

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

October 21, 1986

The Honorable Edward E. Saleeby  
Senator, District No. 10  
Post Office Box 519  
Hartsville, South Carolina 29550

Dear Senator Saleeby:

By your letter of September 25, 1986, you have asked how the boundaries of the Hartsville Community Center Building Commission (hereafter, "Commission") may be enlarged. In addition, you have inquired as to the Commission's authority to own and operate the Hartsville Museum and whether general legislation may be necessary to give such authority to the Commission.

To respond to your first inquiry, it is necessary to determine what kind of entity the Commission is. The Commission was recreated by Act No. 259 of 1961, as amended by Acts No. 88 of 1965, No. 575 of 1967, No. 9 of 1969, and No. 654 of 1969. The Commission is to acquire sites for community center buildings in the "Township of Hartsville," and to operate and manage such community center buildings. The Commission has been given certain corporate powers by the General Assembly. The governing body is to be appointed by the Governor upon the recommendation of a majority of the Darlington County Legislative Delegation. Various acts of the legislature have authorized the Commission to issue notes or bonds, and a tax levy of up to two mills is further authorized. It appears that the Commission fulfills many of the criteria generally found in special purpose districts, as discussed in Op. Atty. Gen. No. 84-132, enclosed.

It may also be argued that the Commission may be an agency of Darlington County. Throughout the relevant acts, there are numerous references to the "Township of Hartsville." A township

The Honorable Edward E. Saleeby

Page 2

October 21, 1986

has been defined as "a body politic under the Constitution (Article 7, § 11); it is a division of the county, made for governmental purposes." Battle v. Willcox, 128 S.C. 500, 504, 122 S.E. 516 (1924); Gallishaw v. Jackson, 99 S.C. 342, 83 S.E. 454 (1914); Ruggles v. Padgett, 240 S.C. 494, 126 S.E.2d 553 (1962). While some townships have subsequently become municipalities since the advent of home rule, see Sections 5-1-10 and 5-1-20 of the Code of Laws of South Carolina (1976), we have determined that the City of Hartsville was chartered by the Secretary of State in 1906; thus, it is unlikely that the "Township of Hartsville" refers to the City of Hartsville. See Act No. 1045 of 1934, establishing boundaries of the township. Due to the relationship of township to county, then arguably the Commission may be a county agency. 1/

In either instance, Darlington County Council would be the appropriate entity to enlarge the boundaries of the Commission. If the Commission should be deemed to be a special purpose district, the procedure to be followed in altering boundaries is found in Sections 6-11-410 et seq. of the Code; the Commission does appear to fall within the definition of "special purpose district" in Section 6-11-410(a), having been created by act of the General Assembly prior to March 7, 1973 and having been committed to it a local governmental function, namely, owning and operating community center buildings.

If the Commission should be viewed as a county agency, section 3 of Act No. 283 of 1975, commonly called the Home Rule

---

1/ The conclusion that this entity is a special purpose district is not at all free from doubt. Nowhere in the enabling legislation is the Commission referred to as a special purpose or public service district. By contrast, see Act No. 582 of 1955, establishing the Una Water District, calling the District a special purpose district. There apparently was an election pursuant to Act No. 1046 of 1934 to issue bonds for erecting a building or buildings to be known as the Community Center Building, but no election was apparently held to establish a special purpose or public service district, as is sometimes required in forming such a district. See, for example, Act No. 199 of 1971 (favorable referendum required to create North Greenville Fire District); but see Act No. 582 of 1955 (no referendum required to establish Una Water District). The more cautious approach may well be to treat the Commission as a county agency.

The Honorable Edward E. Saleeby  
Page 3  
October 21, 1986

Act, would be applicable. In part, that section provides:

All operations, agencies and offices of county government, appropriations and laws related thereto in effect on the date the change in form becomes effective shall remain in full force and effect until otherwise implemented by ordinance of the council pursuant to this act. Provided, however, that county councils shall not enact ordinances in conflict with existing law relating to their respective counties and all such laws shall remain in full force and effect until repealed by the General Assembly, or until January 1, 1980, whichever time is sooner . . . .

Thus, Darlington County Council would be permitted by this statute and Section 4-9-30(6) of the Code to alter the local law and modify the Commission, if the Commission should be determined to be a county agency. Graham v. Creel, 289 S.C. 165, 345 S.E.2d 717 (1986).

You note in your letter that the General Assembly would be precluded from amending the acts relative to the Commission. We concur with your statement. Article VIII, Section 7 of the Constitution of South Carolina prohibits the adoption of laws by the General Assembly for a specific county. This constitutional provision was recently so construed in Spartanburg Sanitary Sewer District v. City of Spartanburg, 283 S.C. 67, 321 S.E.2d 258 (1984).

The authority of the Commission to own and operate a museum has also been questioned. The Commission is authorized, by Section 3 of Act No. 259 of 1961:

(a) To acquire by donation, purchase or lease suitable sites for the location and erection of community center buildings in the Town of Hartsville;

....

(f) To have charge and control of the management of the Hartsville Community Center Buildings, with the authority to enter into contracts and agreements with

The Honorable Edward E. Saleeby  
Page 4  
October 21, 1986

persons for the purpose of using or leasing  
all or portions of any of the buildings;

....

Neither this act nor any of the amendatory acts defines the phrase "community center buildings" or what functions are to take place therein.

In Swift v. Zoning Hearing Board of Abingdon Township, 328 A.2d 901 (Pa. Cmwlth. 1974), the phrase "community center" was construed with respect to uses permissible under a portion of the township's zoning code. In finding a half-way house for treatment and education about drug abuse to be a "community center," the court said:

Neither the term "community center" nor the phrase "similar use" is defined in the [zoning] ordinance, and without such limiting definitions the permissive nature of these phrases must be taken in their broadest sense. [Cites omitted.] To be a valid use within the scope of the ordinance, therefore, it was not necessary that the Crestmont Half-Way House be a "community center" per se. Rather, it was only necessary that it be a similar use or a use similar to any of the others designated by the ordinance, such as a fire station, a public library, or even a parking lot. All of the permitted uses provide the community with a service whether it be for purposes of education and recreation, or for other purposes of public safety and convenience.

328 A.2d at 902-903. While the ordinance is broader than Act No. 259 of 1961, this language may nevertheless be instructive in determining the uses to which community center buildings may be put. See also Stewart v. District of Columbia Board of Zoning Adjustment, 305 A.2d 516 (D. C. Ct. App. 1973).

Because the Commission is not expressly authorized to own and operate a museum, it may be advisable to so authorize such operations, notwithstanding the court's declaration to construe the term "community center" broadly in Swift, supra. As you state in your letter, one option would be for the General Assembly to adopt a law general in form authorizing all building commissions established before a certain date to own and operate

The Honorable Edward E. Saleeby  
Page 5  
October 21, 1986

a museum; if the Commission is deemed a special purpose district, this may be the better approach since, as discussed earlier, constitutional problems could result if legislation were adopted solely for the Commission. If the Commission were deemed to be a county agency, on the other hand, Darlington County Council could modify its functions to include owning and operation of a museum, following Graham v. Creel, supra.

Based on the foregoing, the better approach may be to treat the Commission as an agency of Darlington County government, since the Commission was at one time a part of township government. However, the Commission does have numerous attributes of a special purpose district and could be treated as such. The nature of the entity would determine what actions Darlington County Council and/or the General Assembly should take to enlarge the Commission's boundaries and to enlarge the authority of the Commission to include owning and operating a museum.

With kindest regards, I am

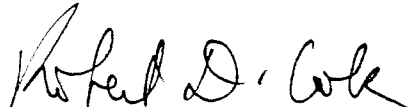
Sincerely,

*Patricia D. Petway*  
Patricia D. Petway  
Assistant Attorney General

PDP/an

Enclosure

REVIEWED AND APPROVED BY:

  
\_\_\_\_\_  
Robert D. Cook  
Executive Assistant for Opinions

cc: C. Gordon McBride, Esquire  
Darlington County Attorney