



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

August 18, 1997

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

Re: Informal Opinion

Dear Mr. Schroeder:

You have sought an opinion as to whether the Legislative Audit Council possesses the authority to conduct an audit of the GLEAMNS Human Resources agency. It is my opinion that the Audit Council does possess the requisite authority in this regard.

Law / Analysis

The authority of the Legislative Audit Council is codified at S.C. Code Ann. Sec. 2-15-10 et seq. The Council is directly responsible to the General Assembly and is independent of any other state agency, board or department. Among the duties of the Council is "[t]o establish a system of post audits for all fiscal matters and financial transactions for all state agencies of the state government." Section 2-15-50. This statute defines "state" agencies as

... 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.

Mr. Schroeder
Page 2
August 18, 1997

An "audit" is defined by Section 2-15-50 as

... a full-scope examination of and investigation into all state agency matters necessary to make a determination of:

- (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
- (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 issue you present is, therefore, whether GLEAMNS would be considered as a "state agency" for purposes of Section 2-15-50.

The GLEAMNS Human Resources Commission is created by S.C. Code Ann. Section 43-41-10 et seq. Section 43-41-10 creates the Commission to encompass the area covering Greenwood, Laurens, Edgefield, Abbeville, McCormick, Newberry and Saluda Counties.

In the preamble creating the Act the General Assembly found that

... a public commission should be created in Greenwood, Laurens, Edgefield, Abbeville, McCormick, Newberry, and Saluda Counties charged with the responsibility of implementing programs designed to improve the health, education,

Mr. Schroeder
Page 3
August 18, 1997

welfare, housing, and employment opportunities of economically disadvantaged persons in these counties. The commission must be funded by federal, state, county, municipal or private organizations.

Act No. 16, 1993, Section 1. Section 43-41-20 declares the GLEAMNS Commission to be "a body politic and corporate" and capable of enjoying "all the rights and privileges as such."

The powers of the GLEAMNS Commission are specified in Section 43-41-100. Such provision authorizes the Commission to sue and be sued; to adopt, use and alter a corporate seal; to make bylaws; to appoint agents and employees and to prescribe their duties, fix their compensation and specify their bonding. Other specific powers granted to the Commission are:

... (e) to undertake the improvement of communication and cooperation among existing and future programs administered by federal, state, county and municipal governmental agencies and private organizations designed to improve the health, education, welfare, housing or employment of the low income residents of the counties represented by the commission and, with the consent of such agencies and organizations, to coordinate the same;

(f) to enter into contracts and agreements for performance of its programs and duties with federal, state, county and municipal governmental agencies and subdivisions thereof, and private nonprofit organizations;

(g) to receive and expend funds for the performance of its duties in the administration of its programs from such governmental agencies and subdivisions thereof and private nonprofit organizations, as well as any other sources;

(h) to designate an executive committee from among the members of the commission to which may be delegated one or more duties and responsibilities of the commission and, from time to time, to appoint one or more subcommittees to advise and assist in the administration of its programs and the performance of its duties; all such committees designated to

have representation from the three categories enumerated in items (1), (2) and (3) of Section 43-41-30(a) in the same proportion as such categories are represented on the full commission;

(i) to maintain adequate accounts and records of its activities, receipts and expenses in conformance with requirements of any contract or agreement with any federal, state, county or municipal governmental agency, or subdivision thereof, or any private nonprofit organization;

(j) to acquire, own or hold in trust, preserve, restore, maintain, or lease property, facilities and equipment reasonably necessary for the performance of its duties and the administration of its programs;

(k) to do such other things as may be necessary to perform the duties prescribed in this chapter.

We start with the proposition that this Office has previously recognized in applying Section 2-15-50 to particular situations and determining whether an entity is a "state agency" for purposes of the jurisdiction of the Legislative Audit Council, that "[t]he General Assembly intended to cast a broad net and include state agencies, departments, divisions, institutions, units, bodies politic and corporate and corporations of most every form" Op. Atty. Gen. No. 86-14 (January 30, 1986). In this same regard, we have thus noted that "[t]his provision, in its literal sense, purports to capture practically, every instrumentality of the State." (emphasis added).

A "state agency" typically possesses statewide authority. See Op. Atty. Gen., May 1, 1979. Southeastern Pa. Transp. Auth. v. Kohn, 336 A.2d 901 (Pa.1975); Op. Atty. Gen., Op.No. 86-14, supra. However, it does not necessarily follow that every agency or instrumentality of the state possesses statewide territorial jurisdiction. Courts elsewhere have recognized that multi-county, regional entities are not county or local entities or can constitute a "state agency" for purposes. For example, in Armer v. Superior Court of Arizona, 112 Ariz. 478, 543 P.2d 1107 (1975), the Arizona Supreme Court (en banc) held that the directors of a multi-county water conservation district were not "local public officers" for purposes of a financial disclosure ordinance. In Booker Creek Preservation, Inc. v. Pinellas Planning Council, 433 So.2d 1306 (Fla.2d DCA 1983) the Florida Court held that the Pinellas Planning Council was not a "state agency" for purpose of the Administrative Procedure Act. Because, ruled the Court, "... the PPC operates entirely within Pinellas

Mr. Schroeder
Page 5
August 18, 1997

County and has no authority outside that county, it is not comparable in jurisdiction to a statewide agency or even a regional intercounty agency" 433 So.2d at 1308. (emphasis added). Conversely, in Orlando-Orange County Expressway Auth., 682 So.2d 566 (Fla.5th DCA 1996), the Court held that the Orlando County Expressway Authority was a "state agency" for APA purposes based upon the fact that such entity was empowered to operate beyond a single county.

Our own Supreme Court has also employed a similar analysis. In Kleckley v. Pulliam, 265 S.C. 177, 217 S.E.2d 217 (1975), the Court held that the Richland-Lexington Airport District, a multi-county entity created by Act of the General Assembly, was not subject to the Constitutional limitation that the General Assembly shall not enact a law for a specific county. The Court stated "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. See also, Brashier v. S.C.D.O.T., et al, Op.No. 24665 (August 6, 1997) [roads and highway construction are not matters of local concern, but are instead of statewide concern].

And, importantly in Op.Atty.Gen., January 28, 1980, this office concluded that regional mental health centers were governed as "state agencies" by the various provisions of the State Appropriations Act. There, we analyzed the question as follows:

[a]ctually, the operation of the clinics and centers is somewhat of a hybrid system for a statewide mental health program. Many of the clinics and centers are multi-county in their operation and multi-county in their local funding as well as the funding received from the federal government. Thus, they cannot be classified as a county agency, but are closer to being an instrumentality of the state government. The best conclusion that can be drawn concerning their split authority as presently structured is that they should be classified as a "quasi-state agency".

Furthermore, In Op.Atty.Gen., Op.No. 94-19 (March 19, 1994), we concluded that the Public Service Authority (Santee-Cooper) is a "state agency" for purposes of Section 2-15-50, thereby empowering the Legislative Audit Council to conduct an audit. We noted that the PSA was deemed a "body politic and corporate" by the General Assembly. In addition, the PSA had consistently been deemed a "state agency" by various authorities. We referenced Rice Hope Plantation v. S. C. Pub. Serv. Auth., 216 S.C. 500, 59 S.E.2d 132 (1950) which had concluded that the PSA "is a public corporation in the nature of a quasi-municipal corporation, exercising certain governmental functions as an agency of

Mr. Schroeder
Page 6
August 18, 1997


the State." Moreover, we found that the PCA was handling money on behalf of the State and was holding "trust funds from any source" as required by Section 2-15-50. Noting that this Office has consistently recognized that the term 'public funds' is comprehensive...", we concluded that "[i]n 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"

Likewise, GLEAMNS is created by the General Assembly. The Commission expressly designated as a "body politic and corporate" by Section 43-41-20. The General Assembly itself has characterized GLEAMNS as a "public commission," rather than designating it as a local or county entity. GLEAMNS acts on behalf of a seven-county area of the State and is not confined to any one county, school district, public service district or municipality. GLEAMNS has been delegated functions by the General Assembly, notably, the implementation of programs "designed to improve the health, education, welfare, housing and employment opportunities of economically disadvantaged persons in these counties... ." In my judgment, GLEAMNS far more resembles a "state agency" than any other type of entity. Having previously concluded that regional mental health commissions are "quasi-state agencies" for purposes of the Appropriations Act requirements, and the Public Service Authority is a "state agency" for purposes of Section 2-15-50, even though in both instances the service of a limited service area was involved, likewise, I am of the opinion that GLEAMNS is also a "state agency" for purposes of the Audit Council's jurisdiction. Moreover because GLEAMNS is a "state agency" for purposes of Section 2-15-50, as custodian of public funds (both local, state and federal, pursuant to state law), it is both handling money on behalf of the State, as well as holding trust funds from any source derived as is required by Section 2-15-50. Thus, in my judgment, GLEAMNS is subject to audit by the Legislative Audit Council.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy 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 kind regards, I am

Very truly yours,


Robert D. Cook
Assistant Deputy Attorney General

RDC/ph