

1974 S.C. Op. Atty. Gen. 83 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3726, 1974 WL 21244

Office of the Attorney General

State of South Carolina

Opinion No. 3726

March 5, 1974

***1 The State Housing Authority has power to act as a nonprofit organization in sponsoring and managing a housing development and to borrow money for the project.**

Executive Director

South Carolina State Housing Authority

In your memorandum to this office of February 6, 1974, you raised three questions concerning the legality of the State Housing Authority sponsoring Farmers Home financing of a housing project in Beaufort County. The three questions raised were:

1. Does the Authority have the legal capacity to act as a nonprofit organization to sponsor and manage a housing development of some 232 units of housing, at a total value of \$4.5 million, in Beaufort County?
2. Does the Authority have the legal capacity to borrow the money for this type of project?
3. What is the continuity of the State Housing Authority?

In answer to the first question, the statutes under which the State Housing Authority operates, notably Section 36–294, are quite specific and clear in granting the State Housing Authority the power to engage in housing projects of the type under consideration. Section 36–294 reads in pertinent part:

‘[T]he Authority and the commissioners thereof shall have the same functions, rights, powers, duties, privileges, immunities and limitations as those provided for housing authorities created for cities, counties or groups of counties and the commissioners of such housing authorities.’

Thus, the State Housing Authority by virtue of provisions of Section 36–294 possesses the general corporate powers granted local housing authorities by Section 36–125. Under Section 36–125 the State Housing Authority is considered: ‘[a] body corporate and politic, exercising public power perpetual in duration, capable of suing and being sued in its corporate name, having a seal and having all powers necessary to carry out and effectuate the purposes and provisions of this chapter including full power and authority to enter into such agreements and contracts as it may deem advisable, to acquire, purchase, sell, own, hold, lease and operate real and personal property, to accept any grant, loan or credit of money under such conditions as it deems desirable, to borrow money upon its bonds and to secure the repayment thereof by mortgage, pledge or lien upon the property held by it and/or the revenues or income therefrom or otherwise.’

In view of the statutes cited, it is clear that the General Assembly has vested the State Housing Authority with legal capacity to participate in programs such as that proposed in Beaufort County.

The answer to the second question can be found in provisions of the statutes cited above and in the provisions of Sections 36–126(6) and (10), 36–151, and 36–152.

Under provisions of Section 36–126(6), the State Housing Authority is empowered:

‘To purchase, acquire or lease from the Federal Government or any agent or agency thereof any interest of the Federal Government or any agent or agency thereof in any low-cost housing or slum clearance project within the territorial jurisdiction of the authority for the purpose of completing or operating such project, to own and hold such interest so acquired, to make such commitments and enter into such agreements as the authority in its discretion sees fit and to act as agent for the Federal Government or any agent or agency thereof; . . .’

*2 The powers granted the State Housing Authority are augmented by Section 36–126(10), which grants ‘all other powers necessary, proper, incidental or useful’ to implementation of the purposes of the housing authorities laws.

In addition, specific power to apply for, receive and expend loans or grants from the Federal Government is granted in Sections 36–151 and 36–152.

Review of the above statutory authority leaves no doubt of the State Housing Authority's legal capacity to borrow money for the type of project under consideration in Beaufort County. The answer to question two accordingly must be affirmative.

In regard to question three, it must be noted that there is no guarantee of the perpetual existence of any state agency, and the State Housing Authority is no exception. Thus, I am aware of no means of insuring or guaranteeing the continued existence of the State Housing Authority over an extended period of time.

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