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# The State of South Carolina



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July 27, 1989

J. S. Flynn, Esquire  
Union County Attorney  
Post Office Box 309  
Union, South Carolina 29379

Dear Mr. Flynn:

By your letter of April 6, 1989, and subsequent communications, you have advised that the General Assembly in 1973 created the Union County Commission on Alcohol and Drug Abuse. You have asked whether this entity would be a state agency or a county agency and who is responsible for handling funds for the entity.

### Background

Act No. 783, 1973 Acts and Joint Resolutions, created the Commission, effective April 16, 1973. 1/ The governing body was thereby established, and the Commission was empowered to study Union County's alcohol and drug abuse needs, to develop a plan to meet these needs, and to cooperate in the implementation of a state plan for the control of alcohol and drug abuse. Act No. 866, also adopted by the General Assembly in 1973, provided for compensation of Commission members. 2/ You have further advised that funding is

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1/ The constitutionality of this act is questionable. See Article VIII, Section 7 of the State Constitution, which prohibits the adoption of an act for a particular county by the General Assembly after March 7, 1973, the effective date of Article VIII. However, constitutionality is presumed unless and until a court declares otherwise. See, Op. Atty. Gen. No. 86-73 (enclosed). Constitutional problems, if any, may have been cured by subsequent actions of Union County Council.

2/ The same constitutional concerns noted in footnote 1/ would also apply to this act.

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provided to the Commission pursuant to Section 61-5-150 et seq. of the Code of Laws of South Carolina (1976 and 1988 Cum. Supp.).

You have further advised that Union County Council, in County Code § 2-221 (Ord. No. 19, 4-5-79), has created the Union County Commission on Alcohol and Drug Abuse, "to be designated the single county authority for alcohol and drug abuse programming pursuant to South Carolina Act 301 of 1973." <sup>3/</sup> Section 2-222 provides for the Commission's membership; Section 2-223 establishes qualifications for members; Section 2-224 provides for meetings and officers of the Commission. Responsibilities and duties are enumerated in Section 2-225 of the County Code and are much more extensive than those enumerated in Act No. 783 of 1973.

#### Status of Commission

##### A. Indicia of Agency of Union County

As noted in footnote 3, Section 61-5-320 of the Code requires each county to designate a single county agency or organization as the sole county agency to receive mini-bottle revenues for the purpose of implementing alcohol and drug abuse programs in the county. This county agency could be existing or newly-created; further, it could be a public or private entity.

In addition, Section 4-9-30(6) of the Code permits a county council to "establish such agencies . . . as may be necessary and proper to provide services of local concern for public purposes. . . ." Thus, Union County Council is authorized by Section 4-9-30(6) of the Code, a portion of the Home Rule Act, to create a county agency. Section 2-221 of the County Code, creating the entity, refers to it as the "designated single county authority for alcohol and drug abuse programming. . . ." It would thus appear that following the authorization of Section 4-9-30(6) of the Code, Union County Council has established a new county agency as permitted by Section 61-5-320 of the Code.

Finally, section 3 of the Home Rule Act, Act No. 283 of 1975, would permit Union County Council to modify the local legislation

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<sup>3/</sup> The provisions of Act No. 301 of 1973 are found in Section 61-5-310 et seq. of the Code. In particular, Section 61-5-320 requires a county council to designate "a single existing county agency or organization, either public or private, as the sole agency in the county for alcohol and drug abuse planning for programs funded" by mini-bottle revenues or to "create a new agency for that purpose." [Emphasis added.]

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adopted by the General Assembly relative to the Union County Commission on Alcohol and Drug Abuse. Section 3 provides in relevant part:

All operations, agencies and offices of county government, appropriations and laws related thereto in effect on the date the change in form become effective shall remain in full force and effect until otherwise implemented by ordinance of the council pursuant to this act. Provided, however, that county councils shall not enact ordinances in conflict with existing law relating to their respective counties and all such laws shall remain in full force and effect until repealed by the General Assembly, or until January 1, 1980, whichever time is sooner. . . .

See Graham v. Creel, 289 S.C. 165, 345 S.E.2d 717 (1986) and Op. Atty. Gen. No. 86-73, a copy of which is enclosed. Act No. 783 of 1973 is a local law which was adopted by the General Assembly for Union County and thus would be subject to modification by Union County Council. Whether Council acted pursuant to this authority or that of Section 61-5-320 of the Code is unknown to this Office. In any event, it appears, on its face, that the Union County Council has created a valid county agency for the purpose of expending minibottle revenues for alcohol and drug abuse programming.

#### B. Indicia of State Agency

No single set of criteria exists by which an entity may be neatly classified as a state agency. Various opinions of this Office have examined criteria on an individual basis; enclosed are copies of opinions dated December 8, 1987 and September 12, 1984. We note that the act of the General Assembly was placed in the local and temporary section of the 1973 Acts and Joint Resolutions, rather than the general and permanent provisions. The Commission does not receive appropriations as an individual entity through the General Appropriations Act adopted by the General Assembly (though it may receive funds through the South Carolina Commission on Alcohol and Drug Abuse). There is no indication in Act No. 783 of 1973 that a state agency was being created. <sup>4/</sup> The entity is not listed in the State of South Carolina Telephone Directory. Thus, it is most probably not a state agency, following the guidance of the opinions of September 12, 1984 and December 8, 1987.

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<sup>4/</sup> For contrast, see footnote <sup>2/</sup> of the opinion enclosed herewith dated September 12, 1984.

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### Conclusion as to Status

For these reasons, it is the opinion of this Office that the Union County Commission on Alcohol and Drug Abuse would be a county entity rather than a state agency.

### Handling of Funds

#### A. State Law

Several provisions of state law are relevant to your inquiry. Section 61-5-340 of the Code requires that revenues collected pursuant to Section 61-5-150 of the Code are to be collected and disbursed by the Tax Commission to the counties. Section 61-5-360 further provides:

Each county governing body shall:

(a) Establish such methods of administration as are necessary for the proper and efficient operation of the programs and services or projects, including the provision of annual reports of progress toward implementing county plans to the South Carolina Commission on Alcohol and Drug Abuse (Commission).

(b) Provide for such accounting procedures as may be necessary to assure proper disbursement of and accounting for such funds, including an annual audit of fiscal records, a copy of which shall be furnished to the Commission.

In addition, this Office has previously advised, by Opinion No. 79-86, that the offices of the State Treasurer and the Comptroller General should disburse funds appropriated to a county, to the county treasurer rather than some other entity in the county, such as the county finance department. The relevant statutory and constitutional provisions leading to that conclusion are discussed in detail in the opinion, a copy of which is enclosed.

#### B. County Code

Section 2-225 of the Union County Code details the responsibilities and duties of the Union County Commission on Alcohol and Drug Abuse. In subsection (1)(c), the Commission is directed to identify and account for all funds to be utilized in implementing and executing alcohol and drug abuse programs. In addition, the Commission is to submit an operating budget to county council, annually, for its approval; the Commission may receive and expend gifts and devises, contributions, appropriations and the like to carry out its pro-

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grams. The County Code is silent in this section as to how funds are to be handled. 5/

Conclusion as to Handling of Funds

Based on the foregoing, it appears that funds to be disbursed from the State should most probably be channeled to the Union County Treasurer. Union County Council, following Section 2-225 of the Union County Code, will have approved the Commission's budget and, following Section 61-5-360 of the South Carolina Code, will have established some method of administering and disbursing the funds, accounting procedures, and the like. The Union County Treasurer would then disburse the funds to the Union County Commission on Alcohol and Drug Abuse according to those policies and procedures adopted pursuant to Section 61-5-360 of the Code.

With kindest regards, I am,

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General

PDP:st  
Enclosures

REVIEW AND APPROVED BY:

*Robert D. Cook*

Robert D. Cook  
Executive Assistant for Opinions

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5/ There may be other relevant Union County Code provisions which were not provided to this Office.