

1979 WL 43202 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 7, 1979

\*1 Mr. Cary D. Chamblee  
Deputy Director  
Land Resources Conservation Commission  
Suite 222  
1221 Devine Street  
Columbia, South Carolina 29205

Dear Mr. Chamblee:

You have asked whether the Land Resources Conservation Commission can provide a motor grader for use on private land for conservation projects and require reimbursement by the landowner of the cost of providing the equipment. You describe a program which will operate as follows: A local soil and water conservation district will make arrangements with a landowner for the use of the motor grader on his property. The reimbursement agreement will be handled by the local district, also. The Land Resources Conservation Commission will provide the motor grader and pay the expenses of its operation.

The Land Resources Conservation Commission was established by Act 182 of 1937 and, being a creature of statute, can exercise only such authority and powers as are expressly or by necessary implication conferred upon it or are merely incidental to the powers expressly granted. See [Brooks v. South Carolina State Board of Funeral Service, 271 S. C. 457, 247 S. E. 2d 820 \(1978\)](#). It appears that local soil and water conservation districts have express authority to carry out the program you describe. [Section 48-9-1270 of the Code of Laws of South Carolina \(1976\)](#) provides that soil and water conservation districts and the commissioners thereof shall have the power

(3) To carry out preventive and control measures and works of improvement for flood prevention or the conservation, development, utilization, and disposal of water within the district including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land, recreational development, water storage facilities, and the measures listed in item (3) of § 48-9-20 on lands owned or controlled by this State or one of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the owner and the occupiers of such lands or the necessary rights or interests in such lands;

(4) To cooperate, or enter into agreements with and, within the limits of appropriations duly made available to it by law, to furnish financial or other aid to any agency, governmental or otherwise, or to any owner or occupier of lands within the district in the carrying on of erosion control or prevention operations and works of improvement for flood prevention or the conservation, development, utilization, and disposal of water within the district, subject to such conditions as the commissioners may deem necessary to advance the purposes of this chapter;

(5) To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise or otherwise, any property, real or personal, or rights or interests therein; to maintain, administer and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this chapter; and to sell, lease or otherwise dispose of any of its property or interests therein in furtherance of the purposes and provisions of this chapter;

\*2 (6) To make available, on such terms as it shall prescribe, to landowners and occupiers within the district agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings and such other material or equipment as will assist such landowners and occupiers to carry on operations upon their lands for the conservation of soil and water resources and for the prevention or control of soil erosion and for flood prevention or the conservation, development, utilization, and disposal of water;

(10) . . . to make and execute contracts and other instruments necessary or convenient to the exercise of its powers . . .

Furthermore, [Section 48-9-1280 of the Code](#) provides that

As a condition to the extending of any benefits under this chapter to, or the performance of work upon, any lands not owned or controlled by this State or one of its agencies the commissioners may require contributions in money, services, materials or otherwise to any operations conferring such benefits . . .

From the foregoing sections of the Code it is apparent that local soil and water conservation districts have the authority to utilize a motor grader on private property with the consent of the landowner for conservation projects and to enter into agreements with the landowner which require reimbursement of the cost of utilizing the equipment.

The Land Resources Conservation Commission also has the authority to own and operate this piece of equipment. Section 48-9-290 empowers the Commission

(1) To offer such assistance as may be appropriate to the commissioners of soil and water conservation districts, organized as provided in this chapter, in the carrying out of any of their powers and programs;

(6) To receive gifts, appropriations, materials, equipment, lands and facilities and to manage, operate and disburse them for the benefit of the soil and water conservation districts. (Emphasis added)

These sections authorize the Land Resources Conservation Commission to own the motor grader and manage and operate it for the benefit of the local districts. Your plan to make the equipment available to landowners through local districts comports with the statutory scheme outlined above. The local district is expressly authorized to require reimbursement to any operations which provide conservation benefits to private landowners under the provisions of Chapter 9, Title 48, of the Code. Section 48-9-1280. The local district, therefore, has authority to act for the Land Resources Conservation Commission and see that the Commission is reimbursed the cost of operating the motor grader.

It is the opinion of this Office that the Land Resources Conservation Commission is authorized to own and operate a motor grader for the benefit of local soil and water conservation districts. The Commission may, through local districts, utilize the motor grader on private land for conservation projects when it requires reimbursement of the operating cost of the equipment. No opinion is expressed as to any constitutional issues which the above-cited statutes may involve. See, [Bauer v. South Carolina State Housing Authority, 271 S.C. 219, 246 S.E.2d 869 \(1978\)](#); [Elliott v. McNair, 250 S.C. 75, 156 S.E.2d 421 \(1967\)](#).

Very truly yours,

\*3 Grady L. Patterson, III  
Staff Attorney

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