



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

December 20, 1996

The Honorable Dick Elliott
Senator, District No. 28
P.O. Box 3200
North Myrtle Beach, South Carolina 29582

Re: Informal Opinion

Dear Senator Elliott:

This Office is in receipt of your recent opinion request. In your request, you raise numerous legal questions concerning the legal authority of an entity called the Road Improvement and Development Effort (hereinafter the "RIDE Committee") and an entity called the "group" in regards to the construction of highways in Horry County.

From the information contained in the materials attached to your opinion request, the Chairman of the South Carolina Department of Transportation, at the direction of the Governor, created an entity called the RIDE Committee. The purpose of the RIDE Committee was to determine the short and long term transportation infrastructure needs and improvements for Horry County along with various options to fund these improvements.

The RIDE Committee developed a report which detailed their conclusions regarding the short and long term transportation needs of Horry County. Included in this report was a recommendation to appoint what was characterized as the "group" to implement the plan created by the RIDE Committee. The RIDE Committee recommended that the "group" consist of seven members, two representatives chosen by Horry County, two chosen by the municipalities, two chosen by the SCDOT, and a chairman chosen by the Governor. The RIDE Committee recommended that the "group" be supported by a staff with a director responsible for overseeing the daily implementation and requirements of the plan

and to coordinate with the State and SCDOT, and the Federal Highway Administration, if necessary.

LAW/ANALYSIS

The SCDOT has among its functions and purposes the systematic planning, construction, maintenance, and operation of the state highway system. Further, the SCDOT shall coordinate all state and federal programs relating to highways among all departments, agencies, and other bodies politic and legally constituted agencies of this State and the performance of such other duties and matters as may be delegated to it pursuant to law. S.C. Code Ann. § 57-1-30 (Supp. 1995).

The powers and duties of the SCDOT are enumerated in S.C. Code Ann. § 57-3-110 (Supp. 1995) and include the following:

- (1) lay out, build, and maintain public highways and bridges, including the exclusive authority to establish design criteria, construction specifications, and standards to construct and maintain highways and bridges;
- (2) acquire such lands, road building materials, and rights-of-way as may be needed for roads and bridges by purchase, gift, or condemnation;
- (3) cause the state highways to be marked with appropriate directions for travel and regulate the travel and traffic along such highways, subject to the laws of the State;
- (4) number or renumber state highways;
- (5) initiate and conduct such programs and pilot projects to further research and development efforts, and to promote training personnel in the fields of planning, construction, maintenance, and operation of the state highway system;
- (6) cooperate with the federal government in the construction of federal-aid highways in the development of improved mass transit service, facilities, equipment, techniques, and methods and in planning and research in connection therewith; and seek and receive such federal aid and assistance as may from time to time become available except for funds designated by statute to be administered by the Chief Executive Officer of the State;

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(7) instruct, assist, and cooperate with the agencies, departments, and bodies politic and legally constituted agencies of the State in street, highway, traffic, and mass transit matters when requested to do so, and, if requested by such government authorities, supervise or furnish engineering supervision for the construction and improvement of roads and bridges, provided such duties do not impair the attention to be given the highways in the state highway system;

(8) promulgate such rules and regulations in accordance with the Administrative Procedures Act for the administration and enforcement of the powers delegated to the department by law, which shall have the full force and effect of law;

(9) grant churches the right to cross over, under, along, and upon any public roads or highways and rights-of-way related thereto;

(10) enter into such contracts as may be necessary for the proper discharge of its functions and duties and may sue and be sued thereon;

(11) erect such signs as requested by a local governing body, if the department deems the signs necessary for public safety and welfare, including "Deaf Child" signs and "Crime Watch Area" signs; and

(12) do all other things required or provided by law.

The authority of a state agency created by statute is limited to that granted by the Legislature. Nucor Steel v. South Carolina Public Service Commission, 310 S.C. 539, 426 S.E.2d 319 (1992). An administrative agency has only such powers as have been conferred by law and must act within the authority granted for that purpose. Bazzle v. Huff, ___ S.C. ___, 462 S.E.2d 273 (1995). It is well recognized that there must exist statutory authority for an administrative officer or agency to subdelegate any portion of the authority which has been delegated to the officer or agency by statute. Op. Atty. Gen. dated August 8, 1985.

There seems to exist some statutory authority that would allow the SCDOT to implement a project such as the RIDE Committee for the purposes of research and development efforts. See S.C. Code Ann. § 57-3-110(5). However, a review of the relevant statutes does not reveal the existence of any statutory authority which would allow the SCDOT to delegate its plenary powers to an entity such as the RIDE Committee. Since the SCDOT cannot delegate its plenary powers to the RIDE

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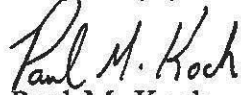
Committee, the RIDE Committee cannot, in turn, delegate powers it does not possess to the "group."

A state agency, such as the SCDOT, derives its powers solely from the statutes created by the Legislature. Consequently, the SCDOT cannot delegate its powers unless the General Assembly clearly and definitively authorizes such. Therefore, to permit the SCDOT to delegate its powers to entities such as the RIDE Committee or the "group," the General Assembly would have to pass a general law, not a law specific to Horry County, enabling SCDOT to do so.

This letter is an informal opinion only. It has been written by a designated 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.

With kindest regards, I remain

Very truly yours,



Paul M. Koch

Assistant Attorney General