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The State of South Carolina

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March 10, 1994

Mr. George L. Schroeder
Director
Legislative Audit Council
400 Gervais Street
Columbia, South Carolina 29201

Re: S. C. Code Ann. § 2-15-50 (1993 Cum. Supp.)

Dear Mr. Schroeder:

You have asked the opinion of the Office of Attorney General whether the Legislative Audit Council has the statutory authority to conduct an audit of the South Carolina Public Service Authority. You referenced S. C. Code Ann. § 2-15-50 (1993 Cum. Supp.) and advised that this provision authorizes the Legislative Audit Council to audit State agencies as defined therein.[1] Section 2-15-

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[1] "Audit" for the purposes of Title 2, Chapter 15 of the South Carolina Code means

> . . . a full-scope examination of and investigation into all state agency matters necessary to make a determination of:
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> (a) (1) whether the entity is acquiring, protecting, and using its resources, such as personnel, property, and space, economically and efficiently;
>
> (2) the causes of inefficiencies or uneconomical practices; and
>
> (3) whether the entity has complied with laws and regulations concerning matters of economy and efficiency; and

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50, supra, provides in pertinent part:

> For the purpose of this chapter 'state agencies' means all officers, departments, boards, commissions, institutions, universities, colleges, bodies politic and corporate of the State and any other person or any other administrative unit of state government or corporate outgrowth of state government, expending or encumbering state funds by virtue of an appropriation from the General Assembly, or handling money on behalf of the State, or holding any trust funds from any source derived, but does not mean or include counties.

This Office has previously recognized that in crafting this enabling provision, "[t]he General Assembly clearly intended to cast a broad net and include state agencies, departments, divisions, institutions, units, bodies politic and corporate and corporations of most every form. . . ." 1986 Op. Atty. Gen. No. 14 (January 30, 1986). This provision, in its literal sense, purports to capture practically every instrumentality of the State.

The Public Service Authority was created by the General Assembly as a "body corporate and politic," Section 58-31-10 (1976), and "the Authority is governed by a board of directors appointed by the governor, with the advice and consent of the Senate." Section 58-31-20 (1976). The Public Service Authority, by statute, possesses expansive governmental powers and duties. See S.C. Code Ann. §§ 58-31-30, et seq. (1976 and 1993 Cum. Supp.). The General Assembly has also declared that the Authority "is a corporation, completely owned by and to be operated for the benefit of the people of this State." Section 58-31-110 (1976).

In construing statutes such as these, the primary objective of both the courts and this Office is to determine and effectuate legislative intent to the extent possible. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). To do so,

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> (b) (1) the extent to which the desired results or benefits established by the General Assembly or other authorizing body are achieved;
>
> (2) the effectiveness of organizations, programs, activities, or functions; and
>
> (3) whether the entity has complied with laws and regulations applicable to the program.

the language of a statute will be examined and words given their plain and ordinary meanings. Worthington v. Belcher, 274 S.C. 366, 264 S.E.2d 148 (1980). In the absence of ambiguity, the literal meaning of the language will be applied. State v. Goolsby, 278 S.C. 52, 292 S.E.2d 180 (1982).

The Authority is most clearly an agency of the State as that term is most often understood. Op. Atty. Gen. (January 23, 1980); Op. Atty. Gen. (October 31, 1984). The federal district court has consistently characterized the Authority as being a department or arm of the State, as being part of the State in a real sense and as being completely identified with the State. DuPont v. S. C. Public Service Authority, 100 F. Supp. 778 (E.D. S. C. 1951); Connor v. S. C. Public Service Authority, 91 F. Supp. 262 (E.D. S. C. 1950); S. C. State Ports Authority v. Seaboard Air Line Ry. Co., 124 F. Supp. 533 (E.D. S. C. 1954). Moreover, the State Supreme Court has resolved that the Authority is a State agency, is part of the State and shares the State's sovereignty. Rice Hope Plantation v. S. C. Public Service Authority, 216 S.C. 500, 59 S.E.2d 132 (1950). In that regard, the Court has noted that the Public Service Authority is a State agency in the same manner as the Public Service Commission. SCE&G v. S. C. Public Service Authority, 215 S.C. 193, 54 S.E.2d 777 (1949). Both the federal and state courts have also recognized that the Authority provides an important governmental function for the benefit of the people of the State of South Carolina. Morgan v. Watts, 255 S.C. 212, 178 S.E.2d 147 (1970); Rice Hope Plantation v. S. C. Public Service Authority, supra; Creech v. S. C. Public Service Authority, 200 S.C. 127, 20 S.E.2d 645 (1942). This recognition that the Public Service Authority is a State agency as that term is most often used does not complete the inquiry since Section 2-15-50 expressly limits its application to those State agencies that either:

(1) expend or encumber State funds by virtue of an appropriation from the General Assembly;

(2) handle money on behalf of the State; or

(3) hold trust funds from any source.

This Office has previously resolved that the expansive use of the term "state agency" in Section 2-15-50 is limited by this qualifying language. 1986 Op. Atty. Gen. No. 14 (January 30, 1986).

At least in recent years, the Public Service Authority has not expended nor encumbered State funds by virtue of an appropriation from the General Assembly. 1978 Op. Atty. Gen. No. 210 (December 21, 1978). On the other hand, the Public Service Authority does "handle monies on behalf of the State" and most probably "holds

trust funds."

This Office has consistently recognized that the term "public funds" is comprehensive.

> 'Public funds' are those monies belonging to a government, be it state, county, municipal or other political subdivision, in the hands of a public official. [Cites omitted.] Such funds are not necessarily limited to tax moneys. [Cite omitted.] Our Supreme Court cited with approval in Elliott v. McNair, 250 S.C. 75, 156 S.E.2d 421 (1967), the definition of 'public money' from State v. Town of North Miami, 59 So.2d 779, which stated that '[i]t does not matter whether the money is derived by ad valorem taxes, by gift or otherwise.' 250 S.C. at 90 (emphasis in original). [Additional cites omitted.]

Op. Atty. Gen. (November 15, 1985); see also, Op. Atty. Gen. (May 12, 1993); 1973 Op. Atty. Gen. No. 3597 (August 10, 1973); 1993 Acts, p. 555, No. 164, Part I, Section 1.1. Accordingly, the revenues from operations of the Authority are "public funds." Whether public funds are denominated as state, as opposed to local, is generally resolved by the respective status of the public custodian in control of the funds. Op. Atty. Gen. (March 25, 1985). In this instance, the public custodian is the Public Service Authority, a State agency, and the public funds are properly denominated state funds as opposed to local funds. Importantly as well, pursuant to Section 58-31-110 (1976), the net revenues of the Public Service Authority's operations are remitted to the general funds of the State to reduce the overall tax burden upon the people of the State.[2] For this additional reason, these net revenues would constitute State funds. Most clearly, the Public Service Authority is a State agency that handles money on behalf of the State.

Moreover, this Office has previously resolved that "the funds of the Authority acquired in the course of business would most probably be considered trust funds maintained by the Authority for the benefit of the persons served by the Authority. . . . [cites omitted]" Op. Atty. Gen. (April 10, 1987). Thus, the Authority is most probably a State agency that holds trust funds.

In that we have determined that the Public Service Authority

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[2] The State's 1993 budget contemplates significant revenues of $6,300,000.00 from the Public Service Authority's net operating monies to be deposited in the general fund. 1993 Acts, p. 1087, No. 164, Part I, Section 128.

is an agency of the State that handles State monies, the Authority literally comes within the very broad scope definition of "state agencies" codified in Section 2-15-50. This literal interpretation of the words chosen by the General Assembly is consistent in all respects with the general purpose underlying the statutes creating the Audit Council, to assist the General Assembly in determining the efficiency and effectiveness of State programs. Moreover, our conclusion relative to Section 2-15-50 is consistent with that reached by the Audit Council. Of course, the construction of Section 2-15-50 by the Audit Council is accorded the most respectful consideration by the courts and this Office. Cf., Dunton v. S. C. Board of Examiners in Optometry, 291 S.C. 221, 353 S.E.2d 132 (1987). Accordingly, this Office concludes that the General Assembly has authorized the Legislative Audit Council to audit the Public Service Authority.[3]

CONCLUSION

1. The Legislature, in enacting legislation creating the Audit Council, intended that the Council possess the authority to audit virtually every State instrumentality.

2. The term "public funds" is broad and comprehensive. It includes monies generated by public agencies. Such funds are not necessarily limited to tax monies.

3. The Public Service Authority is an agency of the State that handles State monies.

4. Accordingly, the Legislative Audit Council possesses the authority to conduct an audit of the South Carolina Public Service Authority.

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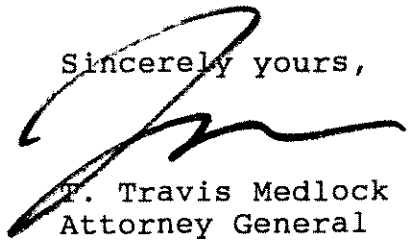
[3] This Office has previously resolved, respectively, that the Legislative Audit Council is not a "state agency" as that term is specially used in the State Reorganization Act [§ 1-19-110 (Rev. 1986)] and the then extant 1976 Acts, p. 1553, No. 561, that provided for collection of information. Op. Atty. Gen. (October 31, 1984); 1977 Op. Atty. Gen. No. 161 (May 25, 1977). Section 1-19-110, supra, exempts any authority having "outstanding revenue bonds" and Act 561, § 2 (1) included only those agencies funded with appropriated funds. These prior Office opinions are not altered by this Opinion.

With best regards, I am

Sincerely yours,



J. Travis Medlock
Attorney General

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