



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

August 5, 1996

Benjamin D. Moore, Esquire  
Attorney, Pee Dee Regional  
Transportation Authority  
Post Office Box 13057  
Florence, South Carolina 29504

RE: Informal Opinion

Dear Mr. Moore:

By your letter of May 21, 1996, to Attorney General Condon, you have advised that the Pee Dee Regional Transportation Authority (PDRTA) was organized pursuant to S.C. Code Ann. §58-25-10 et seq., as amended, in the mid-1970s. For more than twenty years, PDRTA has been a strong, viable, and vital provider of transportation services to a six-county area of South Carolina.

The six-county area served by PDRTA since its inception has been set out in S.C. Code Ann. §6-7-110, the counties being Chesterfield, Darlington, Dillon, Florence, Marion, and Marlboro. You advise that this configuration appears to be in keeping with §58-25-20(2), which defines a "Regional Transportation Area" to be an area in which counties are grouped according to the above-cited statute. You have further advised that PDRTA has exhibited sound management and financial characteristics during its existence, and has in fact been nationally recognized for its excellence.

You then advised that other regional transportation authorities in the state have apparently not enjoyed the same success as PDRTA, for whatever reasons. Some of the regional transportation authorities are apparently now defunct or in peril of such a demise. As a result of all of the circumstances outlined above, PDRTA is in demand from counties outside its current membership area to add counties and/or municipalities to its membership, in order to re-institute these vital transportation services.

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Therefore, you have requested, on behalf of the Pee Dee Regional Transportation Authority, an opinion as to these two questions:

1. Can PDRTA, under existing law, add member counties and/or municipalities which are outside the "Regional Transportation Area" as defined in the relevant statutes?
2. If the response to question 1 is affirmative, what are the requirements for membership of additional PDRTA members?

Both the former regional transportation authority statutes and the statutes as amended in 1985 and more recently will be examined in response to your inquiry.

#### **Statutes Prior to 1985 Amendments**

The Pee Dee Regional Transportation Authority was established pursuant to the statutory scheme which existed prior to massive amendments in 1985. Old §58-25-40 provided a means by which a regional transportation authority could be implemented; subsection (1) provided:

Any two or more counties, municipalities, other political subdivisions, or combinations thereof within a regional transportation area are authorized by a majority vote of its governing body to implement a regional transportation authority, hereinafter referred to as authority, to be constituted and operated as provided for in this chapter. No county, municipality or other political subdivision may be a member in more than one authority.

Several observations are in order. The term "county" is defined in §58-25-20(3) to mean "any county within the regional transportation area." The term "municipality" is defined in §58-25-20(4) to mean "any city or town incorporated within the regional transportation area." The phrase "regional transportation area" is defined by §58-25-20(2) to mean "that area in which counties are grouped according to §§6-7-110 to 6-7-210 providing for regional planning." Section 58-25-40(1) specifically prohibits a county, municipality, or other political subdivision from being a member in more than one authority.<sup>1</sup>

Section 6-7-110, as stated in your letter, is the statute which by reference defines the regional transportation area potentially to be served by a particular regional

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<sup>1</sup>Contrast new §58-25-40(2), to be discussed infra.

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transportation authority. PDRTA's area is delineated by §6-7-110(7) and includes the counties listed above. While such is not the case with respect to PDRTA, conceivably a regional transportation authority could be comprised of fewer counties than those listed for a given region of the state, as long as at least two counties, municipalities, or other political subdivisions within the regional transportation area (as those terms are defined in the statute), as authorized by their respective governing bodies, wished to implement a regional transportation authority. In theory, there could possibly be more than one regional transportation authority in a given grouping of counties, thus giving meaning to the prohibition of old §58-25-40(1) stated in the preceding paragraph.

Once an authority is created under the old statutory scheme, addition of additional members could be accomplished pursuant to §58-25-40(2):

Subsequent to the activation of the authority, contiguous counties, municipalities, or other political subdivisions not participating initially may become members of the authority with the same benefits as the initial members, upon approval by a majority vote of the authority.

This Office has advised previously that this Code section, what area is to comprise the service area of a regional transportation authority, and to what the new member-county, municipality, or other political subdivision must be contiguous, are unclear at best; see Op. Att'y Gen. dated June 6, 1989. The concept of contiguity was examined in that opinion; it was observed therein that reference to a South Carolina map shows that the counties of an individual regional transportation authority area are contiguous, though each county is not contiguous to every other county of a particular area.

Another statute must be taken into account, however. Inclusion of additional territory is provided for in former §58-25-60:

Upon a resolution adopted by the governing body of any county, municipality, or other political subdivision, the authority may, by a majority vote of its membership, include such territory in its regional transportation area.

Section 58-25-60 appears to enlarge the territory of a regional transportation authority beyond that which is provided pursuant to §58-25-20(2), with respect to the county groupings. It would appear that, for regional transportation authorities operating under the former statutory scheme, it is possible to expand the territory of a regional transportation authority. To do so, the governing body of a county, municipality, or other political subdivision would be required to adopt a resolution and present it to the regional

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transportation authority. That body would then be required to approve the request made by resolution, by majority vote of the membership. From §58-25-40, one requirement for membership would be that the county, municipality, or other political subdivision not be a member of another regional transportation authority. And, reading §58-25-60 in conjunction with §58-25-40(2), it would appear that the county, municipality, or political subdivision seeking membership in the regional transportation authority after activation of the authority should be contiguous to the area served by the authority, though this is by no means clear since §58-25-60 provides that the resolution may be submitted by any county, municipality, or political subdivision.

#### **Statutes After 1985 Amendments**

For regional transportation authorities created pursuant to the 1985 amendments (see 1995 Cum. Supp.), the options are somewhat more limited. The definition of "regional transportation area" remains the same; see new §58-25-20(13). The permissibility of adding contiguous counties or cities not participating initially is covered by new §58-25-40(3). However, in the new statutory scheme, there is no counterpart to former §58-25-60 as to inclusion of additional territory. I am therefore of the opinion that a regional transportation authority established under the new statutory scheme would be precluded from extending its territory except in accord with new §58-25-40, to contiguous counties or cities not participating initially, which are located within the regional transportation area. New §58-25-40(2) would require that no city or county be a member in more than one authority unless the services provided by the authorities should be different.

#### **Conclusion**

The responses to your inquiries are set forth above. Depending on the statutes under which the Pee Dee Regional Transportation Authority was formed and is now operating, the area may or may not be extended, as explained above.

This letter is an informal opinion only. It has been written by a designated Senior Assistant Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

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With kindest regards, I am

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Senior Assistant Attorney General