



ALAN WILSON  
ATTORNEY GENERAL

August 13, 2024

David Avant, General Counsel  
South Carolina Department of Administration  
Post Office Box 2825  
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Dear Mr. Avant:

You have presented several questions regarding the Robert Smalls Monument Commission. By way of background, you provide the following:

As you know, through Act 183 of 2024 (the "Act"), the General Assembly amended the S.C. Code of Laws by adding Section 10-1-185 to create the Robert Smalls Monument Commission (the "Commission"). The overarching role of the Commission is to determine the design of a monument to Robert Smalls and the location of the monument on the State House grounds. As the Commission embarks upon its statutory tasks, I am asking for an opinion from your office confirming: 1) the Commission is a governmental entity or agency of the State of South Carolina, and 2) the Commission's mission serves a public purpose.

As the Act sets out, the monument is to represent the remarkable achievements and accomplishments of Robert Smalls and his numerous, profound, and long-lasting contributions to the state of South Carolina and its citizens. The Act empowers and directs the Commission to raise private funds and receive gifts and grants to carry out its purpose. The Commission is comprised of eleven members, including the director of the Department of Administration or her designee, five members appointed by the Speaker of the House of Representatives, and five members appointed by the President of the Senate. The five members appointed by the Speaker of the House are five sitting members of the House including Representatives Jermaine Johnson, Sr., Wendell G. Gilliard, Brandon L. Cox, Patrick Bonner Haddon, and Sylleste H. Davis. The five members appointed by the President of the Senate are five sitting members of the Senate including Senators Gerald Malloy, Shane Massey, Tom Davis, George E. Campsen, III, and Margie Bright Matthews.

The Commission must report the proposed design and location of the monument to the State House Committee for its approval by January 15, 2025. If the Robert Smalls Monument has not been dedicated by January 15, 2028, the powers, duties, and responsibilities of the Commission are transferred to the State House Committee.

Additionally, the Act requires the staff of the Department of Administration to assist with the preparation and maintenance of the Commission's financial records and the South Carolina Department of Archives and History to consult with the Commission to "... determine and confirm the historical accuracy of the monument's engravings." Additionally, the Comptroller General has established a designated State fund within the South Carolina Enterprise Information System - SCEIS - to accommodate receipt of private funds, gifts and grants donated for the purposes of the Act.

The Commission is similar to other commissions created by the General Assembly to foster historical and educational purposes that have been found to be state entities. For instance, previous Attorney General's opinions referred to the Hunley Commission, established to, among other things, "... make a study ... regarding the ... salvage of the Hunley" and "... submit a recommendation for an appropriate site in South Carolina for the permanent display and exhibition" of the Hunley to the General Assembly as a state agency or governmental entity. See Op. S.C. Atty. Gen. October 22, 2004 (2004 WL 2451471) and Op. S.C. Atty. Gen. April 16, 1996 (1996 WL 265780). It was opined that the Hunley Commission's purposes – "historic preservation and education of the public - are valid public purposes" Op. S.C. Atty. Gen. January 9, 1996 (1996 WL 82892). Additionally, a 1997 opinion found the mission of the Strom Thurmond Commission, created by Act 159 of 1997 to "design and establish an appropriate monument to be placed on the grounds of the Capitol Complex to recognize the accomplishments of the Honorable Strom Thurmond" constituted an educational purpose. Op. S.C. Atty. Gen. December 17, 1997 (1997 WL 811914). Finally, there have been multiple opinions pointing out that South Carolina's "... Supreme Court has recognized that the erection of monuments, markers and memorials to the gallantry of service by men and women during wartime constitutes a valuable public purpose." E.g. Op. S.C. Atty. Gen. June 10, 2014 (2014 WL 2757536).

While it seems clear that the Commission is an agency or entity of the State of South Carolina and that its overarching purpose, establishing a monument on the State House Grounds to honor a significant figure in South Carolina history, is a public purpose, we are asking for an Attorney General's opinion specific to the Robert Smalls Monument Commission as confirmation.

#### Law/Analysis

We agree with your analysis and conclude that the Robert Smalls Commission is an agency of the State and that the Commission's purpose – to design a monument honoring Robert Smalls and proposing that it be placed on the State House grounds – serves a valid and overriding public purpose.

As your letter notes, we have addressed previous similar situations in earlier opinions. In Op. S.C. Att'y Gen., 2004 WL 2451471 (October 22, 2004), for example, we concluded that the Hunley Commission was governmental entity, created by the General Assembly for the valid public purpose of making "a study . . . regarding the salvage of the Hunley" and submitting to

the General Assembly “a recommendation for an appropriate site in South Carolina for the permanent display and exhibition” of the Hunley. There, we opined that the Hunley Commission served an important public purpose, noting that “historic preservation and education of the public – are valid public purposes.” We recognized that “[i]t is settled that expenditures of public funds for historical and recreational purposes are for recognized public purposes.” (quoting Op. S.C. Att’y Gen., Op. No. 88-58 (August 2, 1988), citing Timmons v. S.C. Tricentennial Comm., 254 S.C. 628, 175 S.E.2d 805 (1970); Mims v. McNair, 252 S.C. 64, 165 S.E.2d 355 (1969).

Likewise, in Op. S.C. Att’y Gen., 1997 WL 811914 (December 17, 1997), we found that the Strom Thurmond Monument Commission, which was created by the Legislature to establish a monument on the State House grounds, to honor Senator Strom Thurmond and his service to the State, and nation, constituted a state agency which served an important public purpose. In our view, the Monument Commission performed an “educational purpose” – educating the public regarding the historical accomplishments of Senator Thurmond. We stated in that opinion:

For the foregoing reasons, it is our opinion that the proposed monument to the tireless work and to the lasting achievements of Senator J. Strom Thurmond would constitute an "educational purpose." Clearly, Senator Thurmond has been and continues to be a major public figure in South Carolina history. His remarkable career and voluminous record of service, not only to his State, but to his country, is virtually without peer. South Carolina has produced few presidential candidates, but Senator Thurmond's name is among those, such as John C. Calhoun, who have offered for the presidency. His first election to the United States Senate -- by write-in -- is unparalleled. His devotion to the strengthening of this Country's military and to the weakening of the federal government's stranglehold over the States has been unwavering. Unquestionably, historians will record that Senator Thurmond's place in this State's history as a member of all three branches of state government -- chief executive, judiciary and legislative, as well as a distinguished member of the United States Senate, is forever preserved. Thus, a monument celebrating his life and attesting to his accomplishments is, without doubt, educational to the people of South Carolina.

Our Supreme Court has frequently concluded that an “agency of the State” is created “for the convenient accomplishment of what must be regarded as an important governmental function.” Rice Hope Plantation v. S.C. Pub. Serv. Auth., 216 S.C. 500, 515-16, 59 S.E.2d 132, 138 (1950), overruled on other grounds by McCall v. Batson, 285 S.C. 243, 329 S.E.2d 741 (1985). Certainly, the preservation of the State’s history and the education of its citizenry regarding that history is such a function. Importantly, the Court has concluded that the Tricentennial Commission, created to honor South Carolina’s founding, constituted a “State agency created by the General Assembly for the purpose of commemorating the 300<sup>th</sup> birthday of the State. . . .” Timmons v. S.C. Tricentennial Comm., 254 S.C. 378, 385, 175 S.E.2d 805, 808 (1970). These principles are equally applicable here.

Robert Smalls' life is, without question, one of amazing and outstanding accomplishments. Smalls overcame all odds including the scourge of slavery. His biographer characterizes him as the first African-American hero of the Civil War. His service to his State and nation on behalf of the people thereof is truly exemplary. As his biography in the South Carolina Encyclopedia attests, Smalls was born into slavery, the son of a house slave, Lydia Smalls. Early on, he worked as a waiter, lamplighter, stevedore and ship rigger in and around Charleston. Yet, he went on to great accomplishments.

Smalls, for example, performed extraordinary feats of courage and heroism during the Civil War. According to the South Carolina Encyclopedia article on Smalls' life, authored by his biographer, Edward Miller,

[a]s Smalls was a knowledgeable pilot, his services were in demand. On December 1, 1863, he was piloting the Planter near Secessionville when severe enemy fire caused the white captain to abandon his position. Smalls brought the vessel out of danger and was awarded with an army contract as captain of the Planter. He was the first black man to command a ship in U.S. service and remained captain of the Planter until it was sold in 1866. By his own account, Smalls was involved in seventeen military engagements during the war.

After the war Smalls settled in his native Beaufort, where he purchased the house of his former master. Smalls's war-time accomplishments made him a political force in the Sea Islands, with its overwhelmingly black population. In 1867 Smalls was one of the founders of the Republican Party in South Carolina, an organization to which he remained loyal all his life. In 1868 he was a delegate to the state constitutional convention and won election to the state House of Representatives, where he represented Beaufort County until 1870. That same year Beaufort voters sent Smalls to the state Senate, and in 1873 he was promoted to major general in the militia. In the Senate, Smalls was made chairman of the printing committee, an assignment with the potential for graft. In 1877 he was tried and convicted of accepting a bribe and was sentenced to three years, but he was pardoned in an amnesty that also quashed proceedings against Democrats for election irregularities. Even Smalls's enemies at the time said that the case against him was not strong, and it was likely part of the campaign to remove African Americans from public office.

In 1874 Smalls was elected to the U.S. House of Representatives. He was reelected to the following Congress and served intermittently until 1886. With the return of Democratic rule in South Carolina after 1876, Smalls had increasing difficulty winning reelection. He lost to George D. Tillman in 1878 and 1880 but successfully contested the results of the latter election and took Tillman's seat in July 1882. Two years later Smalls failed to secure renomination, losing to Edmund W. M. Mackey, who died soon after taking office. Smalls was elected to fill the vacancy and returned to Washington in March 1884, but he lost a bid for another term in 1886. While in Congress, Smalls earned a reputation as an effective speaker. He secured appropriations for harbor improvements at Port Royal and was a vocal opponent of the removal of federal troops from the South.

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After returning to South Carolina, Smalls successfully lobbied his old congressional colleagues for a veteran's pension and more compensation for the Planter. His last major political role was as one of six black members of the 1895 state constitutional convention, where he unsuccessfully opposed efforts to disenfranchise African Americans. In 1889 President Benjamin Harrison appointed Smalls as collector of customs for the port of Beaufort, an office he held, except during President Grover Cleveland's second term, until June 1913, when he was forced out by South Carolina's senators. Smalls died on February 22, 1915, at his home in Beaufort. He was buried in Tabernacle Baptist Churchyard.

### Conclusion

Based on the foregoing, we conclude that the Robert Smalls Commission is a State agency and that the exercise of its duties serves an important public purpose. Incredibly, Smalls went from being born into slavery, to Civil War hero, to South Carolina Representative and Senator and Congressman, to delegate to the 1895 Constitutional Convention. He served his State and nation remarkably well. He fought for the right of all to vote. The Commission is required to design a monument to Smalls' life and recommend placement of the monument on the State house grounds. This promotes the important purpose of preserving the State's history and educating the public regarding a major historical figure in South Carolina.

Sincerely,



Robert D. Cook  
Solicitor General