

Library 6158/6738
0167/6747



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

July 23, 1999

The Honorable Ronald P. Townsend
Chairman
House Education and Public Works Committee
2328 Wright School Road
Anderson, South Carolina 29621

The Honorable John C. Land, III
Senate Majority Leader
Post Office Drawer 138
Manning, South Carolina 29102

Gentlemen:

You have requested an opinion from this Office addressing whether a South Carolina rural electric cooperative ("SCREC"), either through a subsidiary or otherwise, may lawfully engage in the business of offering products and services other than electric power. For the reasons set forth below, it is the opinion of this Office that the South Carolina Rural Electric Cooperative Act, §33-45-10 *et seq.* ("SCRECA") does not prohibit such diversification.

Section 33-49-250 of the SCRECA addresses the powers of a SCREC and broadly empowers SCRECs, among other specifically enumerated powers, "[t]o become a member in one or more other cooperatives or corporations or to own stock therein." Focusing on this language, this Office concluded in an opinion dated August 6, 1985, that a SCREC may become the sole shareholder and thus, the owner, of a subsidiary that markets television receiving-only satellite systems and related television equipment and supplies.¹ Commenting upon the broad latitude available to rural electric cooperatives, the 1985 opinion noted that §33-49-250 contains "no limiting language as to the

1

85-79 Op. S.C. Att'y Gen. 212 (1985). This Office was also asked to address whether a SCREC could use its tax-preferred, non-profit status to acquire a favorable position in the marketplace. As stated in the opinion, "[a]n inquiry of this type would require factual findings which this Office is not empowered to make in the context of issuing opinions. This Office cannot usurp the fact finding functions of the courts of the State of South Carolina." *Id.* at 214.

purpose of the other cooperatives or corporations in which stock may be owned.” 85-79 Op. S.C. Att’y Gen. 213 (1985). Diversification, therefore, was permissible because the SCRECA clearly authorizes an electric cooperative to own stock in one or more other cooperatives or corporations, regardless of the purpose for which such other cooperatives or corporations are formed. The long-standing standard of review used by this Office to determine the validity of a prior opinion is whether that opinion is clearly erroneous. 84-4 Op. S.C. Att’y Gen. 22 (1984). Such a result could be reached, for example, when a legislative act in the intervening time causes the conclusion to be erroneous; however, the General Assembly has not materially amended the SCRECA since this Office rendered the opinion of August 6, 1985. Moreover, it is well recognized that the absence of any legislative amendment following the issuance of an opinion of the Attorney General strongly suggests that the views expressed therein were consistent with the legislative intent. Scheff v. Township of Maple Shade, 149 N.J. Super. 448, 374 A.2d 43 (1977). Indeed, the General Assembly has on occasion acted swiftly in amending statutes following the issuance of an opinion by this Office, but such has not occurred in this instance. Accordingly, our additional review of the SCRECA does not compel the conclusion that the interpretations reached in our earlier opinion have become clearly erroneous. Therefore, we must affirm the opinion of August 6, 1985.

In addition to the specific grant of power to own stock or to become a member in other corporations or cooperatives, §33-49-250 broadly grants to SCRECs all “the powers conferred on all private corporations by §33-3-102....” Section 33-3-102 of the South Carolina Business Corporation Act of 1988, as amended (the “SCBCA”), states that every corporation “has the same powers as an individual *to do all things necessary or convenient to carry out its business and affairs....*” (Emphasis added). Without limiting the scope of the preceding sentence, §33-3-102 also lists certain specific powers granted to business corporations. Among these are the powers to:

- (4) purchase, receive, lease, or otherwise acquire and own, hold, improve, use, and otherwise deal with real or personal property, or any legal or equitable interest in property, wherever located;
- (5) sell, convey, mortgage, pledge, lease, exchange, and otherwise dispose of all or any part of its property;
- (7) make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations..., and secure any of its obligations by mortgage or pledge of any of its property, franchises, or income;
- (9) be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity; [or]
- (14) transact any lawful business that will aid governmental policy.

The Honorable Ronald P. Townsend
The Honorable John C. Land, III
Page 3
July 23, 1999

The Official Comment to §33-3-102 states that the history of the Model Act (which South Carolina has adopted) "is largely one ensuring that corporate powers are broad enough to cover all reasonable business transactions." Consequently, it is the opinion of this Office that the SCRECA, either alone or by incorporating the comprehensive powers granted to private corporations in §33-3-102, permits SCRECs, through a subsidiary or otherwise, to lawfully engage in the business of offering products and services other than electric power.

Finally, this Office is aware that some states have impeded electric cooperatives from offering products and services other than electric power; nevertheless, we are not persuaded that a South Carolina court would reach the same conclusion. In those states that have litigated the diversification issue and settled upon a more restrictive approach, the enabling statutes in question have contained limiting language not present in the SCRECA. See Washington Electric Membership Corporation v. Avant, 256 Ga. 340, 348 S.E.2d 647 (Ga. 1986). Again, since this Office's opinion of nearly fourteen years has not been superseded by either judicial decision or legislative action, we have no alternative but to conclude that the prior opinion remains consistent with the intent of the General Assembly.

I trust this information is responsive to your inquiry. If you have additional questions, please do not hesitate to contact me.

Sincerely yours,



Zeb C. Williams, III
Deputy Attorney General

ZCW /ph

REVIEWED AND APPROVED BY:



Robert D. Cook
Special Counsel