

1984 WL 250015 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 26, 1984

\*1 Helen T. Zeigler  
Special Assistant for Legal Affairs  
Office of the Governor  
Post Office Box 11450  
Columbia, South Carolina 29211

Dear Ms. Zeigler:

By your letter of October 10, 1984, you have asked whether regional transportation authorities established pursuant to [Section 58-25-10 et seq., Code of Laws of South Carolina \(1976\)](#) would be special purpose districts, so that the requirements of Act No. 488, 1984 Acts and Joint Resolutions, would be applicable. It is the opinion of this Office that regional transportation authorities would most probably fit within the definition of 'special purpose district' and thus would be required to comply with Act No. 488 of 1984.

By Act No. 488, a special purpose district is required to give notice of its existence to the Secretary of State and to the auditor of the county in which such district is located, within specified time periods. An annual financial audit by a certified public accountant is also required. If the requirements of Act No. 488 are not met, the Secretary of State may declare the special purpose district to be inactive, resulting in the withholding of fees, taxes, or such revenue collected for the district by a county or municipality.

Section 2 of the Act, in part adding [Section 6-11-1610 to the Code](#), defines a special purpose district as any district created by an act of the General Assembly or pursuant to general law and which provides any local governmental power or function including, but not limited to, fire protection, sewerage treatment, water or natural gas distribution, recreation, and means any rural community water district authorized or created under the provisions of Chapter 13 of Title 6, Special purpose districts do not include any state agency, department, commission, or school district.

Your question is whether a regional transportation authority falls within this definition.

Regional transportation authorities are bodies politic and corporate established pursuant to [Section 58-25-10 et seq.](#) of the Code, which is general law. The area to be served by such an authority is determined by the groupings specified in [Sections 6-7-110 to 6-7-210 of the Code](#), pertaining to regional councils of government. Such an authority is empowered by Section 58-25-50 to enter into contracts, exercise the power of eminent domain, sue and be sued, borrow money, issue negotiable bonds or notes, develop transportation plans, and exercise other similar duties. The power or function of providing transportation is not among those specified in the definition of 'special purpose district,' but the legislature did not intend the definition to be so strictly limited to the functions listed. Transportation would be considered a local governmental function according to [Section 4-9-30\(5\) of the Code](#), however. Considering all of these factors, it would appear that the regional transportation authorities could be considered special purpose districts and thus would be subject to the requirements of Act No. 488.

\*2 It could be argued that because the name of the entity contains the term 'authority,' the entity was not meant to be special purpose district. However, this Office addressed the same question in an opinion dated January 12, 1978, and concluded that while the Beaufort-Jasper Water Authority was denominated an 'authority,' it was given the powers of a special purpose district and should be considered such a district. A copy of the opinion is enclosed for your information.

It might also be argued that because regional transportation authorities exist as multi-county entities, the authorities would not be considered special purpose districts in the usual sense of the term. However, South Carolina Supreme Court decisions have pointed out that special purpose districts may be multi-county, [Kleckley v. Pulliam](#), 265 S.C. 177, 217 S.E. 2d 217 (1975), coterminous with county boundaries, [Richardson v. McCutchen](#), 278 S.C. 117, 292 S.E. 2d 787 (1982), or less than county-wide, [Cooper River Park and Playground Commission v. City of North Charleston](#), 273 S.C. 639, 259 S.E. 2d 107 (1979). The legislature also anticipated that special purpose districts might be multi-county entities; see new Section 16-11-1650, which provides in part that '[w]here the boundaries of the district lie in more than one county, the audit must be made to each auditor in which the district is located.' Thus, the fact that an authority is located in more than one county could not be used to defeat applicability of the Act to an authority.

In construing an act, the primary objective is to determine and give effect to the intent of the legislature. [McGlohon v. Harlan](#), 254 S.C. 207, 174 S.E. 2d 753 (1970). Furthermore, where, as here, a statute or an act is remedial in nature, it is to be liberally construed to effectuate legislative intent. [South Carolina Department of Mental Health v. Hanna](#), 270 S.C. 210, 241 S.E. 2d 563 (1978). The problem to be remedied by the Act is the lack of accountability of special purpose districts to the public whom the districts serve. While a certain amount of accountability is required by Section 58-25-70, mandating at least an annual report to the Governor, there is no requirement that an audit be conducted annually by a certified public accountant. Because the regional transportation authorities provide a local governmental function and are established pursuant to general law, as required by the definition of 'special purpose district,' and because a broad construction of the Act is mandated, regional transportation authorities most probably would fall within the definition of 'special purpose district' and thus would be subject to the requirements of the Act.

In [Chicago Transit Authority v. Danaher](#), 40 Ill. App. 3d 913, 353 N.E. 2d 97 (1976), the Chicago Transit Authority was found to be a 'special district,' which entity corresponds to South Carolina's 'special purpose district.' The Authority was described as a relatively autonomous local government providing a single service, possessing a structural form, an official name, perpetual succession, and the right to make contracts and dispose of property. To be such a special district, that court said that it was not necessary for such districts to have the power of taxation or even considerable fiscal autonomy from other governmental entities. A South Carolina court could find such reasoning persuasive if faced with the issue of a regional transportation authority being a special purpose district.

\*3 It must be noted that regional transportation authorities have not been traditionally thought of as special purpose districts. Too, the definition in the Act is not particularly precise. While we believe the Act would most probably be found applicable to such authorities by a court, our opinion cannot be completely free from doubt. Legislative clarification or a declaratory judgment action may be necessary to completely resolve the issue.

Sincerely,

Patricia D. Petway  
Assistant Attorney General

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