire, without requiring that a county also be a member for a city located therein to be a member.

Conclusion

Based on the foregoing, it is the opinion of this Office that under the old and the new statutes, the City of Anderson may probably become a member of the Greenville Transit Authority, whether or not Anderson County wishes to be a member. Because the statutes referred to above concerning the necessity of contiguity for subsequently-joining members of a regional transportation authority are not specific as to the requirement of contiguity, this conclusion is not completely free from doubt. Legislative or judicial clarification may be advisable.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP:sds

Thomas F. Dugas, Esquire
Page 7
June 6, 1989

REVIEWED AND APPROVED BY:



ROBERT D. COOK
EXECUTIVE ASSISTANT FOR OPINIONS