



05-5859  
February

The State of South Carolina  
**OFFICE OF THE ATTORNEY GENERAL**

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

May 2, 1996

The Honorable James A. Lander  
Senator, District No. 18  
601 Gressette Building  
Columbia, South Carolina 29202

RE: Informal Opinion

Dear Senator Lander:

By your letter of February 13, 1996, to Attorney General Condon, you have sought an opinion as to the scope of services which the Central Midlands Regional Planning Council (hereinafter sometimes referred to as "the Council") may provide to its member counties and municipalities. You, as an advisory member of the Central Midlands Regional Planning Council, advise that the Council views itself as a service arm to local governments and therefore wants to be current on what it may or may not do.

Questions Presented

The issues which have been raised include the following:

1. How does Article VII, Section 13 of the South Carolina Constitution impact the Council? Does it increase the scope of services which the Council can provide to local governments?
2. Does the wording of Article V, Section 2 of the current local creating agreement for the Council restrict the Council from using the authorization of powers and duties granted under Act No. 487 of 1967 to the fullest extent possible (i.e., does it restrict the Council's ability to fully function as an implementing administrative agency for two or more local units of government which choose to operate a joint activity through the Council?)

*Request Letter*

The Honorable James A. Lander  
Page 2  
May 2, 1996

3. Were the Council to be recreated under the provisions of Article VIII, Section 13 of the South Carolina Constitution, could its authority to respond to the service needs of local governments be broadened and clarified?

4. When counties, incorporated municipalities, or other political subdivisions choose to jointly administer one or more functions by means of interagency agreement, can they, if they so elect, have the council of government serve as their implementing administrative agent?

5. Under the enabling legislation used by local governments in Planning District Four to create the Council (Article 2 of Act No. 487 of 1967, as amended), can the Council own, provide, perform, or operate such services as a joint vehicle service center, Geographic Information System computer system, transit systems, wetlands bank, etc., on behalf of local governments as long as the local governments have the individual legal authority to provide such services or functions? (Of course, this would have to exclude general governmental powers of passing laws, regulating, taxing, or police powers.)

### Background

The Council was created under the provisions of Article 2 of Act No. 487 of 1967, as subsequently amended. See S.C. Code Ann. §6-7-110 *et seq.* (1976 & 1995 Cum. Supp.). The Council was initially formed in the spring of 1969, with the agreement creating the Council being approved by the Governor on June 9, 1969. Subsequently, the electorate of South Carolina approved amendments to the local government/home rule portions of the South Carolina Constitution, and the agreement was modified in 1977 to reflect the wording of the new constitutional amendment and the modification of Article 2 of Act No. 487 of 1967. The member-political subdivisions of the Council at the time of the modification of the agreement included Fairfield County; Lexington County; Newberry County; Richland County; the Town of Batesburg; the City of Columbia; the Town of Cayce; the Town of Forest Acres; the City of Newberry; the Town of West Columbia; and the Town of Winnsboro. You had enclosed a copy of the agreement for our review.

### Constitutional Provisions

It is also observed that there are two constitutional provisions which are to be considered when analyzing powers and duties of regional councils of government. The first is Article VII, Section 15, which provides:

The Honorable James A. Lander

Page 3

May 2, 1996

The General Assembly may authorize the governing body of a county or municipality, in combination with other counties and municipalities, to create, participate in, and provide financial support for organizations to study and make recommendations on matters affecting the public health, safety, general welfare, education, recreation, pollution control, utilities, planning, development and such other matters as the common interest of the participating governments may dictate. Such organizations, which shall be designated regional councils of government, may include political subdivisions of other states. The studies and recommendations by such organizations shall be made on behalf of and directed to the participating governments and other governmental instrumentalities which operate programs within the jurisdiction of the participating governments.

The legislature may authorize participating governments to provide financial support for facilities and services required to implement recommendations of such organizations which are accepted and approved by the governing bodies of the participating political subdivisions. Such organizations shall not have the power to levy taxes. Local funds for the support of such organizations shall consist of contributions from the participating political subdivisions as may be authorized and granted by their respective governing bodies. ...

This constitutional provision has been deemed not to be self-executing; the statutory provisions of §6-7-110 et seq. thus effectuate the constitutional provisions.

The second constitutional provision to be considered is Article VIII, Section 13, which provides in relevant part:

(A) Any county, incorporated municipality, or other political subdivision may agree with the State or with any other political subdivision for the joint administration of any function and exercise of powers and the sharing of the costs thereof.

(B) Nothing in this Constitution may be construed to prohibit the State or any of its counties, incorporated municipalities, or other political subdivisions from agreeing to share the lawful cost, responsibility, and administration of functions with any one or more governments, whether within or without this State.

(C) The prohibitions against dual office holding contained in Article VI of this Constitution do not apply to any elected or appointed official or employee who serves on a regional council of government created under the authority of this section.

By Op. Att'y Gen. No. 92-25, dated May 6, 1992, it was observed that "under either constitutional provision, a broad, almost unlimited range of powers to be exercised by regional councils of governments, might be envisioned." That opinion concluded that it would be difficult to detail a comprehensive, all-inclusive list of powers which a council of governments may exercise in this State. It was suggested therein that the constitutional provisions; §6-7-150 and other statutes; and the agreement creating a particular council of governments should be consulted to determine the scope of a particular council's powers. That the purpose of the program or activity must be public and that the program or activity be nonprofit in nature were certain, however.

#### Relevant Statutes

Because the Council was created pursuant to Article VII, Section 15 of the South Carolina Constitution and the enabling legislation, now §6-7-110 et seq., it is appropriate to consider those statutes which establish the powers and duties of a regional council of governments. Section 6-7-140 provides:

In discharging its responsibilities, the regional council of government shall have the power and duty to:

(1) Prepare studies and make recommendations on such matters as it deems appropriate;

(2) Coordinate and promote cooperative programs and action with and among its members and other governmental and nongovernmental entities, including those of other states;

(3) Study and make recommendations on matters affecting the public health, safety, general welfare, education, recreation, pollution control, utilities, planning, development and such other matters as the common interest of the participating governments may dictate;

(4) Provide continuing technical assistance, and information to the member local governments and other agencies and individuals;

(5) In general, the regional council of government shall have the power to carry on such planning activities and the development of such studies and programs as it deems to be in the interest of the area;

(6) Acquire and dispose of real and personal property necessary to the conduct of its business;

(7) After coordination with the appropriate State, local and Federal agencies, the regional council of government may adopt such plans and programs as it may from time to time prepare. Such plans and programs as are adopted shall constitute the recommendations of the regional council of government.

The Honorable James A. Lander  
Page 5  
May 2, 1996

The power to enter into contracts is specified by §6-7-150:

A regional council of government may cooperate with, contract with, and accept funds from Federal, State, or local governments, public or semi-public agencies or private individuals or corporations. It may expend such funds and it may carry out such cooperative undertakings and contracts.

As to powers and responsibilities of regional councils of government, this Office has advised previously that no council of government has been granted powers of a general purpose local government such as those found in §5-7-30 as to incorporated municipalities or §4-9-30 as to counties. Op. Att'y Gen. No. 86-3, dated January 8, 1986. Moreover, the powers exercised by a regional council of government are not greater than the specifically authorized powers of the local units of government represented on the council; the powers exercised jointly are not greater than the powers authorized for the political subdivisions acting singly. Op. Att'y Gen. dated June 23, 1977.

#### Agreement Creating the Council

The agreement creating the Council, as referenced above, was approved by the member political subdivisions and then approved by the Governor in 1977. Of particular importance to your request is Article V, which enumerates the powers and duties of the Council according to the authorizations of the member political subdivisions. That article provides in relevant part:

- Section 1.            Powers and Duties--In discharging its responsibilities, The Council shall have the power and duty to:
- a.     Prepare studies and make recommendations on such matters as it deems appropriate.
  - b.     Coordinate and promote cooperative programs and action with and among its members and other governmental and non-governmental entities.
  - c.     Study and make recommendations on matters affecting the health, safety, general welfare, education, recreation, pollution control, utilities, planning, development and such other matters as the common interest of the participating governments may dictate.
  - d.     Provide continuing technical assistance, and information to the member local governments and other agencies and individuals.
  - e.     In general, The Council shall have the power to carry on such



- planning activities and the development of such studies and programs as it deems to be in the interest of the area.
- f. Acquire and dispose of real and personal property necessary to the conduct of its business.
  - g. After coordination with the appropriate State, local and federal agencies, The Council may adopt such plans and programs as it may from time to time prepare. Such plans and programs as are adopted shall constitute the recommendations of The Council.

Section 2. Plans Advisory Only--The Council shall act in an advisory and assisting capacity only and any plan or program prepared and adopted by The Council shall have no binding effect on the governing body of any political subdivision.

### Discussion

It is clear that Central Midlands Regional Planning Council was established by its member political subdivisions pursuant to Article VII, Section 15 of the South Carolina Constitution and §6-7-110 et seq., and is thus subject to the limitations expressed in the constitutional and statutory provisions, as well as to limitations in the charter, particularly section 2 of Article V, supra. If the Council were to be re-established pursuant to Article VIII, Section 13, which more recent constitutional provision does not contain the limiting language of Article VII, Section 15, the authority or scope of powers and duties to be exercised by the Council would not be so limited. It might be possible to broaden the scope of powers to be exercised by the Council by amending the agreement and in particular removing section 2 of Article V; care must be taken, however, to determine that the new agreement would be consistent with §6-7-110 et seq., however.

If counties, incorporated municipalities, or other political subdivisions wished to jointly administer one or more functions by means of an interagency agreement, it is possible that the council of government could serve as the implementing administrative agent. The project under consideration would require scrutiny to determine exactly what was being asked of the council of government and to determine that such tasks were within the scope of the appropriate constitutional provision, the enabling legislation if applicable, and the agreement establishing the council of government. Such activity on the part of the council of government would be more likely if the council were established pursuant to Article VIII, Section 13. Should such activity be contemplated by two or more of the member political subdivisions, most probably a formal agreement should be executed to memorialize the responsibilities and expectations of each party.

The Honorable James A. Lander

Page 7

May 2, 1996

The scope of activities which councils of government generally undertake has been described in 1 McQuillin, Municipal Corporations, §1.54, which provides in part:

A council of government is not a governmental unit; it has no legislative powers nor powers of taxation. Generally its functions are to define and study the municipal problems which affect all of the associated governmental bodies but which are not soluble by any one of them acting alone; to conduct research in connection with such problems and draft proposals, with recommendations, to the council members for adoption and implementation. The solution of problems is not by legal sanction, but through consensus. The range of council activities is not limited to any particular subject matter, but encompasses the whole spectrum of old and new problems daily confronting those charged with governing urban areas in our increasingly complex society. The dimension of their work is, of course, regional, involving such matters as centralized purchasing, planning, uniform codes, sewerage, water, and data banks. ...

In an opinion of this Office dated May 6, 1992, supra, it was observed that we could not detail a comprehensive, all-inclusive list of powers and duties of a council of government. It was deemed permissible in that opinion for a regional council of government to provide public engineers and architects to member governments for technical assistance on specific projects. In an opinion dated June 2, 1993, it was concluded that a regional council of government created pursuant to Article VII, Section 15, as implemented by §6-7-110 et seq., could be utilized to assist counties in the area of tourism; the General Assembly has plenary power to adopt legislation so that regional councils of government could be the exclusive provider of those services, if that body wished to do so.

To determine whether a council of government could undertake the tasks specifically listed in your letter, would require examination of the tasks which the council was expected to undertake and whatever other statutory law might be applicable. For example, as to the wetlands bank, I observe that a council of government is permitted to acquire and dispose of real and personal property necessary to the conduct of its business; I would want to examine the statutes or regulations which might impact on such a project and further seek some kind of determination that holding such property would be necessary to the conduct of the council's business. In other words, at this point, there is insufficient information to be able to assess that such activities or tasks could be undertaken by the council of government.

The Honorable James A. Lander  
Page 8  
May 2, 1996

I trust that the foregoing has been as responsive to your inquiries as is possible under the circumstances. Please feel free to contact me if clarification or additional assistance should be required.

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.

With kindest regards, I am

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Senior Assistant Attorney General