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February 28, 1986

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Dear Ms. Zeigler:

By your letter of January 22, 1986, you have asked for the opinion of this Office in the interpretation of several 1985 amendments to the Regional Transportation Authority Law. Each of your questions will be addressed separately, as follows.

Question 1

Section 58-25-35 of the Code of Laws of South Carolina, as amended by Act No. 169, 1985 Acts and Joint Resolutions, provides:

The members of a regional transportation authority created under authority of this chapter must be the cities within the service area as defined by this chapter and the counties within the unincorporated areas or the service area of the authority.

You have asked whether the members of a regional transportation authority (RTA) can be only cities or counties within the respective RTA's service area.

Applying the plain meaning of this statute, as must be done when the statute contains no ambiguity, Hartford Accident and Indemnity Co. v. Lindsay, 273 S.C. 79, 254 S.E.2d 301 (1979), it may be argued that local governments (municipalities or counties) within the service area would be members of the RTA; however, not every municipality or county would be required to be a member. Because the statute states that members "must be the cities ... and the counties" within the service area or as described, an argument may be made that all cities of over 5,000 population and counties as described, must be included in the membership. Legislative clarification may be helpful to resolve this difficulty in interpretation.

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Section 58-25-40, as amended in 1985, provides a procedure for contiguous counties or cities not participating initially to become members of an RTA. Also, Section 58-25-30(4) specifies that the question to be placed before the electorate must specify the cities and counties to be involved in the RTA. If Section 58-25-35 were interpreted to mean that every county and municipality within the regional transportation area, see Section 58-25-20 (13), must be members at the outset, then these additional statutes would be meaningless. Thus, the interpretation of Section 58-25-35 that would allow other statutes to be given effect, as must be done whenever possible, Hartford Accident and Indemnity Co., supra, is that cities or counties within the service area which wish to do so may become members of an RTA created under the 1985 act. Again, however, there is some doubt as to this conclusion.

Question 2

Section 58-25-40 (1), third paragraph, provides that as many as three members of an RTA governing board may be appointed by legislative delegations of member counties. May only those RTAs established through a referendum consider using this procedure for appointment? Would these three members be in addition to those members required by Section 58-25-40 (1), first and second paragraphs?

The relevant portion of Section 58-25-40 (1) provides the following:

The authority's board members, officers, and staff must be as follows:

- (1) The members of the authority must be represented on the governing board of the authority by appointees of the governing bodies of the cities and counties within the service area as set forth in § 58-25-35. The appointees may be elected officials of these local governing bodies and if so would serve in an ex officio capacity. The governing board of the authority must be made up of not more than two times the number of authority governmental members.

There must be at least five board members. The membership of the governing board must be apportioned among the member cities and

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counties proportionate to population within the authority's service area.

As many as three members of the governing board of any transportation authority may be appointed by the legislative delegations of the member counties if approved by the qualified electors within the proposed service area in accordance with the procedures set forth in § 58-25-30. No member government may have less than one member on the board. ...

The plain language of this statute refers to RTAs established through the procedures specified in Section 58-25-30; the electorate within the service area must, by referendum, approve the appointment of up to three members by legislative delegations of member counties.

For RTAs established under the older law (or "grandfathered"), which law is found in the 1976 Code as the original Section 58-25-10 et seq. prior to the 1985 amendment, Section 58-25-45 of the new law would be applicable:

If a majority of the member governments of any transportation authority formed under Chapter 25 of Title 58 of the 1976 Code prior to July 1, 1985, agree, three members of the governing boards may be appointed by a majority of the members of the legislative delegations of the member counties.

Thus, the same result of having three members appointed by legislative delegations of member counties may be achieved for the RTAs established under the older law but by following a different mechanism.

Your second question is more difficult. We would point out that membership of the governing body must meet several requirements: (1) a minimum of five board members; (2) a maximum of two times the number of authority governmental members; (3) membership apportioned among the member cities and counties proportionate to population within the service area; and (4) each member government must have at least one member on the governing board.

It would appear that, as to RTAs established under the 1985 law, the delegation appointee(s) would be included within the maximum number of board members, due to the language restricting

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the number of board members to twice the number of governmental members. The absence of language such as "in addition to the maximum number calculated above" or something similar suggests that the delegation appointees are to be counted within the maximum.

For RTAs established under the older law prior to July 1, 1985, how the three delegation appointees are to be counted is not clear. The old Section 58-25-30 provided the following:

The governing body of an authority shall be composed of one member from each member county, municipality or political subdivision to be appointed by the governing body of each of such entities and three members who shall be appointed by the Governor upon the approval of a majority of the members of the legislative delegations of such member counties including the senator. Two thirds of the Governor's appointees shall be residents of the participating entities. The members shall serve for a term of three years and until their successors have been appointed and qualify. Any vacancy shall be made in the same manner as the original appointment.

Under the old law, there was no maximum number; the gubernatorial appointees were in addition to the members who represented the city and county members.

However, Section 4 of Act No. 169 of 1985 requires that as old members' terms expire, new members' terms and composition of the governing board be governed by Section 58-25-40 of the new law. Thus, as to old RTAs now complying with the new law, the question again arises as to whether the three delegation appointees under Section 58-25-40 are to be counted as part of or in addition to the maximum. Thus, whatever interpretation is made for new RTAs would also be applicable to the older RTAs.

Because the language is not particularly clear as to how these members should be counted, it may be advisable to seek legislative clarification. While it appears from the language of the statute that delegation appointees are to be counted within the maximum, this interpretation may not comport with legislative intent, as we have been advised by your office's Division of Transportation. Legislative clarification would insure that intent of the legislature comports with interpretation of the statute.

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Question 3

In Section 58-25-40 (1), supra, reference is made to the first paragraph, last line, to "authority governmental members." Who are the "authority governmental members" in the case of RTAs established under the old law but following new Section 58-25-40?

As noted in the responses to your first two questions, members of RTAs may be cities and counties within the service area of an RTA. Membership of old RTAs was governed by old Section 58-25-40, which provided in part:

(1) Any two or more counties, municipalities, other political subdivisions, or combinations thereof within a regional transportation area are authorized by a majority vote of its governing body to implement a regional transportation authority, hereinafter referred to as authority, to be constituted and operated as provided for in this chapter. No county, municipality or other political subdivision may be a member in more than one authority.

Thus, under the old law, cities and/or counties jointly agreed to create RTAs. The formation of the older entity was vastly different than the procedure to be followed by RTAs being established after July 1, 1985. See new Section 58-25-30.

However, as noted above, Section 4 of Act No. 169 requires that "as the terms of appointees to the governing board expire, appointments and composition must be in accordance with the provisions of Section 58-25-40 of the 1976 Code, as amended by this act." The act is silent as to bringing in additional members merely because the number or manner of appointments may be changed; it requires that composition reflect the several requirements noted in our response to Question 2, for example (minimum and maximum numbers of members, etc.). Thus, even though the grandfathered RTAs would follow new Section 58-25-40 as to appointment and composition, their member-governmental authorities would generally remain the same as under the old law.

We would note, however, that a "city" is defined by Section 58-25-20 (2) to be "a municipality with a population of five thousand or more according to the latest United States Census of population located within the service area of the authority." Under the older RTAs, municipalities were not restricted from membership by virtue of population. Conceivably some small

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"cities" of under five thousand persons could be excluded from membership once the old RTAs are completely within the new Section 58-25-40.

Question 4

Section 58-20-70 provides for the review and approval of the authority's annual budget by its member cities and counties. In which budget year should this provision take effect, considering that Act No. 169 did not take effect until July 1, 1985, a date some time after which the governmental members' 1985-86 fiscal year budgets were already set?

As to approval and adoption of an RTA's budget, Section 58-25-70 provides in part:

The authority must submit to the member cities and counties the annual operating and capital budget proposed for each fiscal year, at least sixty days prior to the beginning of the fiscal year. In the event a member city or county disagrees with the proposed budget, it may set forth points of disagreement and transmit its statement to the authority and other governing bodies of the member cities and counties within thirty days of the receipt of the proposed budget. Budgets must be adopted by a majority of the member governments. In the event a majority of the governing bodies of the member cities and counties do not agree with the proposed budget, the authority must convene a meeting of chief elected and administrative officials of member governments to develop a budget which may be acceptable to a majority of the member governments; a majority, for the purposes of this section, includes the governing bodies of the member cities and counties representing more than one-half of the service area population. In the event a budget acceptable to a majority of the member governments is not developed prior to the beginning of its fiscal year, the authority shall continue to operate at the budget levels of the previously approved budget. Any budget changes requiring an increase in local funds in excess of ten percent during the budget year must be approved as provided above for annual budgets.

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Section 58-25-60 specifies the sources of funds for operation of an RTA. Section 58-25-60 is not meant to be exclusive as to sources of funding (relative to generation of local funds vis a vis vehicle registration fees) at the local level; it is very likely that some of the funds to be used in operation of the RTA will be budgeted by county and municipal governing bodies.

Unlike Section 4-9-140 of the Code which provides for the fiscal year of a county, the statutes as to regional transportation authorities are silent as to when an RTA's fiscal year begins and ends; we are advised that most RTAs use a July 1 to June 30 fiscal year, however. If the RTA's fiscal year began on July 1, 1985, the effective date of Act No. 169, it would have been impossible for such an RTA to comply with the sixty-day requirement. Arguably it would be more practical for such an RTA to begin its compliance with the fiscal year beginning July 1, 1986. For those RTAs whose fiscal year began at least sixty days after July 1, there would have been time, practically speaking, for compliance with the terms of Section 58-25-70.

Unless there is clear intent to the contrary, statutes are not to be applied retroactively, but must be applied prospectively. Schall v. Sturm, Ruger Co., Inc., 278 S.C. 646, 300 S.E.2d 735 (1983). See also 2 Sutherland Statutory Construction, § 33.10 ("an act committed before the statute is passed should not be affected by the statute, and an act done after the passage of the statute should be affected by it."). Section 58-25-70 should thus take effect prospectively, and those RTAs whose complete budgetary enactment process begins on or after July 1, 1985, would follow the new statute as the process begins. For those RTAs whose budget process was complete with an effective date of July 1, 1985, the process would be implemented as the next budget is prepared.

Question 5

Section 58-25-100 refers to expending funds in accordance with the "current plan of service as provided for in Section 58-25-30." Would grandfathered RTAs, which are exempted from the provisions of new Section 58-25-30 by Act No. 169, also be exempt from Section 58-25-100 and other parts of the law which refer to exempted Sections 58-25-30 and 58-25-60?

The answer to your question depends upon whether the grandfathered RTA has opted to have taxing power. According to Section 4 of Act No. 169, those RTAs which have opted to have taxing power must comply with the full terms of the act, including adoption of a service plan, and thus must comply with

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Sections 58-25-100, 58-25-30, 58-25-60, and all statutes which refer to those statutes. If an old RTA wishes to follow the new law except for taxing power, that RTA is exempted from the provisions of Sections 58-25-30 and 58-25-60; because a service plan has not been adopted, provisions relative to service plans would not be relevant to RTAs in this scheme.

If, however, the grandfathered RTAs have opted not to have taxing power, the RTAs may, by Section 4 of Act No. 169, continue to follow the terms of the old law, except for appointment of board members.

Question 6

When should grandfathered RTAs begin to take advantage of tax exemptions and State programs, and when should compliance with Sections 58-25-40 and 58-25-70 begin?

Section 58-25-80 provides the following:

Each authority established, including any formed under Chapter 25 of Title 58 of the 1976 Code prior to the effective date of this chapter, shall exist for nonprofit and public purposes and is a public agency, and it is found and declared that the carrying out of the purpose of each authority is exclusively for public benefit and its property is public property. No authority shall pay any state or local ad valorem, income, sales, fuel, excise, or other use taxes or other taxes from which municipalities and counties are exempt. The South Carolina Tax Commission is responsible for promulgating any regulations necessary to effect fully this provision for tax exemption. The authority or operator providing public transportation on behalf of an authority may participate in the State Retirement System and utilize the services of the State Purchasing Department of the Division of General Services, the state insurance program, including, but not limited to, all health programs, and any other joint activity of the State carried on for the benefit of state agencies and political subdivisions of the State. Operators providing public transportation on behalf of an authority shall not pay state and local fuel taxes from which municipalities and counties are exempt.

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As noted above, Act No. 169 took effect on July 1, 1985. There is no intent that this section take effect at a different date to either new or grandfathered RTAs. Thus, the tax exemptions and other State programs would be effective July 1, 1985, as to grandfathered RTAs and upon coming into existence for newly-formed RTAs. We are advised that the South Carolina Tax Commission has already issued tax exemption letters to RTAs in existence under the old law. Their interpretation, which concurs with ours, is entitled to great weight. Etiwan Fertilizer Co. v. South Carolina Tax Commission, 217 S.C. 354, 60 S.E.2d 682 (1950). Thus, the effective date of the act would be the effective date of Section 58-25-100, or July 1, 1985.

Section 4 of Act No. 169 specifies that as the terms of board members of grandfathered RTAs expire, the appointment and composition of the RTA members must be made in compliance with Section 58-25-40. Any appointments made on or after July 1, 1985, must be in compliance with new Section 58-25-40, since July 1, 1985 is the effective date of the act.

Finally, the date to begin compliance with Section 58-25-70 is discussed in response to the fourth question.

We trust that the foregoing will assist in resolving these issues. We understand that amendments to the 1985 act are presently pending; we do not intend herein to comment on those pending amendments. Please let us know if we may assist you further.

Sincerely,

Patricia D. Petway

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PDP/an

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