



HENRY McMASTER
ATTORNEY GENERAL

April 14, 2006

The Honorable Glenn L. Hamilton
Member, House of Representatives
312-B Blatt Building
Columbia, South Carolina 29211

Dear Representative Hamilton:

We issue this opinion in response to your request for guidance on the requirements necessary to change the name of the Employment Security Commission's building. In your letter, you informed us: "I have requested that the Employment Security Commission change the name of their building. The legal staff at the Commission feels that a name change would require action by the General Assembly, however, Legislative Council does not necessarily agree." Thus, you request an opinion of this Office as to "whether the Commission has the authority to change the present name of their building, if not what options are available to initiate a name change, and whether the Commission may concur or nonconcur with Legislative request or direction."

In our review of the legislative history, we discovered the Legislature established the current name of the South Carolina Employment Security Commission (the "Employment Security Commission") building by concurrent resolution. Based on our determination that a concurrent resolution does not have the force and effect of the law, we find the resolution naming the building is not binding. Additionally, after a review of the pertinent statutory authority, we conclude the Employment Security Commission lacks authority to name the building. Thus, we suggest legislative action is the best avenue for establishing a binding name for the building.

Law/Analysis

Attached to your letter, you supplied us with a House Journal report providing some legislative history surrounding the present name of the building housing the South Carolina Employment Security Commission. From our review of the legislative history, we found a concurrent resolution, passed by the South Carolina House of Representatives on March 28, 1990 and the South Carolina Senate on April 3, 1990, established the present name, the "Robert E. David State Office Building." House Journal March 28, 1990, p. 1785; Senate Journal April 3, 1990, p. 1536.

As we noted in a prior opinion of this Office, no South Carolina statute or constitutional provision addresses concurrent resolutions. Op. S.C. Atty. Gen., June 17, 1987. In that opinion addressing a concurrent resolution directing the Confederate Flag be flown on top of the State House, we examined the legal effect of a concurrent resolution. Id. Quoting 73 Am. Jur. 2d Statutes § 3, we found: “[w]hile some constitutions provide to the contrary, the general rule is that a joint or concurrent resolution adopted by the legislature is not a statute, does not have the force or effect of law, and cannot be used for any purpose for which an exercise of legislative power is necessary.” Id. In that opinion, we determined: “The concurrent resolution passed by the General Assembly in 1962 concerning the Confederate Flag probably does not have the force and effect of law; nevertheless, it does carry great weight.” Id. Thus, we found pursuant to the doctrine of separation of powers, the General Assembly, not the Governor or the State Budget and Control Board, is empowered to remove the Confederate Flag from the top of the State House. Id.

In a subsequent opinion, we again addressed the legal effect of a concurrent resolution with respect to the Confederate Flag issue. Op. S.C. Atty. Gen., October 18, 1993. In this opinion, we more definitively stated: “It is clear that, legally speaking, a concurrent resolution does not have the force and effect of law.” Id. Furthermore, we concluded:

Even though legislative resolutions are entitled to deference and respect, they are not law. While a concurrent resolution may bind the members of the legislative body, they are not statutes and do not have the force and effect of law. Moreover, a concurrent resolution binds only the particular Legislature which enacts it and not future ones. Resolutions are but temporary measures and die when the subject matter is completed.

Id. (citations omitted).

We dealt with the issue of a concurrent resolution establishing a portion of a state highway as “Jim Bilton Boulevard” in an opinion dated March 11, 1980. In that opinion, we stated the concurrent resolution “does not have the effect or power of an act. It is used whenever the Legislative body passing it wishes merely to express an opinion as to some given matter or thing or, as in the present case, to submit a request.” Op. S.C. Atty. Gen., March 11, 1980. We noted our belief that the Highway Commission named the portion of the highway in accordance with the resolution. In another opinion, also issued on March 11, 1980, we reiterated the finding that the resolution did not have full force and effect of law and was not binding. Thus, we concluded: “The decision of the Highway Commission to name that portion of U.S. 78 as Jim Bilton Boulevard is subject to modification by the Town of St. George if they so desire.” Op. S.C. Atty. Gen., March 11, 1980.

In keeping with our prior opinions, as cited above, because the Legislature established the current name of the building housing the Employment Security Commission by concurrent resolution, this act by the Legislature does not have the force and effect of the law. However, the

The Honorable Glenn L. Hamilton

Page 3

April 14, 2006

fact that the concurrent resolution is not binding does not automatically vest the Employment Security Commission with the authority to name the building.

Our courts have long held an agency created by statute is limited to the authority granted to it by the Legislature. Med. Soc'y of South Carolina v. Med. Univ. of South Carolina, 334 S.C. 270, 275, 513 S.E.2d 352, 355 (1999); Nucor Steel, a Div. of Nucor Corp. v. South Carolina Pub. Serv. Comm'n, 310 S.C. 539, 543, 426 S.E.2d 319, 321-22 (1992). "An administrative agency has only such powers as have been conferred by law and must act within the authority granted for that purpose." Bazzle v. Huff, 319 S.C. 443, 445, 462 S.E.2d 273, 274 (1995).

This Office addressed whether the ETV Commission may name its facilities for its president in an opinion dated September 2, 1988. Op. S.C. Atty. Gen., September 2, 1998. In that opinion we commented on the void of authority concerning naming a state owned building. Furthermore, we found:

It would appear to be axiomatic that, in the absence of any other provisions thereon, the authority to name the facilities in question would be inherent in, or implied by, the authority granted the Commission to acquire them. There being nothing prohibiting it to name them for whom it chooses, and the legislative action which would have addressed the issue having failed of enactment; the necessary implication is that the Commission has the authority to name its new facilities for its president.

Id. Thus, relying on the ETV Commission's authority to acquire its facilities, we determined it held implied authority to name those facilities.

In regard to the South Carolina Employment Security Commission, we also find no statutory authority allowing it or any other administrative agency to name a state owned building. In addition and unlike the ETV Commission, we find no statutory authority allowing the Employment Security Commission to acquire property. Furthermore, in prior opinions of this Office we concluded because the Legislature on numerous occasions expressly authorized an administrative agency to acquire property, when such authority is not expressly given, we presume the Legislature did not intend for the agency to have such authority. Op. S.C. Atty. Gen., September 25, 1998; Op. S.C. Atty. Gen., October 15, 1975; Op. S.C. Atty. Gen., June 16, 1974. Accordingly, the Employment Security Commission does not have either the express or implied authority to name its building.

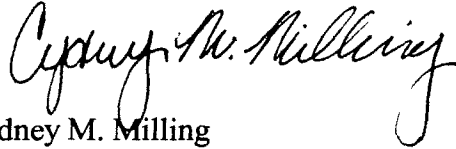
You also request information on avenues by which a name change may be initiated. Although the Legislature's previous action naming the building is not binding, if the Legislature desires to name the building, we recommend it do so by legislative action. Furthermore, we suggest such action by the Legislature be in a form having the force and effect of the law, perhaps by a joint resolution, rather than a concurrent resolution.

The Honorable Glenn L. Hamilton
Page 4
April 14, 2006

Conclusion


Because the Legislature established the current name of the Employment Security Commission's building by a concurrent resolution, we find such resolution does not have the force and effect of the law. In addition, we found no statutory authority, express or implied, allowing the Employment Security Commission to name the building. Based on these findings, we suggest you seek legislative action to name the building in a form that will assure such a name has full legal effect.

Very truly yours,



Cydney M. Milling
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General