



ALAN WILSON  
ATTORNEY GENERAL

April 13, 2023

David L. Tedder, Esq.  
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PO Box 420  
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Dear Mr. Tedder:

You have requested an opinion from this Office regarding the validity of Jasper County ordinances in relation to the creation, authority, and appointment of the Jasper County Aeronautics Commission.

### LAW/ANALYSIS

Your question involves the authority of Jasper County over the Jasper County Aeronautics Commission (“Commission”) after Home Rule. In order to answer your question, we must consider whether the Commission became a county commission after the passage of Home Rule or whether it is a public service district, special purpose district, or other political subdivision making the Home Rule provisions inapplicable.

As explained by our Supreme Court in Pinckney v. Peeler, 434 S.C. 272, 296, 862 S.E.2d 906, 919 (2021):

Before 1973, legislators governed their home counties through acts of the General Assembly. Duncan v. York Cnty., 267 S.C. 327, 333-34, 228 S.E.2d 92, 95 (1976). In 1972 and 1973, the Legislature and the voters amended the South Carolina Constitution to include the concept of “Home Rule,” leaving the local governments to govern themselves. Act No. 1631, 1972 S.C. Acts 3184, 3185; Act No. 63, 1973 S.C. Acts 67, 68-69.”

The main purpose of Home Rule is to relieve the General Assembly of the burdens of local governments.” Torgerson v. Craver, 267 S.C. 558, 562, 230 S.E.2d 228, 229 (1976). As such, the General Assembly passed legislation to implement Home Rule which gave counties the following powers:

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All counties of the State, in addition to the powers conferred to their specific form of government, have authority to enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, including the exercise of these powers in relation to health and order in counties or respecting any subject as appears to them necessary and proper for the security, general welfare, and convenience of counties or for preserving health, peace, order, and good government in them. The powers of a county must be liberally construed in favor of the county and the specific mention of particular powers may not be construed as limiting in any manner the general powers of counties.

S.C. Code Ann. § 4-9-25.

Counties were granted specific powers over boards and commissions, including the power:

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, to prescribe the functions thereof and to regulate, modify, merge or abolish any such agencies, departments, boards, commissions and positions, except as otherwise provided for in this title . . .

S.C. Code Ann. § 4-9-30(6).

Counties were also granted the authority to appoint the members of all county boards and commissions:

The council shall provide by ordinance for the appointment of all county boards, committees and commissions whose appointment is not provided for by the general law or the Constitution. Each council shall have such appointive powers with regard to existing boards and commissions as may be authorized by the General Assembly except as otherwise provided for by the general law and the Constitution, but this authority shall not extend to school districts, special purpose districts or other political subdivisions created by the General Assembly; provided, however, that beginning January 1, 1980, the council shall provide by ordinance for the appointment of all county boards, committees and commissions whose appointment is not provided for by the general law or the Constitution, but this authority shall not extend to school districts, special purpose districts or other political subdivisions created by the General Assembly.

S.C. Code Ann. § 4-9-170. Section 4-9-80 of the Home Rule legislation also specified that counties did not have authority over public service districts, special purpose districts, water and

sewer authorities, or other political subdivisions established prior to Home Rule. See S.C. Code Ann. § 4-9-80.

Therefore, we must determine if the Commission is a special purpose district or other political subdivision. Our Office considers certain factors when determining if an entity is a special purpose district:

- 1) the purpose for which the district was established (single or general);
- 2) whether the entity has corporate powers or duties;
- 3) how the governing body of the entity is chosen;
- 4) whether the entity is empowered to issue revenue or general obligation bonds;
- 5) whether the entity may levy tax assessments;
- 6) whether the entity may issue notes or bonds;
- 7) how the entity was created; and
- 8) whether a county established the entity as a taxing district rather than a special purpose district.

Op. S.C. Att’y Gen., 1984 WL 159938 (Nov. 14, 1984). Although these factors are frequently found in special purpose districts, “a district does not have to meet all the factors for it to be a special purpose district.” Op. S.C. Att’y Gen., 2012 WL 5966604 (Nov. 15, 2012). Additionally, a “determination of a special purpose district must be done on an individual case-by-case basis.” Id.

We considered these factors when determining if the Newberry County Hospital was a special purpose district preventing the Newberry County Council from taking over its board of trustees. Op. S.C. Att’y Gen., 1991 WL 632991 (June 4, 1991). We noted an earlier opinion in which we concluded the Newberry County Water and Sewer Authority was a special purpose district based on its creation as a body politic and corporate, its having a specified service area, its power to sue and be sued, its power of eminent domain, and its ability to borrow money and issue bonds. Id. (citing Op. S.C. Atty. Gen. No. 84-132). In regard to the hospital board of trustees, we stated:

The Newberry County Hospital Board of Trustees was established by Act No. 808 of 1971, as amended by Act No. 809 of 1971. The board of trustees was created; no mention is made in the acts to a district, to a body politic or corporate, to the specific granting of corporate powers or use of a corporate seal, or to the power to

sue or be sued in its own name. Newberry County Council, rather than the hospital's board of trustees, would be authorized to issue bonds to provide for public hospital facilities. Section 2(10) of Act No. 808 clearly states the General Assembly's intention that the board of trustees not be vested with "any ownership of such hospital facilities, it being intended that such hospital facilities will be owned by Newberry County." Section 14 of Act No. 808 states that the "full faith, credit and taxing power of Newberry County shall be irrevocably pledged" for the payment of bonded indebtedness. Certain proceeds of bonds may be expended for specified purposes by the board when approved by County Council. Section 16 of Act No. 808 also empowers County Council to take certain other actions with respect to bond proceeds.

Id.

Accordingly, we concluded the hospital board of trustees was not the governing body of a special purpose district or separate political subdivision but would be a county board, committee or commission for purposes of § 4-9-170. Id.<sup>1</sup>

We considered the eight factors when we determined that "strong arguments can be made" that the Greenville Airport Commission was a special purpose district:

The purpose for which the Greenville Airport Commission was established is special, as opposed to general governmental purpose; operation of airports has been determined to be an appropriate purpose for special purpose districts. Kleckley v. Pulliam, 265 S.C. 177, 217 S.E.2d 217 (1975); Torgerson v. Craver, 267 S.C. 558, 230 S.E.2d 228 (1976). The fact that the Commission has been given certain corporate powers and duties is also significant; powers necessarily implied from those granted and also those specified in the Uniform Airports Act, Section 55-9-10 et seq., Code of Laws of South Carolina (1976), are also important considerations. The fact that the Commission was created by an act of the legislature rather than by action of the City or County Councils is also significant.

There are also certain fiscal considerations: whether the entity is empowered to issue revenue or general obligation bonds, levy tax assessments, and issue notes

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<sup>1</sup> We came to the same conclusion regarding the Newberry Airport Commission in 1982 and reaffirmed such in the 1991 opinion. Id.; Op. S.C. Att'y Gen., 1982 WL 189436 (Sept. 23, 1982). Other opinions of this Office similarly find that county airport commissions are subject to the Home Rule legislation allowing them to be brought under county control. See Ops. S.C. Att'y Gen., 2000 WL 356783 (Jan. 11, 2000); 1993 WL 720086 (Mar. 9, 1993) (Walterboro-Colleton County Airport Commission); 1980 WL 120799 (July 29, 1980) (Anderson County Airport Commission).

or bonds. This Office has been advised that the Commission is completely self-sufficient financially, that it operates entirely on revenues generated from Commission property and operations, and further that the Commission has never received any subsidy from either the City or the County. While the Commission is not empowered to levy taxes, it is apparent from the self-sufficient fiscal management of the Commission that a tax levy would be unnecessary. By Act No. 636, 1980 Acts and Joint Resolutions, the Commission was empowered to borrow money, issue negotiable bonds, notes and other evidences of indebtedness payable solely from the revenue derived from the operation of any revenue-producing facility under its jurisdiction and may mortgage or pledge any assets owned by the Commission in connection with such indebtedness.

It appears that the Commission does possess many of the fiscal attributes frequently found in special purpose districts.

Considering all of the attributes [factors] discussed in the opinion of November 15, 1984, it would appear that while that Greenville Airport Commission does not possess all of those attributes, the Commission does possess a sufficient number of those factors to consider the Commission a special purpose district.

Op. S.C. Att’y Gen., 1985 WL 166006 (Apr. 11, 1985).

In the opinion, we explained that the Greenville Airport Commission could also be considered a political subdivision:

In addition, it would appear that the Commission may be considered a political subdivision, even though the General Assembly has not formally denominated it as such. While a specific geographic territory is not specifically prescribed by the legislature, it may be readily inferred that the boundaries served by the Commission would be coterminous with the boundaries of Greenville County. See also Section 55-9-30 of the Code; Gould v. Barton, 256 S.C. 175, 181 S.E.2d 662 (1971). As noted above, the Commission exercises no taxing power, but then, as also noted, no taxing power has ever been needed by the Commission. The Commission carries out a public function, as noted supra. The Commission governs itself virtually autonomously, though members are appointed by City and County Council. Considering all factors frequently present in political subdivisions, it would appear that the Greenville Airport Commission could be considered a political subdivision, as well as a special purpose district, an entity separate from both the City and the County.

Id.

In Willis Construction Company v. Sumter Airport Commission, 308 S.C. 505, 419 S.E.2d 240 (Ct. App. 1992), the South Carolina Court of Appeals considered whether the Sumter Airport Commission was a political subdivision of the state or a special purpose district. The Court concluded it was not a political subdivision, because it lacked “governmental functions” such as the ability to raise revenue and the power of eminent domain. Similarly, the Court determined that it was not a special purpose district:

South Carolina Code Ann. § 6–11–410(a) (1976) and § 6–11–810(d) (1976) each define a “special purpose district” as “any district created by act of the General Assembly prior to March 7, 1973, and to which has been committed prior to March 7, 1973, any local governmental function.” Under this scheme, the Sumter Airport Commission is not a “special purpose district” because no local governmental function has been committed to it.

We are aware that prior South Carolina cases describe the Greenville–Spartanburg Airport District and the Richland–Lexington Airport District as “special purpose districts.” Kleckley v. Pulliam, 265 S.C. 177, 217 S.E.2d 217 (1975); Berry v. Milliken, 234 S.C. 518, 109 S.E.2d 354 (1959). These cases are, however, easily distinguishable. The Greenville–Spartanburg Airport District was created by Act No. 99, 1959 S.C. Acts 101 and the Richland–Lexington Airport District was created by Act No. 681, 1962 S.C. Acts 1660. Each Act expressly creates a “political subdivision” of the State, and grants the particular airport district the powers to raise revenue through bond issues, promulgate rules and regulations, exercise eminent domain, and apply for and receive public funds from the State. Property of those airport districts is expressly exempted from State and local taxation. See also Act No. 1235, 1970 S.C. Acts 2634 (similar act creating the Charleston County Airport District). The Acts which created those airport districts are much different from the Act which created the Sumter Airport Commission.

Id. at 509–10, 419 S.E.2d at 242.<sup>2</sup>

The General Assembly created the Jasper County Aeronautics Commission in 1949 via Act 12. 1949 S.C. Acts 12. According to the Act, the Commission was established “for and in behalf of Jasper County” and is comprised of three members appointed by the Governor on the recommendation of the Jasper County Legislative Delegation. Id. According to the Act, the intent of the legislation is to give the Commission

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<sup>2</sup> Relying on Willis Construction Company, we came to a similar conclusion regarding the City of Orangeburg Aviation Commission in 2014. Op. S.C. Att’y Gen., 2014 WL 2120888 (Apr. 29, 2014) (finding the City of Orangeburg Aviation Commission lacked the power to perform governmental functions and therefore, was not a political subdivision).

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the right to promulgate any rules or regulations in connection with the operation of said air port. It is the further intention of this legislation that the said Commission has the right to do anything which in their discretion is proper relative to the operation, maintenance or control of said air port.

Id. The Act gives the Commission the power to acquire and dispose of property, including the power to acquire property by condemnation. The Commission is empowered to contract with the United States for the establishment, operation, and maintenance of an airport, and the contracts are valid and binding on the Commission and on the County. Id.

Pursuant to section 4-9-170 of the Home Rule legislation, county councils have appointive powers over county boards and commissions whose appointment is not provided for by the general law. Therefore, you have asked us to consider whether Act 12 is general or special legislation. We have previously described the difference between general and special legislation:

A law is general [pursuant to the South Carolina Constitution]<sup>3</sup> when it applies uniformly to all persons or things within a proper class, and special when it applies to only one or more individuals or things belonging to that same class.” Kizer v. Clark, 360 S.C. 86, 92-93, 600 S.E.2d 529, 532 (2004).

Op. S.C. Att’y Gen., 2022 WL 1642323 at 3 (May 9, 2022). Because Act 12 only applies to the Commission, and does not apply generally to aeronautics or airport commissions, it is our opinion that it is special legislation.

The Jasper County Aeronautics Commission was created by legislative act “for and in behalf of Jasper County.” 1949 S.C. Acts 12. It was not designated as a political subdivision, special purpose district, or body politic or corporate. It was not provided with a specific grant of corporate powers and it cannot use a corporate seal or sue or be sued in its own name. Although it is empowered to contract with the United States for the establishment, operation, and maintenance of an airport, the contracts are valid and binding on both the Commission and on the County.

The Commission lacks the ability to raise revenue, a primary governmental function. It cannot issue bonds, levy tax assessments, or incur indebtedness. According to your opinion request letter, it is not self-supporting, as it receives annual appropriations from Jasper County. These factors are a strong indication that the Commission is a county commission.

If the Commission is a county commission, Jasper County has the right to enact ordinances bringing the Commission under its control. Pursuant to sections 4-9-30(6) and 4-9-170, Jasper

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<sup>3</sup> See S.C. Const, art. III, § 34(IX) (“[w]here a general law can be made applicable, no special law shall be enacted ...”).

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County has the power to enact ordinances establishing, regulating, and modifying the Commission. Jasper County is also authorized to enact ordinances prescribing the function of and providing for the appointment of the members of the Commission pursuant to these statutes. We have previously explained that “our courts consistently recognize local ordinances are presumed valid unless and until a court declares them to be invalid.” Op. S.C. Att’y Gen., 2021 WL 3703908 (Aug. 3, 2021). Therefore, any ordinance passed by Jasper County Council is presumed valid unless and until a court rules otherwise.

You have not informed us who has title to the airport property. However, as we explained in a prior opinion, Jasper County would be the true owner of the airport property if the Commission is an agency of Jasper County. See Op. S.C. Att’y Gen., 2014 WL 4953184 (Sept. 23, 2014). The airport property must continue to be used for a public purpose. Id. If Jasper County owns the airport property, it also has the right to lease it. See S.C. Code Ann. § 4-9-30(2). However, state law and Jasper County ordinances prescribing contractual matters must be followed.

The legal status of an Airport Commission, such as the Jasper County Aeronautics Commission, is indeed a difficult one to determine, as is illustrated by the varying conclusions reached by our courts in this regard. For example, in Torgerson v. Craver, supra, the Supreme Court distinguished Kleckley, supra, noting that in Kleckley, the “airport district was formed by joining Richland County and Lexington County.” According to the Court in Torgerson, “[t]he bond legislation [in Kleckley] was not for a specific county; it was for a region.”

However, in Torgerson, the Court noted that “[t]he fact that a Charleston County Airport serves travelers from other counties does not change its local status.” 267 S.C. at 563 – 64, 230 S.E.2d at 230. The Torgerson Court added that “[i]t would hardly be argued that a Charleston County Hospital, a Charleston County Library, a Charleston County Museum, or a Charleston County Zoo, is not a local function merely because it served the needs of citizens from other counties.” Id.

Here, there is no suggestion in the enabling legislation that the Jasper County Aeronautics Commission is regional in nature. As noted, the Commission was created “for and in behalf of Jasper County.” Thus, Torgerson’s analysis would strongly argue for the Commission’s status being that of a county agency.

However, the question is certainly not free from doubt, given the fact that our courts have reached seemingly conflicting conclusions regarding airport commissions. Thus, we believe the wisest course of action would be to petition a court for a declaratory judgment to determine the status of the Commission as either a political subdivision or special purpose district or as a post Home Rule agency of the County. Although the Commission has many of the characteristics of a county agency, it is not entirely free from doubt whether the Commission is a county commission or a special purpose district or other political subdivision. The Commission was



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established for a special purpose, the operation of an airport. It was granted the power to acquire and dispose of property, including the power of eminent domain, a governmental function. It has the right to promulgate rules and regulations in connection with the operation of the airport. While Act 12 does not establish a geographic territory for the Commission, we can infer that its boundaries are coterminous with the boundaries of Jasper County.

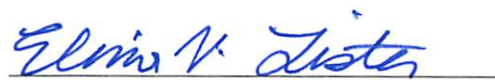
### CONCLUSION

In conclusion, Jasper County has the right to enact ordinances bringing a county agency, board, or commission under its control. Pursuant to sections 4-9-30(6) and 4-9-170, Jasper County has the power to enact ordinances establishing, regulating, and modifying a county board or commission. Jasper County is also authorized to enact ordinances prescribing the function of and providing for the appointment of the members of a county board or commission pursuant to these statutes. We have previously explained that “our courts consistently recognize local ordinances are presumed valid unless and until a court declares them to be invalid.” Op. S.C. Att’y Gen., 2021 WL 3703908 (Aug. 3, 2021). Therefore, any ordinance passed by Jasper County Council is presumed valid unless and until a court rules otherwise.

Although the Jasper County Aeronautics Commission has many of the characteristics of a county agency, it is not entirely free from doubt, given the fact that our courts have reached seemingly conflicting conclusions regarding airport commissions. Therefore, we believe the wisest course of action would be to petition a court for a declaratory judgment to determine the status of the Commission as either a political subdivision or special purpose district or as a post Home Rule agency of the County.

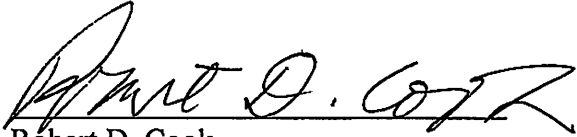
Sincerely,

  
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Cydney M. Milling  
Assistant Attorney General

  
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Elinor V. Lister  
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REVIEWED AND APPROVED BY:

A handwritten signature in black ink, appearing to read "Robert D. Cook", written over a horizontal line.

Robert D. Cook  
Solicitor General