

The State of South Carolina



Office of the Attorney General

Opinion 10
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August 15, 1985

David E. Belding, Esquire
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Division of Public Safety Programs
1205 Pendleton Street
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Dear Mr. Belding:

By your letter of July 29, 1985, you have asked for the opinion of this Office on two questions concerning the new Regional Transportation Authority Law, Act No. 169, 1985 Acts and Joint Resolutions, as follows:

1. What process may be used to add members to regional transportation authorities existing on July 1, 1985, the effective date of Act No. 169?
2. If an already-existing regional transportation authority changes its name upon the addition of members, does the entity become an entirely new entity which must be activated in accordance with the terms of the new act?

Each of your questions will be discussed separately, as follows.

Question 1

The law relating to regional transportation authorities was found in Section 58-25-10 et seq., Code of Laws of South Carolina (1976 & 1984 Cum. Supp.), prior to adoption of Act No. 169 of 1985. Under the old provisions, new members could be added under the terms of Section 58-25-40 and additional territory

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under Section 58-25-60. The new act changes completely the manner in which new areas or local governments may be added to an authority; see new Section 58-25-30. However, the act contains a "grandfather" clause of sorts in Section 4:

Any transportation authority formed under Chapter 25 of Title 58 of the 1976 Code prior to the effective date of this act may continue to operate in accordance with the terms and conditions of that law. However, 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. If the authority desires to operate under the full terms and conditions of Chapter 25 of Title 58, as amended by this act, with the exception of the exercise of taxing power, the authority must comply with all procedures set forth in that chapter, except those set forth in Sections 58-25-30 and 58-25-60. If the authority desires to operate under the full terms and conditions of that chapter, as amended by this act, including the exercise of taxing power, the authority must comply with all procedures set forth in that chapter.

The answer to your first question depends upon the construction of this section of the new act.

The primary objective of the courts of this State, as well as this Office, in construing an act of the legislature, is to ascertain and give effect to the intent of the legislature, if at all possible to do so. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). Furthermore, language used in a statute must be interpreted according to its plain and ordinary meaning, absent ambiguity. State v. Hardee, 279 S.C. 409, 308 S.E.2d 521 (1983). Applying these rules of statutory construction, we would advise that if a regional transportation authority had been formed prior to July 1, 1985, the effective date of Act No. 169, that authority could opt to follow the previous statutes under which it was formed or to follow the terms of the new act. If the authority opts to follow the new act, certain measures are to be taken if the authority is to

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have taxing power; otherwise, new Code Sections 58-25-30 and 58-25-60 will not be applicable. Whether the old or new Code sections are followed, new appointments to the governing body of the authority will be made according to new Section 58-25-40.

As to adding new members or including additional territory to an already-existing regional transportation authority, the options include the following:

1. If the option to continue operating under the old law is made, the authority would add new members by following old Sections 58-25-40(2) and 58-25-60. In short, the governing body of the political subdivision to be added would adopt a resolution relative to its joining the authority, and a majority vote of the authority would also be necessary.

2. If the option of the new law, without exercise of taxing power, should be selected, new Section 58-25-30 as to activation of an authority is expressly not applicable by Section 4 of the new act. Thus, an already-existing authority would follow old Sections 58-25-40(2) and 58-25-60 under this option.

3. Should the already-existing authority desire to follow the new law, including the exercise of taxing power, the provisions of new Section 58-25-30 as to activation of an authority must be followed; the process would include formulation of a service plan, adoption of agreements, and a referendum. Because a change in membership of local governments would necessarily cause changes in funding, service provision, costs, and so forth, the adopted agreements would be affected and would most likely require revision. Such revision may be revised by repeating the process specified in new Section 58-25-30. 1/

Thus, regional transportation authorities already in existence on July 1, 1985, must determine which law they wish to follow and, if the new law is selected, what taxing power they

1/ While the term "may" generally connotes permissiveness, in this instance mandatory compliance with new Section 58-25-30 appears to be required. The section appears to permit revision of less than the entire agreement rather than permissiveness in following the process.

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wish to exercise. The process to be followed then depends upon which option has been selected, as outlined above.

Question 2

You have advised that one or more regional transportation authorities in existence on July 1, 1985, may wish to add members or enlarge their service areas. In doing so, the authorities would like to change their corporate names to reflect the expanded service area. The present names may not reflect that the entities are regional transportation authorities; these entities were formed under old Section 58-25-10, et seq., however.

Based upon the facts presented to this Office, it is assumed that the already-existing entities would prefer to follow the law before amendment. We would also note that, pursuant to old Section 58-25-20(1), the authorities in question are bodies politic and corporate and are incorporated through the Secretary of State as required by law. The question thus becomes whether a change of corporate name, upon the addition of members to an authority, makes the authority a completely new entity such that it may no longer follow the old law and must therefore become activated under new Section 58-25-30.

The Georgia Court of Appeals has stated, "A corporate name change is routinely accomplished by merely amending the articles of incorporation. . . . Such a procedure does not cause a new corporation to come into 'existence.'" Goodwyne v. Moore, 170 Ga. App. 305, 316 S.E.2d 601, 603 (1984). Furthermore, "[o]nce corporate existence has begun, even though . . . the stockholders, directors, and corporate name may change, the corporation retains the same rights, liabilities, and responsibilities until dissolved." Continental Bankers Life Ins. Co. v. Simmons, 561 S.W.2d 460, 464 (fn. 2) (Tenn. Ct. App. 1977); Alley v. Miramon, 614 F.2d 1372 (5th Cir. 1980); Bankers Life and Casualty Co. v. Kirtley, 338 F.2d 1006 (8th Cir. 1964). Because dissolution is not contemplated by the authorities in question, merely a name change upon the addition of new members or territories would not cause a new corporation to be created. The old corporate identity of each authority would be retained until dissolution. Each such authority may opt to follow the old or new law, as stated in response to your first question.

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We trust that the foregoing has satisfactorily responded to your inquiries. Please advise if we may provide clarification or additional assistance.

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

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REVIEWED AND APPROVED BY:

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