

The State of South Carolina



Office of the Attorney General

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September 3, 1985

Mr. J. W. Lawrence
South Carolina Department of Parks,
Recreation & Tourism
Edgar A. Brown Building, Suite 110
1205 Pendleton Street
Columbia, South Carolina 29201

Dear Mr. Lawrence:

By your letter of August 14, 1985, you have asked the opinion of this Office as to whether the Old Ninety Six Tourism Commission is a special purpose district. For the following reasons, we conclude that the Commission is most probably not a special purpose district.

The Old Ninety Six Tourism Commission was created by Act No. 59, 1981 Acts and Joint Resolutions, codified at Section 51-13-1110 et seq., Code of Laws of South Carolina (1984 Cum. Supp.). Section 51-13-1110 establishes the Commission and provides for appointment of members by the Governor upon the recommendation of the legislative delegation of the appropriate county. Duties of the Commission are specified in Section 51-13-1120 and involve promotion of various aspects of tourism within the five counties of the Commission. Section 51-13-1130 covers Commission officers and meetings.

In an opinion of this Office dated February 21, 1985 (enclosed), this Office determined that the Commission was not a separate political subdivision. The following observations were also made.

[I]t would appear that the Commission was not established as a body politic and corporate; the Commission does not possess corporate powers, nor is it authorized to incur indebtedness, issue notes or bonds, or

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levy or assess taxes. The Commission is organized to serve a governmental purpose, and a specific geographic area is served by the Commission. ...

These considerations as to whether an entity constitutes a political subdivision are also important in establishing whether the entity may be a special purpose district.

In Opinion No. 84-132, dated November 14, 1984 (enclosed), this Office discussed legal authority pertaining to special purpose districts and outlined the typical characteristics of such districts, including:

1. The purpose for which the district was established, whether single or general.
2. Whether the entity has corporate powers or duties.
3. How the governing body of the entity is chosen.
4. Whether the entity is empowered to issue revenue or general obligation bonds.
5. Whether the entity may levy tax assessments.
6. Whether the entity may issue notes or bonds.
7. How the entity was created.
8. Whether a county established the entity as a taxing district rather than a special purpose district.

Applying the attributes of the Commission to the characteristics usually found in a special purpose district, we note that the Commission was created by the General Assembly to carry out a single governmental purpose (tourism), and its governing body is appointed by the Governor. However, the Commission has not been given corporate powers, nor has it been granted the power or authority to incur indebtedness, issue bonds or notes, levy tax assessments, or issue revenue or general obligation bonds. Because the entity was not created by a county, consideration of the eighth characteristic is unnecessary. Moreover, the entity is denominated a "commission" in its enabling legislation; nowhere within Act No. 59 of 1981 is mention made of a special purpose or public service district.

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Balancing all of the above criteria, it is the opinion of this Office that the Old Ninety Six Tourism Commission lacks the fiscal attributes usually associated with special purpose districts and thus would most probably not be considered a special purpose district. As stated in the opinion of February 21, 1985, "[i]t can only be said that the General Assembly has created an entity regional in scope to carry out a certain local governmental function, promotion of tourism."

It appears to this Office that the Commission is not the type of entity which the General Assembly intended to be covered by Act No. 488, 1984 Acts and Joint Resolutions, codified as Section 6-11-1610 et seq. of the Code. Because the Secretary of State is charged with enforcement of Section 6-11-1610 et seq., you may wish to discuss the matter with the Secretary of State to determine his views as to the Commission being a special purpose district.

Enclosed with your request letter was a news letter of the South Carolina Association of Special Purpose Districts dated August 8, 1985, which contained the statement: "According to the Ethic's [sic] Commission you are a Special Purpose District. ..." In checking with the State Ethics Commission, this Office has been advised that while the Ethics Commission has made the determination that some entities are indeed special purpose districts, no such determination has been made as to the Old Ninety Six Tourism Commission.

We trust that the foregoing has satisfactorily responded to your inquiry. If we may provide additional assistance or clarification, please advise us.

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP:djg
Enclosures

REVIEWED AND APPROVED BY:

Robert D. Cook

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cc: The Honorable John T. Campbell
Secretary of State