



ALAN WILSON
ATTORNEY GENERAL

September 8, 2020

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Dear Ms. Heizer:

Attorney General Alan Wilson has referred your letter to the Opinions section. The letter states the following:

This request for an opinion is being submitted on behalf of the Central Midlands Regional Transit Authority (the "Authority"). The Authority has been in existence since 2002 and has had several iterations of membership. ...

In the last couple of years, the service area has expanded to include more of Lexington County and now includes service into the City of Cayce, the City of West Columbia, and the Town of Springdale. One of the reasons for the expansion of service is that Federal regulations changed in 2015 thereby allowing federal funding to be used for operating expenses of transit services. As a result of the increased services, each of the municipalities mentioned above have requested membership in the Authority.

After presenting this history for context, the letter poses three questions which are addressed below.

Law/Analysis

- I. Is it, or is it not, a requirement that a municipality who wants to become a member of an existing authority as described in Section 58-25-40(3) of the Regional Transportation Authority Law (the "Act") must follow the procedures as outlined in Section 58-25-30 of the Act? What procedures should be followed to ensure that a prospective member of the authority meets the requirements of Section 58-25-30 of the Act?

It is this Office's opinion that a court would hold a local government must follow the procedures as outlined in S.C. Code § 58-25-30 to become a member in an existing regional transportation authority ("RTA"). This Office has previously concluded that the Act permits a municipality to become a member of a RTA if it is within the service area of a RTA and has a population of five thousand or more persons. See Op. S.C. Att'y Gen., 2014 WL 1398586, at 3-4 (January 6, 2014).¹ However, when a contiguous county or municipality seeks to become a member of an existing RTA, it must do so "pursuant to the procedure set forth in Section 58-25-30" and also gain approval from a majority of the RTA board. S.C. Code Ann. § 58-25-40(3).

Since the letter notes that the Authority has only existed since 2002, subsequent members may be added according to the statutory scheme established by Act No. 169 of 1985 and subsequent amendments thereto. See Op. S.C. Att'y Gen., 1985 WL 166053 (August 15, 1985) (explaining that RTAs established prior to the effective date of 1985 Act No. 169 were permitted, in part, to continue operating under the old statutory scheme). Specifically, section 58-25-30 states that when a new source of revenue would be imposed, the question of creating a RTA "must be submitted for ratification" at a general or special election. S.C. Code § 58-25-30 (2015). For the addition of new members to a RTA, such an election is only held in "the contiguous counties or municipalities that are seeking to become members." 2000 Act No. 368, § 4 (clarifying rules regarding the expansion of RTA into contiguous of municipalities). After the approval of a majority of the voters, the agreement becomes "operational." S.C. Code § 58-25-30. However, where existing sources of revenue are used, an election is not required. See S.C. Code §§ 58-25-30, -40. When an election is not required, "the agreement becomes operational upon the execution of the agreement by the governing bodies of the municipalities and counties which include at least ninety percent of the population of the proposed service area." S.C. Code § 58-25-30. This Office has previously commented that "change in membership of local governments would necessarily cause changes in funding, service provision, costs, and so forth, the adopted agreements would be affected and would most likely require revision." Op. S.C. Att'y Gen., 1985 WL 166053 (August 15, 1985). Subsection 58-25-30(6) provides for such revisions to the adopted agreement and referendum by repeating the process in the statute. Additionally, subsection 58-25-30(7) allows the plan of service to be updated as required to stay consistent with local transportation plans.

- II. Can membership on the Board of Directors (the "Board") be apportioned or impacted based upon the relative financial contribution to the Authority of each of the various members of the Authority?

¹ The opinion explains that the Act statutorily defines "municipality" as an "incorporated city or town within the regional transportation area", S.C. Code Ann. § 58-25-20(7) (2015), and further defines "city" as a "municipality with a population of five thousand or more according to the latest United States Census of population." S.C. Code Ann. § 58-25-20(2) (2015). Section 58-25-35 also states that for a municipality to be a member of an RTA it "must be ... within the service area."

This Office's January 6, 2014 opinion to Senator Hembree concluded that, according to the rules of statutory construction, S.C. Code § 58-25-40 requires membership on a RTA governing board to be based only on population and not on financial contributions. See Op. S.C. Att'y Gen., 2014 WL 1398586 (January 6, 2014). The opinion discussed earlier versions of the statute which did, in fact, allow for consideration of financial contributions in RTA governing board membership and it further discussed that a subsequent amendment removed that language from the statute. See id. This Office recognizes a long-standing rule that it will not overrule a prior opinion unless it is clearly erroneous or there has been a change in applicable law. Op. S.C. Att'y Gen., 2017 WL 3438532 (July 27, 2017). Because section 58-25-40 has not been amended since the opinion was issued nor are we aware of a court issuing a contrary construction of the statute, this Office declines to overrule the well-reasoned opinion.

The request letter notes, however, that there exists a "tremendous disparity in financial contributions" between the members of the Authority. While a great disparity could become a source of disagreement, the General Assembly clearly expressed its intent to remove financial contribution to a RTA as a factor in apportioning membership on its governing board. See 1992 Act No. 499 ("An act ... to provide that the membership of the governing board must be apportioned according to population ..."). The issue of whether or not financial contributions to a RTA should be considered in apportioning membership is best addressed to the General Assembly because it alone possesses the legislative authority to amend section 58-25-40.

III. Can a portion of the transportation penny from Richland County devoted to mass transit be spent providing transportation services in Lexington County?

The answer to this question would require factual findings related to the transportation penny which are beyond the scope of this Office's opinions. See Op. S.C. Att'y Gen., 1989 WL 508567, at 6 (July 17, 1989) (Fact-finding is beyond the scope of an opinion and is more appropriately reserved to "the province of the courts."). However, the letter additionally asks whether the Act, itself, prohibits revenue derived from one member of a RTA from being expended within the geographic boundaries of another member of the same RTA. This Office has not found an express or implied prohibition on such an expenditure within the statutes of the Act. But see S.C. Code § 58-25-100 (2015) ("All funds that the authority has generated locally must be used to implement the current Plan of Service as provided for in Section 58-25-30, as amended by this chapter.").

Conclusion

As is discussed more fully above, it is this Office's opinion that a court would hold a local government must follow the procedures as outlined in S.C. Code § 58-25-30 to become a member in an existing regional transportation authority ("RTA"). Further, it remains this Office opinion

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that, according to the rules of statutory construction, S.C. Code § 58-25-40 requires membership on a RTA governing board to be based only on population and not on financial contributions. See Op. S.C. Att'y Gen., 2014 WL 1398586 (January 6, 2014).

Sincerely,



Matthew Houck
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Solicitor General