

The State of South Carolina



*Opinion - 6-9-86*

Office of the Attorney General

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January 8, 1986

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Dear Ms. Zeigler:

By your letter of December 17, 1985, you have asked for the opinion of this Office as to whether a regional council of governments would constitute a "unit of local government," thus enabling such councils of governments to be eligible for funding from block grants under the Justice Assistance Act of 1984.

Regulations governing the implementation of this program contain a provision which defines "eligible units of local government" which may receive subgrants from the State; in part, 28 C.F.R. § 33.11 (a) states:

Units of local government are eligible to receive subgrants from a participating state. Unit of local government means any city, county, township, borough, parish, village, or other general purpose political subdivision of a state . . . .

Whether a regional council of governments falls within this definition must thus be determined.

Article VII, Section 15 of the State Constitution provides for the formation of regional councils of governments:

The General Assembly may authorize the governing body of a county or municipality, in combination with other counties and municipalities, to create, participate in,

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and provide financial support for organizations 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. Such organizations, which shall be designated regional councils of government, may include political subdivisions of other states. The studies and recommendations by such organizations shall be made on behalf of and directed to the participating governments and other governmental instrumentalities which operate programs within the jurisdiction of the participating governments.

The legislature may authorize participating governments to provide financial support for facilities and services required to implement recommendations of such organizations which are accepted and approved by the governing bodies of the participating political subdivisions. Such organizations shall not have the power to levy taxes. Local funds for the support of such organizations shall consist of contributions from the participating political subdivisions as may be authorized and granted by their respective governing bodies. The prohibitions against dual office holding contained in Section 2 of Article 2 and Section 24 of Article 3 of this Constitution shall not apply to any elected or appointed official or employee of government who serves as a member of a regional council. [Emphasis added.]

The entity thus created by agreement of counties and/or municipalities is referred to as an "organization." Reference to councils of government as "organizations" may also be found in Sections 6-7-10, -20, and -120, Code of Laws of South Carolina (1976). Furthermore, Section 6-7-190 provides that

[e]ach council of government established under authority of this article [Article 3, Chapter 7 of Title 6] exists for nonprofit and public purposes and is a public agency ... .

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The legislature has denominated the entity an "organization" and a "public agency." Nowhere within constitutional or statutory provisions is the entity called a political subdivision or a local governmental unit. Thus it is necessary to examine the attributes of political subdivisions to determine whether councils of governments possess those attributes despite the denominations in the Code and State Constitution. 1/

As stated in Arkansas State Highway Commission v. Clayton, 266 Ark. 712, 292 S.W.2d 77 (1956), political subdivisions

embrace a certain territory and its inhabitants, organized for the public advantage and not in the interest of particular or classes; that their chief design is the exercise of governmental functions; and that to the electors residing within each is to some extent committed the power of local government, to be wielded either mediately or immediately within their territory for the peculiar benefit of the people there residing.

292 S.W.2d at 79. Other attributes include the power to levy taxes and make appropriations, Dugas v. Beauregard, 155 Conn. 256, 236 A.2d 87 (1967); and the powers to sue and be sued, enter into contracts, exercise eminent domain, incur indebtedness, and issue bonds, among others. Hauth v. Southeastern Tidewater Opportunity Project, Inc., 420 F.Supp. 171 (E. D. Va. 1976). See also State ex rel. Maisano v. Mitchell, 155 Conn. 256, 231 A.2d 539 (1967); Commander v. Board of Commissioners of Buras Levee District, 202 La. 325, 11 So.2d 605 (1942); McClanahan v. Cochise College, 25 Ariz. App. 13, 540 P.2d 744 (1975).

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1/ But see Richmond County Hospital Authority v. McClain, 112 Ga. App. 209, 144 S.E.2d 565 (1965), to the effect that

an agency of one or more participating governmental units created by statute for the purpose of having delegated to it certain functions governmental in character, is not a political subdivision unless recited to be so in the pertinent Constitutional or statutory instruments creating it.

144 S.E.2d at 566.

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Based on the foregoing definitions of the term "political subdivision," it is unlikely that a regional council of governments would fall within the definition. The entity is not authorized to levy taxes by Article VII, Section 15, nor is it empowered to sue or be sued, to exercise eminent domain, incur indebtedness, issue bonds, or exercise similar powers granted to counties and municipalities. The functions of a council of government are basically to study and make recommendations in specified matters such as public health, safety, recreation, and so forth; no council of government has been granted powers of a general purpose government such as found in Section 5-7-30 as to municipalities and Section 4-9-30 as to counties, for example. It is further noted that the term "political subdivision" is generally used in terms of the creating counties and/or municipalities and never in conjunction with councils of government. Richmond County Hospital Authority, supra. Thus, it is unlikely that a council of government would be a "unit of local government" as a "general purpose political subdivision" under 28 C.F.R. § 33.11 (a). Since a council of government is clearly an entity separate from the municipalities or counties establishing it, it appears that a regional council of government would not be an eligible unit of government under the regulation.

We have identified several cases in which entities established by agreement of counties or municipalities have been held not to be political subdivisions. In Lane Council of Governments v. Lane Council of Governments Employees Association, 26 Or. App. 119, 552 P.2d 600 (1976), a council of governments created by agreement of seven local governments in the Eugene-Springfield, Oregon, area was found not to be a political subdivision. While the specific reasons for so holding were not expressed, we would note the many similar characteristics between this entity and a council of government in this State.

Similarly, in Hauth v. Southeastern Tidewater Opportunity Project, Inc., supra, a community action agency was found to be a nonprofit agency even though the eight cities and counties establishing it were themselves political subdivisions, "because the agency is much more than these eight cities and towns." 420 F.Supp. at 174. Further, the agency did not have the power of eminent domain and was not empowered to borrow money or issue tax-exempt bonds. Finally, for similar reasons as those cited in Hauth, the Richmond County Hospital Authority was found not to be a political subdivision; lack of power to tax and to elect officials were cited in addition to the fact that the Authority was in no statutory or constitutional provision declared to be a political subdivision. Richmond County Hospital Authority v. McClain, supra. Copies of all three cases are enclosed for your use.

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Based on the foregoing, it is the opinion of this Office that a regional council of government as established under South Carolina law would not come within the definition of "unit of local government" as it is not a "city, county, township, borough, parish, village, or other general purpose political subdivision" of this State.

Sincerely,

*Patricia D. Petway*

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PDP/an

Enclosures

REVIEWED AND APPROVED BY:

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