

The State of South Carolina

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Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE: 803-734-3636
FACSIMILE: 803-253-6283

May 7, 1992

Kenneth D'Vant Long, Director
State Reorganization Commission
Post Office Box 11949
Columbia, South Carolina 29211

Dear Mr. Long:

I have been requested to respond to your letter of April 28, 1992.

QUESTION PRESENTED

You have asked the following question:

Is the State Housing Authority required to promulgate regulations for its Program Fund (established in § 31-13-340) through the procedures specified in Title I Section 23 of the South Carolina Code of Laws, the State's Administrative Procedures Act?

ANSWER

The South Carolina State Housing, Finance, and Development Authority ("Housing Authority") is required to promulgate regulations establishing guidelines for the use of program funds in the "State Housing, Finance, and Development Authority Program Fund Account." The Housing Authority is a State agency for the purposes of the Administrative Procedures Act ("APA"), S.C. Code Ann. §§ 1-23-10, et seq. (Supp. 1991). Additionally, S.C. Code Ann. § 31-13-340 (1991) specifically requires the Housing Authority to promulgate "guidelines established in regulations" for the use of monies in the Program Fund Account. This legislative intent is clear and unambiguous and requires no statutory interpretation.

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DISCUSSION

The APA defines "agency" or "state agency" in S.C. Code Ann. § 1-23-10 (Supp. 1991), as follows:

As used in this article:

- (1) "Agency" or "state agency" means each state board, commission, department, executive department or officer, other than the legislature or the courts, authorized by law to make regulations or to determine contested cases;....
(Emphasis added)

Further, S.C. Code Ann. § 2-15-50 (Supp. 1991) defines "State agencies" as follows:

For the purpose of this chapter "State agencies" means all officers, departments, boards, commissions, institutions, universities, colleges, bodies politic and corporate of the State and any other person or any other administrative unit of State government or corporate outgrowth thereof, expending or encumbering State funds by virtue of an appropriation from the General Assembly, or handling money on behalf of the State, or holding any trust funds from any source derived, but shall not mean or include counties. (Emphasis added)

The Housing Authority was created as "a public body corporate and politic" under S.C. Code Ann. § 31-3-110 (1991). The Housing Authority is authorized by law to make regulations. S.C. Code Ann. § 31-3-130 (1991) provides, in part, the following:

As soon as possible after their appointment, the commissioners shall organize for the transaction of business by choosing a vice chairman and by adopting bylaws and rules and regulations suitable to the purpose of organizing the Authority and conducting the business thereof....
(Emphasis added)

An opinion of the Attorney General has determined that the Housing Authority is subject to the general state law governing its employee personnel classification and compensation like other State agencies under the State Personnel Act, S.C. Code Ann. § 8-11-210, et seq. (1986). See 1985 Op. S.C. Att'y Gen., No. 85-80, at 215 (copy attached). There is no reason why the APA as a general state law would not also apply to the Housing Authority.

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S.C. Code Ann. § 31-13-340 (1991) provides, in relevant part, the following:

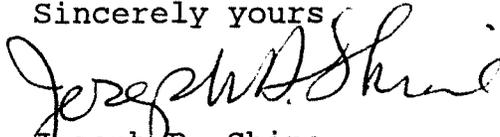
...The monies in the State Housing, Finance, and Development Authority Program Fund may be used only in accordance with the guidelines established in regulations promulgated by the Authority....

This specific statutory requirement is unambiguous on its face. "Where the terms of a statute are clear and unambiguous, there is no room for interpretation and we must apply them according to their literal meaning." South Carolina Department of Highways and Public Transportation v. Dickinson, 288 S.C. 134, 341 S.E.2d 134, 135 (1986). The Housing Authority is required specifically by law to use the Program Fund Account monies only in accordance with guidelines established in regulations promulgated by the Housing Authority.

I trust the above opinion has met your needs. Please call me if you have any questions.

I remain...

Sincerely yours



Joseph D. Shine
Chief Deputy Attorney General

JDS:ppw
Attachments

APPROVED BY:


ROBERT D. COOK
Executive Assistant for Opinions