

1977 S.C. Op. Atty. Gen. 133 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-161, 1977 WL 24503

Office of the Attorney General

State of South Carolina

Opinion No. 77-161

May 25, 1977

*1 Although the Public Service Authority is a State agency in the general meaning of such term, it is not included in the special definition of State agencies required to comply with Act No. 561.

To: George L. Schroeder
Executive Director
Legislative Audit Council

QUESTION PRESENTED:

Is the Public Service Authority required to comply with Act No. 561, 1976 Acts and Joint Resolutions.

STATUTES, CASES, ETC.

Code of Laws of South Carolina, 1962, as amended, Sections 59–1, et seq.,

Act No. 561, 1976 Acts and Joint Resolutions;

[Creech v. South Carolina Public Service Authority](#), 200 S. C. 127, 20 S. E. 2d 645 (1942);

[Rice Hope Plantation v. S. C. Public Service Authority](#), 216 S. C. 500, 59 S. E. 2d 132 (1950); [Cain v. S. C. Public Service Authority](#), 222 S. C. 200, 72 S. E. 2d 177 (1952);

[S. C. Ports Authority v. Seaboard Air Line R. Co.](#), 124 F. Supp. 533 (1954);

[Morgan v. Watts](#), 255 S. C. 212, 178 S. E. 2d 147 (1970).

DISCUSSION OF ISSUES:

The question has been presented as to the applicability of Act No. 561, of the 1976 Acts and Joint Resolutions, to the South Carolina Public Service Authority.

Act No. 561 was passed for the following reasons:

SECTION 1. Findings-The General Assembly finds that additional current information concerning the organization, operation and expenditures of agencies, departments and institutions of State government is necessary to enable members of the General Assembly to fulfill their responsibilities as legislators in the appropriation of tax monies and in the general overview and monitoring of the activities of State government. It is the purpose of this act to provide for the collection of this necessary information in a central location and in a usable form. (emphasis added).

The term ‘agencies, departments and institutions of State government,’ as used in the Act, is defined as follows:

SECTION 2. Definitions-As used in this act:

(1) 'Agencies, departments and institutions of State government' means all such agencies, departments and institutions funded in whole or in part by funds appropriated by the General Assembly excluding those included within the legislative department of government and the office of the Governor; provided, however, that the term shall include the Governor's Office of Administration. (emphasis added).

From examining the above-quoted Sections, it is apparent that the General Assembly intended to use Act No. 561 as a device for collecting information on all agencies, departments and institutions of State government.

However, when defining this term, 'agencies, departments and institutions of State government,' the General Assembly set up a requirement of funding in whole or in part by the General Assembly. Such a definition narrows the scope of the Act as stated in Section One, by adding a funding requirement as a requisite for inclusion within the scope of this Act.

*2 The Public Service Authority has long been held by the South Carolina Supreme Court to be a public agency, as that term is commonly defined. In [Rice Hope Plantation v. S. C. Public Service Authority](#), 216 S. C. 500, 59 S. E. 2d 132 (1950), the Court held:

The status of the South Carolina Public Service Authority has heretofore been considered and determined by this Court, and we think the following statement from the unanimous opinion in the case of [Creech v. S. C. Public Service Authority](#), 200 S. C. 127, 20 S. E. 2d 645, 648, succinctly and correctly describes it: 'In our opinion, the South Carolina Public Service Authority is a public corporation in the nature of a quasi-municipal corporation, exercising certain governmental functions as an agency of the State.' . . . Manifestly, a quasi-municipal corporation, as an agency of the State, is also in a real sense a part of the State and shares in its sovereignty. 59 S. E. 2d at 138.

The fact that the credit of the State is not granted to the Authority does not destroy its State agency status:

The governmental character of the functions of the Authority cannot be deemed impaired by this financial provision. 59 S. E. 2d at 138.

[Rice Hope Plantation](#) also quoted with approval the following language:

[the South Carolina Public Service Authority] is, in effect, a State agency just as the Public Service Commission is and both are subject to constitutional legislation which may be enacted by the General Assembly of the State. [S. C. Electric and Gas Co. v. S. C. Public Service Authority](#), 215 S. C. 193, 54 S. E. 2d 777, 786, (1949).

See also [Cain v. S. C. Public Service Authority](#), 222 S. C. 200, 72 S. E. 2d 177 (1952), wherein the Court determined that the Authority was a State agency for purposes of exercising the right of eminent domain.

As recently as 1970, the Supreme Court held that the Authority was a State agency, and its property was exempt from taxation because the Authority exercises a public or governmental function. [Morgan v. Watts](#), 255 S. C. 212, 178 S. E. 2d 147 (1970).

Although the Public Service Authority would come under a general broad definition of the term 'public agency,' it does not come under the literal terms of the definition set out in Section 2(1) of Act No. 561. The Public Service Authority receives no funds in whole or in part from the General Assembly. Rather, the Authority's revenue is generated pursuant to statutory authority granted in Code Section 59-3(13):

(13) To fix, alter, charge and collect tolls and other charges for the use of their facilities of, or for the services rendered by, or for any commodities furnished by, the Public Service Authority at rates to be determined by it, such rates to be at least

sufficient to provide for payment of all expenses of the Public Service Authority, the conservation, maintenance and operation of its facilities and properties, the payment of principal and interest on its notes, bonds and other evidences of indebtedness or obligation and to fulfill the terms and provisions of any agreements made with the purchasers or holders of any such notes, bonds or other evidences of indebtedness or obligation.

CONCLUSION:

*3 Although the Public Service Authority is a State agency in the general meaning of such term, it is not included in the special definition of State agencies required to comply with Act No. 561.

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