

## The State of South Carolina



## Office of the Attorney General

T. TRAVIS MEDLOCK  
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING  
POST OFFICE BOX 11549  
COLUMBIA, S.C. 29211  
TELEPHONE: 803-734-3970  
FACSIMILE: 803-253-6283

December 5, 1989

The Honorable Irene K. Rudnick  
Member, House of Representatives  
Post Office Box 544  
Aiken, South Carolina 29802

Dear Representative Rudnick:

By your letter of November 21, 1989, you have inquired as to the possibility of Aiken County's issuing a taxi franchise. You have asked to be advised on the law concerning a county's issuance of franchises.

Section 4-9-30(11) of the South Carolina Code of Laws (1976, as revised) empowers county governments

to grant franchises in areas outside the corporate limits of municipalities within the county in the manner provided by law for municipalities and subject to the same limitations... .

Section 5-7-30 of the Code permits municipalities to, inter alia, "grant franchises for the use of public streets and make charges for them... ." Section 5-7-30 places no limitation on municipalities which wish to franchise taxis.

A franchise is defined as a "special privilege conferred by government on [an] individual or corporation, and which does not belong to citizens... of common right." Black's Law Dictionary 592 (5th Ed. 1979). See also 36 Am.Jur. 2d Franchises §1. No section of the South Carolina Code provides guidance on how counties or municipalities are to extend franchises for use of the streets, though jurisdiction of the counties and municipalities to franchise would be suggested by the terms of Sections 4-9-30(11) and 5-7-30.

Two Code sections have been referred to in your request letter as possible limitations on a county's or municipality's right to franchise taxis. Each must be examined separately.

Section 58-23-1510 of the Code is a general grant of power to cities with population of 30,000 to 50,000 according to the last United States census to regulate buses and taxis. This Code section originated in Act No. 653, 1928 Acts and Joint Resolutions. At the time of enactment, according to 1920 United States census figures, only the City of Columbia had a population between the stated figures, 37,524 inhabitants. See Fourteenth Census of the United States, 1920, Vol. 3, p. 934, table 10. Sections 4388 and 4544 of the 1922 Civil Code of Laws, the general grants of municipal powers in effect when Act No. 653 was adopted, did not authorize municipalities to grant taxi licenses. Thus, it was necessary to provide such authorization by an act such as Act No. 653. 1/ This provision deals with licensing and regulating motor vehicles for hire and does not address the granting of franchises, however.

Also to be considered is Section 58-23-1210 et seq. of the Code, which was adopted as Act No. 833 of 1948. This act required the licensure of taxis in counties having a city having a population in excess of seventy thousand inhabitants according to the most recent United States Census. At the time of adoption of Act No. 833, only Charleston County would have met the requirements, as the population of the City of Charleston in the 1940 census was 71,275. See Sixteenth Census of the United States: 1940, Vol. 1, p. 976, table 2. Interestingly, in 1953, Act No. 168 was adopted to exclude Richland County from the terms of this Act. Home rule was not yet in existence, and Charleston County would not have had such authority to license taxis without an act such as Act No. 168. 2/ Again, franchising was not addressed.

A review of the general grants of powers to municipal governments, beginning with the above-cited provision in the 1922 Civil Code, reveals none which would authorize or limit the granting of franchises to use municipal streets. See Sections 7233 and 7432 of the 1932 and 1942 Codes; Section 47-61 of the 1952 and 1962 Codes. Act No. 283 of 1975, popularly known as the Home Rule Act, contained Section 47-32 which, apparently for the first time, granted municipalities the power to grant franchises for the use of their

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1/ Today using the 1980 census figures, Section 58-23-1510 would most probably apply only to Florence, Rock Hill, Spartanburg, and possibly one or two other municipalities.

2/ Today, using the 1980 census possibly only Richland County would be eligible to use Section 58-23-1210 et seq., using figures from the 1989 directory of municipal officials published by the Municipal Association of South Carolina.

The Honorable Irene K. Rudnick  
Page 3  
December 5, 1989

streets. Section 47-32 currently is Section 5-7-30 and does not appear to place limits on such power; hence, no limit would exist for counties in the same situation.

The distinction between the issuance of a license and the granting of a franchise is not precisely drawn, but the distinction is seen in cases such as Schisler v. Merchants Trust Co. of Muncie, 94 N.E.2d 665 (Ind. 1950); cases in 36 Am. Jur. 2d Franchises §2, footnote 18; 17 Words and Phrases, "Franchise," pp. 710-712; 9A McQuillin, Municipal Corporations, §§26.173 et seq. and 7A McQuillin, §§24.660 et seq. Basically, a license is a personal privilege or right to do business, whereas a franchise is a property right of sorts. If the issue you have presented is the granting of a franchise, then there is apparently no restriction on the same action of a municipality.

Licensure of taxis presents a closer question and may actually be the issue in this instance. Clearly, counties now have police power by virtue of the adoption of Act No. 139 of 1989, which added Section 4-9-25 of the Code. See also Op. Atty. Gen. No. 84-66. Section 58-23-1210 et seq. became law at a time when home rule did not yet exist. It could be argued that the adoption of general police powers for counties impliedly repealed Section 58-23-1210 et seq., thus imposing no limits on a county wishing to license taxis. Implied repeal of a statute is disfavored, Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376 (1970), particularly when the repealing statute is general in nature and the specific statute being impliedly repealed is not mentioned or identified. Cf., Rhodes v. Smith, 273 S.C. 13, 254 S.E.2d 49 (1979). For this reason, it would be preferable to seek legislative clarification on this issue.

The Aiken County Attorney has advised Aiken County Council that, with respect to a county's regulation of taxis, no express authority to do so yet exists. As discussed above, our opinion concurs with that given by the County Attorney. We understand that he has suggested legislation which, in his view, would clarify the issue; further consultation with the County Attorney would thus be in order.

Because the Opinion Section received your request on December 1, and you requested our response before a meeting scheduled today, we must advise that while our research has been thorough it has not been absolutely exhaustive. There are possibly arguments which could be addressed but were not in today's opinion; thus, our opinion is not entirely free of doubt and the conclusion could change upon consideration of other arguments.

The Honorable Irene K. Rudnick

Page 4

December 5, 1989

With kindest regards, I am

Sincerely,

*Patricia D. Petway*  
Patricia D. Petway  
Assistant Attorney General

PDP/nnw

REVIEWED AND APPROVED BY:

*Robert D. Cook*  
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Robert D. Cook  
Executive Assistant for Opinions

cc: Robert M. Bell, Esquire  
Aiken County Attorney