

1977 S.C. Op. Atty. Gen. 62 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-64, 1977 WL 24406

Office of the Attorney General

State of South Carolina

Opinion No. 77-64

February 28, 1977

*1 Mr. Hugh C. Lane

Post Office Box 10608

Charleston, SC 29411

Dear Mr. Lane:

Attorney General McLeod has referred your letter of February 7, 1977, to me for reply. You have requested an opinion as to the power of the State Housing Authority to create one or more not-for-profit corporations for the purpose of financing low-cost rent-supplement housing facilities in connection with Federal housing assistance programs. The Housing Authority would authorize the creation of the not-for-profit corporation, and the Board of Directors of the corporation would consist largely of persons who are Commissioners of the Housing Authority. The corporation would issue revenue bonds which would finance the acquisition of real estate and the construction thereon of the low-rent dwelling units. This program is similar to others which have already been put into effect by several city and county housing authorities within the State.

You have stated the three questions, which I quote from your letter:

1. Are there any applicable State laws that would prohibit the State Housing Authority from forming and creating a not-for-profit corporation under the not-for-profit laws of the State?
2. Once legally created, may the State Housing Authority use a not-for-profit corporation as its instrumentality in a manner similar to that of the Greenwood Housing Authority?
3. Are the State Housing Authority's private-citizen, gubernatorially-appointed, governing-body Commissioners prohibited from serving either partially, as a majority, or wholly as incorporators and members of the Board of Directors of a not-for-profit corporation that would serve to assist the Authority in fulfilling its legislatively mandated purposes?

The State Housing Authority is vested by Sections 36-294, 36-125, 36-126, and 36-156 of the Code with broad power, including the power to issue bonds, to effectuate the purpose of constructing low cost housing. Clearly, it could issue such bonds itself if it chose to do so. The fact that it has chosen to do so through the instrumentality of a not-for-profit corporation does not dilute its powers; in other words, the answer to Question 2 above is 'yes'. In answer to Question 1, it is the opinion of this Office that the broad powers of the Authority set forth in Section 36-126(10) clearly include the power to establish a not-for-profit corporation whose existence will further the purpose set forth in Section 36-103. Finally, and in answer to Question 3, there is no constitutional or statutory provision which would prevent the Commissioners from serving as directors or incorporators of the not-for-profit corporation.

However, since the corporation would be an instrumentality of the State Housing Authority, its powers would certainly be no broader than those of the Authority. If the purpose of the bonds could not be deemed a public purpose under State law, the not-for-profit corporation would have no power to issue them. We express no opinion at this time as to whether any particular proposal for the issuance of bonds by the not-for-profit corporation constitutes a public purpose.

Sincerely yours,

*2 Kenneth P. Woodington

Assistant Attorney General

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