

1979 WL 42813 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 15, 1979

\*1 Thomas W. Thomas, Esquire  
City Attorney  
Post Office Box 947  
Lancaster, South Carolina 29720

Dear Mr. Thomas:

This is in response to your letter of November 20, 1978, concerning the validity of a proposed municipal ordinance creating a 'Downtown Authority' for the City of Lancaster. It is the opinion of this Office that the ordinance is void insofar as it attempts to establish an independent and autonomous corporate body outside of the control of the Lancaster City Council.

'[T]he principle is fundamental and of universal application that public powers conferred upon a municipal corporation and its officers and agents cannot be delegated to others, unless so authorized by the legislature or charter.' McQUILLIN, MUNICIPAL CORPORATIONS § 10.39 (3d ed. 1966). This proscription is particularly potent with respect to 'legislative' powers of the municipality. [U. S. v. Illinois Central R. Co.](#), 291 U.S. 457 (1933); [Arkansas-Missouri Power Co. v. Kennet](#), 78 F.2d 911 (1935); [Brackman's, Inc. v. Huntington](#), 126 W.Va. 21, 27 S.E.2d 71 (1943).

The rule is well settled that legislative power cannot be delegated by a municipality, unless expressly authorized by the statute conferring the power. So judicial, as distinguished from ministerial, functions cannot be delegated. So far as the powers of a municipal corporation are legislative, they rest in the discretion and judgment of the municipal body entrusted with them, and the general rule is that that body cannot delegate or veto the exercise of such powers to the judgment of a committee of the council, or to an administrative board or officer of the city. If the legislature confers power on a municipal corporation, the exercise of discretion by the governing body of the municipality cannot be delegated to a municipal officer or other person or body, and the general rule is that, if from the nature of things to be done, a municipal officer is required to perform duties involving the exercise of discretion and judgment, he cannot in any manner delegate them.

McQUILLIN, MUNICIPAL CORPORATIONS § 10.40. Clearly, the proposed duties of the 'Downtown Authority' involve the exercise of discretion, and thus constitute legislative powers; the delegation of such powers by the City Council would be invalid, since discretion is properly vested in that body alone. The rule against delegation of legislative powers is applicable to public improvements. McQUILLIN, MUNICIPAL CORPORATIONS § 37.09 (3d Ed. 1971). Thus, the creation of such an autonomous entity to exercise legislative powers is improper. As this Office noted in a letter to Douglas S. Garvin, Esquire, dated April 5, 1976:

While it is true that Act No. 283 of 1975, the 'home rule' legislation, does grant sweeping new powers to county governing bodies, I find nothing in that Act that would, or, indeed, could, empower a county governing body to create, in effect, an independent political subdivision of the State. In fact, the same provision of Act No. 283 [§ 12-3703(6)] which grants to county governing bodies the authority 'to establish such agencies, departments, boards, commissions, and positions in the county as may be necessary and proper to provide services of local concern for public purposes,' also requires the county governing body to 'regulate, modify, merge or abolish such agencies, departments, boards, commissions and positions [emphasis added].'

\*2 Therefore, not only is a municipality precluded from delegating a legislative power reposed in it, but it also cannot delegate even an executive or ministerial power to an autonomous, unregulated entity.

If you have any further questions, please do not hesitate to contact this Office.

With kindest regards,

Karen LeCraft Henderson  
Senior Assistant Attorney General

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