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December 21, 1988

Opinion No 88-0
P2492

The Honorable R. Linwood Altman
Member, House of Representatives
Post Office Box 164
Pawleys Island, South Carolina 29585

Dear Representative Altman:

By your letter of December 8, 1988, you have advised that there is interest in founding a county housing authority in Georgetown County. The City of Georgetown already has a housing authority, and many persons agree that the existing housing authority should be extended to the county, so that there would be only one housing authority in Georgetown County. You have asked about the procedure to have only one housing authority in the county.

At the outset, it must be noted that separate sets of statutes, both in Title 31 of the South Carolina Code of Laws, govern the creation of city and county housing authorities. As noted, the City of Georgetown has a housing authority; there are at least two other incorporated municipalities in the county which may or may not have housing authorities. The unincorporated area of Georgetown County is not as yet governed by a housing authority. On this basis, there would be at least two methods by which a housing authority could exist to cover Georgetown County in its entirety. Each of the two will be discussed separately, as follows.

Extension of City Housing Authority

One method by which your desired results may be achieved would be an extension of the territory or the jurisdiction of the Georgetown City Housing Authority, as may be the case depending on the territory of the county under consideration. In this respect, several statutes must be considered.

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A. Areas contiguous to the City

Territorial jurisdiction of the City's housing authority may be expanded to areas contiguous to the City by following Section 31-3-390, Code of Laws of South Carolina (1976):

The territorial jurisdiction of each authority, except as otherwise specially provided, shall be coterminous with the boundaries of the city creating the authority unless this territory is extended by the [State Development] Board. The [State Development] Board may extend the territorial jurisdiction of any housing authority contiguous to that of the housing authority if such extension does not conflict with any other housing authority.

Thus, the State Development Board must take some action to extend the territorial jurisdiction of a city housing authority to areas contiguous to those being served by the housing authority. In so doing, the Board must find that such extension "does not conflict with any other housing authority." See Op. Atty. Gen. dated September 2, 1975 (enclosed). In following the requirements of present Section 31-3-390, formerly Section 36-120 of the 1962 Code of Laws, an opinion dated March 11, 1977 (also enclosed) covers the procedure which the State Development Board should follow.

The unincorporated areas of Georgetown County most probably could be brought within the territorial jurisdiction of the Georgetown City Housing Authority, following Section 31-3-390, assuming that the requirement of contiguity may be met. While this remains a question of fact, reference to a map of Georgetown County makes it appear probable that the requirement of contiguity, given the legal definition, could likely be met.

Reference to a map of Georgetown County shows that obviously not every tract of the unincorporated part of the county touches the boundary of the City of Georgetown. However, 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. State ex inf. Taylor ex rel. Kansas City v. North Kansas City, 360 Mo. 374, 228 S.W.2d 762 (1950); City of Chicago v. Equitable Life Assurance Society of the U.S., 8 Ill.2d 341, 134 N.E.2d 296 (1956); Petition of Westmoreland 15 Ill.App.2d 51, 145 N.E.2d 257 (1957); Mutz v. Municipal Boundary Commission, 101 N.M. 694, 688 P.2d 12 (1984); State ex rel. Farley v. Brown, 151 W.Va. 887, 157 S.E.2d 850 (1967). In Mutz v. Municipal Boundary Commission, supra, it was noted that any other concept of contiguity,

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in the context of municipal annexation, would allow annexation only on a lot-by-lot or strip-by-strip basis. Thus, as long as one tract of unincorporated area of the county is contiguous to the city and the other tracts are contiguous to that tract and to each other, it would be appropriate to follow Section 31-3-390 to extend the territorial jurisdiction of the Georgetown City Housing Authority to the unincorporated areas of the county. Again, this Office does not herein make such a factual determination but points out the possible legal consequences if that determination should be made.

B. Other incorporated municipalities

As noted earlier, there are several incorporated municipalities in Georgetown County: Georgetown, Pawleys Island, and Andrews are known to this Office, and there may be others. With respect to other municipalities, territorial jurisdiction may not be extended to those municipalities but extraterritorial powers may be exercised therein by following Sections 31-3-400 and 31-3-410 of the Code. Section 31-3-400 provides as follows:

In addition to its other powers, a housing authority created for a city may exercise any or all of its powers within the territorial boundaries of any other municipality not included in the territorial jurisdiction of such housing authority for the purpose of planning, undertaking, financing, constructing and operating a housing project within such municipality, if a resolution shall have been adopted (a) by the council of such municipality in which the authority is to exercise its powers and (b) by the housing authority of such municipality, if one has been theretofore established by such municipality, declaring that there is a need for the housing authority of the aforesaid city to exercise its powers within such municipality.

It must be noted that this section calls for an extraterritorial exercise of powers but does not extend the actual jurisdiction of a city housing authority into another municipality. See Op. Atty. Gen. dated March 11, 1977.

The steps to be followed to exercise extraterritorial powers are specified in Section 31-3-410:

No council of any such other municipality shall adopt a resolution as provided in 31-3-400 declaring that there is a need for a housing

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authority other than a housing authority established by such municipality to exercise its powers within such municipality unless a public hearing has first been held by the council of such municipality and the council shall have found in substantially the following terms: (a) That unsanitary or unsafe inhabited dwelling accommodations exist in such municipality or that there is a shortage of safe or sanitary dwelling accommodations in such municipality available to persons of low income at rentals they can afford and (b) that these conditions can be best remedied through the exercise of the powers of the housing authority of the city mentioned in § 31-3-400 within the territorial boundaries of such municipality. But such findings shall not have the effect of establishing a housing authority for any such municipality under this chapter and Chapter 11 nor of thereafter preventing such municipality from establishing a housing authority or joining the creation of a consolidated housing authority or the increase of the area of operation of a consolidated housing authority. The clerk of the municipality shall give notice of the time, place and purpose of the public hearing at least ten days prior to the date on which the hearing is to be held, in a newspaper published in such municipality or, if there is no newspaper published in such municipality, then in a newspaper published in the State and having a general circulation in such municipality. Upon the date fixed for such public hearing an opportunity to be heard shall be granted to all residents of such municipality and to all other interested persons.

The requirements for the exercise of Section 31-3-400 powers in another municipality include:

1. A public hearing in the other municipality regarding the exercise of powers by the Georgetown City Housing Authority.
2. The specified findings made by the city council of the other municipality.
3. Notice of the public hearing in a newspaper, as specified.

Completion of these requirements would permit the Georgetown City Housing Authority to operate in one or more of the other incorporated municipalities in Georgetown County.

Use of these two statutes would thus permit the Georgetown City Housing Authority to either extend its jurisdiction or exercise its powers in an extraterritorial manner, so that most probably all of Georgetown County could be covered one way or another by the actions of the Georgetown City Housing Authority.

Creation of County Housing Authority

Sections 31-3-710 et seq. of the Code provide the mechanism for the creation of a county housing authority. Section 31-1-720 requires a resolution of the county's legislative delegation in the same manner as that provided in Section 31-3-320 for city housing authorities. The delegation is to perform whatever functions the mayor and city council would have performed in establishing the respective housing authorities.

Jurisdiction of a county housing authority is provided in Section 31-3-750, as follows:

The territorial jurisdiction of a housing authority of a county shall be coterminous with the boundaries of the county in which such authority is situated but shall not include that portion of the county within the territorial jurisdiction of any housing authority of a city. But notwithstanding the provisions of this section the Board may extend the territorial jurisdiction of a housing authority of a city over territory contiguous thereto, including territory included within the territorial jurisdiction of the housing authority of a county, and such extension of the territorial jurisdiction of a housing authority of a city and limitation of the territorial jurisdiction of the housing authority of the county affected thereby shall not be deemed to conflict with the housing authority of the county within the meaning of § 31-3-390 unless a housing project shall have been constructed or acquired or the Board shall determine that such a project is about to be constructed or acquired by the housing authority of such county within the territory proposed to be included within the territorial jurisdiction of the housing authority of the city.

If a county housing authority should be established, the rights of a city housing authority to exercise its extended jurisdiction appear to be preserved.

Section 31-3-760 provides the mechanism for a city housing authority to come within the territorial jurisdiction of a county housing authority:

But the territorial jurisdiction of a housing authority of a county shall include the territorial jurisdiction of any housing authority of a city if a resolution is adopted by the council of the city, and also by the housing authority of the city if it shall have been theretofore established, declaring, as provided in §31-3-400, that there is a need for the county housing authority to exercise its powers within such city.

Thus, a county housing authority could be created and, with the cooperation of the involved municipalities and/or city housing authorities, the jurisdiction of a county housing authority could be extended county-wide.

Home Rule Considerations

The statutes relative to creation of city and county housing authorities were adopted well before the adoption of the Home Rule Act, Act No. 283 of 1975. The role of the county legislative delegation in creating a county housing authority would most probably be exercised by a county council today, but at the time the housing authority laws were adopted, county governing bodies generally did not have such powers. In Section 4-9-30 of the Code, a portion of the Home Rule Act, the county governing body is given the enumerated powers "subject to the general law of this State." The Housing Authorities Act, Act No. 783 of 1934, as amended, is certainly general law, and we have identified no authority granted to county councils to depart from that general body of law governing the creation of housing authorities. In addition, the Housing Authorities Act, in slightly different but substantially similar legal form, has withstood constitutional challenges of separation of powers and unlawful delegation of authority with respect to the role of the legislative delegation, Benjamin v. Housing Authority of Darlington County, 198 S.C. 79, 15 S.E.2d 737 (1941); this decision predated the adoption of the Home Rule Act by many years, however.

If the approach to be taken by the City and County of Georgetown should be the second approach, whereby a county housing

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authority is created and one or more city housing authorities decide that the county housing authority should exercise its jurisdiction within the municipality or municipalities, it might be prudent to obtain a declaratory judgment or seek legislative clarification with respect to the role of the legislative delegation. Nowhere in the Home Rule Act does it appear that a county council has been authorized to vary from the terms of the Housing Authorities Act; while it would appear more proper for the county council to exercise those powers assigned to the delegation since the advent of home rule, the requisite authority, absent judicial or legislative declaration, appears to be lacking.

We trust that the foregoing has satisfactorily responded to your inquiry. If we may assist you further, please advise.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosures

REVIEWED AND APPROVED BY:

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