

6633 Liberty



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

January 8, 1999

The Honorable Alex Harvin III
The Majority Leader Emeritus
South Carolina House of Representatives
Post Office Box 266
Summerton, South Carolina 29148

RE: Informal Opinion

Dear Representative Harvin:

Your opinion request has been forwarded to me for reply. You have asked whether the Santee-Cooper Counties Promotion Commission (hereinafter "the Commission") has the authority to borrow money in its own name and repay the loan with funds received from the county governments comprising the area represented by the Commission.

Governmental agencies or corporations, municipal corporations, counties and other political subdivisions can exercise only those powers conferred upon them by their enabling legislation or constitutional provisions, expressly, inherently or impliedly. Op. Atty. Gen. dated September 22, 1988. In addition, while not directly on point, the Supreme Court, in an opinion addressing the borrowing power of a school district, stated that "[i]t is quite important that school districts and other political subdivisions should not borrow money without definite authority, and it seems to me that in order for a school district to do so we should be able to put our finger on a statute either expressly or impliedly giving such authority." Craig v. Bell, 211 S.C. 473, 46 S.E.2d 52 (1948).

The legislation establishing and setting forth the powers of the Commission is found

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in Section 51-13-210 et seq. of the South Carolina Code of Laws. The powers of the Commission, as listed in Section 51-13-230, are as follows:

- (1) To have perpetual succession;
- (2) To sue and be sued;
- (3) To adopt, use and alter a corporate seal;
- (4) To define a quorum for its meetings;
- (5) To make bylaws for the management and regulation of its affairs;
- (6) To accept gifts or grants of services, properties or moneys from the United States Government or any of its agencies or from the State or any of its political subdivisions;
- (7) To institute and operate programs to improve, enlarge, increase and otherwise enhance recreation and development in the area around and in the Santee-Cooper Lakes in the counties of Berkeley, Calhoun, Clarendon, Orangeburg and Sumter.

In establishing the Commission, the General Assembly did not grant the Commission the power or authority to borrow money. As the Commission may only exercise those powers conferred upon it by its enabling legislation, it does not appear that the Commission is permitted to borrow money in its own name. Furthermore, because the legislature chose to enumerate the powers of the Commission so specifically, it may be presumed that the legislature intended to omit those not so specified, including the borrowing of money in the name of the Commission. See Op. Atty. Gen. dated July 18, 1984.

Since the Commission does not possess the power to borrow money, it is not necessary to address whether the Commission is permitted to repay a loan with funds received from the counties comprising the area represented by the Commission. I note that the General Assembly did specifically provide the Commission with a funding mechanism for the acquisition of lands and rights in lands. Section 51-13-240 provides:

All funds used by the Commission to acquire lands and rights in land shall be provided by the county governments comprising the area represented by the Commission.

This letter is an informal opinion only. It has been written by a designated assistant attorney general and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General

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nor officially published in the manner of a formal opinion.

With kindest regards, I remain

Very truly yours,

A handwritten signature in cursive script that reads "Paul M. Koch". The signature is written in black ink and is positioned above the typed name.

Paul M. Koch

Assistant Attorney General