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Office of the Attorney General

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June 2, 1993

Ladson F. Howell, Esquire
Beaufort County Attorney
Post Office Box 40
Beaufort, South Carolina 29901

Dear Mr. Howell:

By your letter of October 6, 1992, to Attorney General Medlock, you had inquired as to the status of the Lowcountry and Resort Islands Tourism Commission as well as the constitutionality of the legislative act which created the Commission. Each of the issues will be addressed separately, as follows.

Status of the Commission

The Lowcountry and Resort Islands Tourism Commission was created by Act No. 42, 1991 Acts and Joint Resolutions. The purpose of the Act is expressed in S.C. Code Ann. § 51-13-1810, added to the Code by that act; the Commission was created "for the purpose of promoting the economic development of the region through a formal program of tourism promotion in Beaufort, Colleton, Hampton, and Jasper counties." Section 51-13-1820 lists the powers or duties to be exercised by the Commission; these include taking necessary action to establish the region as a major tourism center; bringing together specified interests to promote tourism; establishing guidelines to protect various interests; seeking funding; and others.

This Commission appears to be quite similar to several other regional tourism commissions created by the General Assembly. For examples, see § 51-13-610 (Pee Dee Tourism Commission); § 51-13-1110 (Old Ninety Six Tourism Commission); and § 51-13-1610 (Olde English District Commission). It is, however, unlike other districts created by the General Assembly for similar purposes, which have been given more powers of a corporate nature. For examples of the contrast, see § 51-13-910 (Old Abbeville District Historical Commission) and § 51-13-210 (Santee-Cooper Counties Promotion Commission).

We generally observe that the Lowcountry and Resort Islands Tourism Commission was not established as a body politic and corporate; the Commission has not been granted the typical corporate powers; nor has it been authorized to incur indebtness, issue notes or bonds, or levy or assess taxes. The commission is organized to serve a specific, four-county geographic area, and it is serving a governmental purpose. While this Commission does possess some of the attributes of a political subdivision, or a special purpose district,[1] it is lacking in most of the attributes. See Op. Atty. Gen. No. 84-132 and Op. Atty. Gen. dated February 21, 1985, among others, as to various attributes of political subdivisions.

The following, from the opinion of February 21, 1985 as to the status of the Old Ninety Six Tourism Commission, is equally applicable here:

> While its enabling legislation, Act No. 59, 1981 Acts and Joint Resolutions, created the Commission, its exact status other than a state commission is not completely clear. ... By its language Act No. 59 does not appear to create a new state agency ... . It can only be said that the General Assembly has created an entity regional in scope to carry out a certain local governmental function, promotion of tourism.

That opinion concluded that the Old Ninety Six Tourism Commission was not a political subdivision of the State or a state agency.

Considering all of the foregoing, we are of the opinion that the Lowcountry and Resort Islands Tourism Commission is not a political subdivision or special purpose district. Instead, it is an entity regional in scope, created by the General Assembly to carry out a certain local governmental function, the promotion of tourism.

Constitutional Issues

In considering the constitutionality of any act of the General Assembly, it is presumed that the act is constitutional in all respects. Moreover, such act will not be considered void unless its unconstitutionality is clear beyond any reasonable doubt. Thomas v. Macklen, 186 S.C. 290, 195 S.E. 539 (1937); Townsend v. Richland County,

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[1]In checking with the Office of the Secretary of State, this Office learned that, as of this time, the Commission has not filed a report with that Office as would be required of a special purpose district pursuant to § 6-11-1610 et seq.

190 S.C. 270, 2 S.E.2d 777 (1939). All doubts of constitutionality are generally resolved in favor of constitutionality. While this Office may comment on potential constitutional issues, it is solely within the province of the courts of this State to declare an act unconstitutional; unless or until a court so concludes, the act is presumed to be constitutional.

As noted in your memorandum, Art. VIII, § 7 of the State Constitution clearly prohibits the enactment of laws for a specific county. Act No. 42 of 1991 is not an act for a particular county, since four counties are affected by the act. Moreover, the Supreme Court in Kleckley v. Pulliam, 265 S.C. 177, 217 S.E.2d 217, 220 stated as to Art. VIII, § 7:

> The prohibition was not intended to create an area in which no laws can be enacted. Rather, the prohibition only means that no law may be passed relating to a specific county which relates to those powers, duties, functions and responsibilities, which under the mandated systems of government, are set aside for counties.

The court stated further that "... a constitutional provision restricting legislative action in local areas does not prevent legislative action if the subject matter dealt with extends beyond the purely local concern." 217 S.E.2d at 221. Because here, the subject matter of the legislation (tourism and economic development) is not peculiar to one political subdivision (and here, four, not one, counties are involved), where the four counties have a mutual, regional concern, most likely the plenary power of the General Assembly in this regard would be viewed as continuing.[2] Thus, in our opinion Act No. 42 of 1991 is not violative of Art. VIII, § 7. See also Op. Atty. Gen. dated February 5, 1985 (enclosed), concluding that legislative acts adopted for the multi-county Western Carolina Regional Sewer Authority would pass constitutional muster.

We agree with the argument that regional councils of government, authorized to be created pursuant to Art. VII, § 15 as implemented by act of the General Assembly in § 6-7-110 et seq., could be utilized to assist the counties in the area of tourism. We can locate no authority which would preclude the General Assembly from enacting legislation specifically to enhance tourism on a regional basis, to the end that utilizing the services

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[2]We observe that other tourism commissions have been established on a regional basis, many since the advent of home rule. We are not aware of any challenge being made as to the constitutionality of any of those acts.

of a regional council of governments for this purpose would be viewed as the exclusive means of providing these services. As stated previously, we believe the General Assembly would have plenary power in this regard.

Conclusions

Based on the foregoing, this Office concludes:

1. That the Lowcountry and Resort Islands Tourism Commission is an entity regional in scope, rather than a political subdivision, special purpose district, or state agency, to which a local governmental function (tourism) has been assigned.

2. Act No. 42 of 1991 would most probably be considered constitutional, as it would not appear to violate Art. VIII, § 7 of the State Constitution or any other part of the Constitution. In any event, the act is entitled to the presumption of constitutionality unless and until a court declares otherwise.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an
Enclosure

REVIEWED AND APPROVED BY:

Robert D. Cook
Executive Assistant for Opinions