



ALAN WILSON  
ATTORNEY GENERAL

July 1, 2013

Charles M. MacNeil, Executive Director  
Pee Dee Regional Transportation Authority  
313 Stadium Road  
P.O. Box 2071  
Florence, SC 29503-2071

Dear Mr. MacNeil:

By your letter dated June 21, 2013, you have asked for the opinion of this Office regarding the interpretation of Sections 58-25-35 and 58-25-40 of the South Carolina Code. Per your letter you explain:

The Pee Dee Regional Transportation Authority (PDRTA) is a public agency created prior to the amendment of Chapter 25, Title 58, Code of Laws of South Carolina, 1976, which became effective July 1, 1985. The PDRTA elects to operate under the provisions of said Title and Chapter and all subsequent amendments.

In recent months, the PDRTA has gone through a significant transition in organizational scope of services and size. We have become a much smaller agency and no longer provide public transportation services in areas where we had previously done so for many years.

With regard to Sections 58-25-35 and 58-25-40 of the above referenced Code, our Board of Directors seeks your opinion of the participation of existing membership or municipalities when they are no longer "in the service area", and further what process is recommended to implement any reduction or removal of membership to address these circumstances.

For purposes of this discussion I have broken your question into two parts: (1) whether Sections 58-25-35 and 58-25-40 of the Code permit existing membership or municipalities to participate in the authority when they are no longer "in the service area" of PDRTA; and (2) in the event existing membership or municipalities are no longer able to participate in the authority,

“what process is recommended to implement any reduction or removal of membership to address these circumstances.”

### Law/Analysis

#### Question 1

In the definitions portion of the statute, Section 58-25-20 of the Code defines municipality as, “any incorporated city or town within the regional transportation area” defines “service area” as “the area served by the regional transportation authority[,]” and explains “authority” is “a regional transportation authority created pursuant to this chapter[.]” S.C. Code Ann. § 58-25-20(7); S.C. Code Ann. § 58-25-20(14); S.C. Code Ann. § 58-25-20(1). Moreover, Section 58-25-35 of the Code limits members of a regional transportation authority to “the municipalities within the service area as defined by this chapter and the counties within the unincorporated areas of the service area of the authority.” S.C. Code Ann. § 58-25-35 (West 2012). Additionally, Section 58-25-40 of the Code gives general guidance regarding the composition of the authority’s board members, officers and staff. See S.C. Code Ann. § 58-25-40 (West 2012) (“The authority’s board members, officers and staff must be as follows:”). In particular, Section 58-25-40(1) explains in part that “members of the authority must be represented on the governing board of the authority by appointees of the governing bodies of the municipalities and counties within the service area as set forth in Section 58-25-35.”

“The cardinal rule of statutory construction is to ascertain and effectuate the legislative intent whenever possible.” Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000); Mid-State Auto Auction of Lexington, Inc. v. Airman, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996). “What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will” and “courts are bound to give effect to the expressed intent of the legislature.” Media General Communications, Inc. v. South Carolina Dept. of Revenue, 388 S.C. 138, 148, 694 S.E.2d 525, 530 (2010); Wade v. State, 348 S.C. 255, 259, 559 S.E.2d 843, 844 (2002); see also Jones v. South Carolina State Highway Dep’t, 247 S.C. 132, 137, 146 S.E. 2d 166, 168 (1966) (“There is no safer nor better rule of interpretation than when language is clear and unambiguous it must be held to mean what it plainly states.”). The determination of legislative intent is a matter of law. Charleston County Parks & Recreation Comm’n v. Somers, 319 S.C. 65, 459 S.E.2d 841 (1995).

Therefore, giving effect to all parts of the statutes as must be done whenever possible under Bradford v. Byrnes, 221 S.C. 255, 260, 70 S.E.2d 228, 231 (1952), it would appear the answer to your first question is that pursuant to Section 58-25-35 of the Code, membership in the authority is limited to “municipalities” and the “counties within the unincorporated areas” of the authority’s service area. As a result, under Section 58-25-40, membership on the governing

board of the authority is limited to appointees from the governing bodies of the municipalities and counties within the service area of the authority.

### Question 2

As it relates to your question regarding what process is recommended to implement any reduction or removal of membership to address PDRTA's diminished service area, it appears the statute offers little guidance. Indeed, this was noted in a previous opinion by this Office, which stated "[n]o statute specifically governs withdrawal from membership." Op. S.C. Op. Atty. Gen., 1989 WL 406198 (October 5, 1989). However, while not directly on point, we should not overlook the fact that Section 58-25-30(5) at least provides guidance regarding dissolution of an "authority" stating:

Dissolution of the authority created pursuant to this chapter must be in the same manner as that for creation of the authority as set forth in this chapter. All resources of the authority including, but not limited to, real and personal property, structures, improvements, buildings, equipment, plants, rolling stock, vehicle improvements, vehicle parking, or other facilities and rights-of-way must be disposed of and the proceeds distributed among the authority's government members proportionate to their financial contribution.

S.C. Code Ann. § 58-25-30(5) (West 2012).<sup>1</sup>

Despite the statute's silence with respect to withdrawal from membership, this Office previously addressed the issue in the above-referenced 1989 opinion advising:

We note that withdrawal of a member-government from an RTA would affect the service area of the RTA, the service plan as duly adopted, service procedures, capital input and ongoing financial support, and governance of the authority. Of course, each member-government's proportionate financial contribution would change, and such change would potentially affect the composition of the governing board of the RTA. To dissolve an RTA because a member wished to withdraw would apparently require a favorable referendum, according to the strict terms of Section 58-25-30(5), and arguably another favorable referendum would then be required to re-create the authority for those member-governments wishing to continue their participation. Because there is no clear answer as to the withdrawal process, this may be an area which the General Assembly would wish to address legislatively.

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<sup>1</sup> This office has interpreted provisions of the chapter relating to the creation of an RTA in previous opinions. See Op. S.C. Atty. Gen., 1989 WL 508557 (June 13, 1989); Op. S.C. Atty. Gen., 1989 WL 406154 (June 6, 1989); Likewise, this office has previously opined on the expansion of an RTA. See Op. S.C. Atty. Gen., 1996 WL 549523 (August 5, 1996); Op. S.C. Atty. Gen., 1989 WL 406154 (June 6, 1989).

Mr. MacNeil  
Page 4  
July 1, 2013

Op. S.C. Op. Atty. Gen., 1989 WL 406198 (October 5, 1989). Since the 1989 opinion, there has been no additional authority or legislative action on the narrow question of withdrawal from membership in an RTA. Thus, we stand by our previous opinion regarding this issue since this Office will not overrule a prior opinion unless it is clearly erroneous or a change occurred in the applicable law. Ops. S.C. Atty. Gen., 2009 WL 959641 (March 4, 2009); 2006 WL 2849807 (September 29, 2006); 2005 WL 2250210 (September 8, 2005); 1986 WL 289899 (October 3, 1986); 1984 WL 249796 (April 9, 1984). Furthermore, “the absence of any legislative amendment following the issuance of an opinion of the Attorney General strongly suggests that the views suppressed therein were consistent with the legislative intent.” Op. S.C. Atty. Gen., 2005 WL 2250210 (September 8, 2005) (citing Scheff v. Township of Maple Shade, 149 N.J. Super. 448, 374 A.2d 43 (1977)). However, because the statute appears to be silent on withdrawal of membership, and merely addresses dissolution of the authority in general, we caution that the legislature’s failure to provide additional guidance on this matter, despite an invitation to do so, may not be dispositive of legislative intent.

### Conclusion

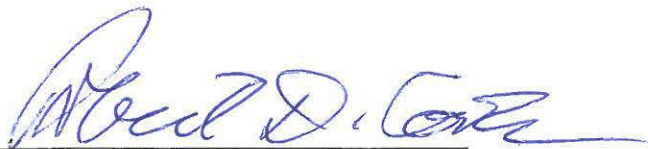
In conclusion, it is this Office’s opinion that membership in the authority is limited to “municipalities” and the “counties within the unincorporated areas” of the authority’s service area, meaning that membership on the governing board of the authority is limited to appointees from the governing bodies of the municipalities and counties within the authority’s service area. Additionally, with respect to your question regarding the process recommended to implement any reduction or removal of membership to address PDRTA’s diminished service area, we stand by this Office’s above-referenced 1989 opinion.

Sincerely,



Brendan McDonald  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Solicitor General