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# The State of South Carolina



## Office of the Attorney General

T. TRAVIS MEDLOCK  
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING  
POST OFFICE BOX 11549  
COLUMBIA, S.C. 29211  
TELEPHONE 803 734 3970  
FACSIMILE 803 253 6283

November 4, 1991

The Honorable Johnny Mack Brown  
Sheriff of Greenville County  
4 McGee Street  
Greenville, South Carolina 29601

Dear Sheriff Brown:

You have advised that the Chanticleer Community Special Tax District was created by ordinance of Greenville County Council in 1987 to, inter alia, provide security and property protection within the district. The governing body of the district and Greenville County are negotiating the terms and provisions of a proposed contract for the county to provide patrol and law enforcement services to the district through the Greenville County Sheriff's Department. The remaining issues to be negotiated involve liability and insurance therefor. In this context, you have asked:

1. In establishing the Chanticleer Community Special Tax District, has the Greenville County Council created a separate, legal entity capable of contracting with third parties, including the County, and is it a separate legal entity for the other purposes set forth in the Ordinance?
2. May the South Carolina Insurance Reserve Fund amend or endorse its policies of insurance to permit its insureds to assume contractual liabilities in specific cases?

The Chanticleer Community Special Tax District was created by Ordinance No. 1638 of Greenville County Council on February 17, 1987. The district was established to provide security and property protection, control litter and such health hazards along the public rights of way, and to maintain and promote improvements around the entrances, exits, and rights of way within the district. A governing board was

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established thereby, to be responsible "for maintaining and operating" the district in accordance with the specified purposes; the governing board was also authorized to adopt its own rules and operating procedures.

The governing board, known as the Chanticleer Community Commission, consists of five members appointed by Greenville County Council, who are not compensated for their services. Neither the district nor the Commission has any employees. The first issue to be addressed is the nature of this Commission: is it an extension of the county or a separate legal entity?

A county council is authorized, in S. C. Code Ann. § 4-9-30(5)(1986), to create a special tax district for the purpose of taxing a specified area of the county at a different tax rate than the remainder of the county to provide a different level of one or more of the services specified in the statute. Too, a county council is authorized, by § 4-9-30(6), to establish such agencies, boards, departments, commissions, and positions within the county as it deems necessary, to prescribe the functions thereof, and to regulate, merge, modify, or abolish the same. As the statutes existed at the time the Chanticleer Community Commission was created, there was no particular statutory guidance on how the governing body was to be set up; how services were to be rendered; what was to be delegated to the governing body; and so forth. A great deal was left to the discretion of a county council, pursuant to § 4-9-30(6).

This Office opined on April 5, 1976, that a county council had not been authorized by the Home Rule Act to create, in effect, an independent political subdivision of the State. Referring to present § 4-9-30(6), the opinion noted that

the same provision -- which grants to county governing bodies the authority "to establish such agencies, departments, boards, commissions, and positions in the county as may be necessary and proper to provide services of local concern for public purposes," also requires the county governing body to "regulate, modify, merge or abolish such agencies, departments, boards, commissions and positions".... [Emphasis in original opinion.]

See also Op. Atty. Gen. dated February 15, 1979 (a municipal council cannot delegate a legislative power reposed in it, nor can it delegate an executive or ministerial power to an autonomous, unregulated entity) and authority cited therein. Copies of both opinions are enclosed.

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Based on the foregoing, it is our opinion that Greenville County Council lacks the authority to create a separate, autonomous political subdivision; thus, the Chanticleer Community Special Tax District and its governing board are most probably considered a part of Greenville County, pursuant to § 4-9-30(6). Similarly, because council may prescribe functions of and otherwise regulate the district and its governing body, again pursuant to § 4-9-30(6), the Commission may contract for various goods and services if council has delegated that function to the Commission; it is not necessary, in our view, that the Commission be a separate, autonomous political subdivision to be authorized to enter into contracts on behalf of the district. 1/

As to your second question, we are not aware of any statutory or constitutional provision which precludes the Budget and Control Board from writing tort liability insurance for Greenville County for tort liabilities that may be incurred by the County in the performance of its official services pursuant to a contract. We assume, of course, that the contract between the County and the third party is lawfully entered and that the performance of the services by the County is in furtherance of its official duties and mandate. 2/

The Budget and Control Board is expressly enabled to provide tort liability insurance to counties in order to protect the counties against tort liability and to protect County personnel from tort liability arising in the course of their official employment. We reiterate that we are not aware of any legal constraint that would preclude the Board from writing tort liability insurance for a county and its personnel in order to cover tort liabilities that are incurred by the County in the performance of official duties pursuant to a contract.

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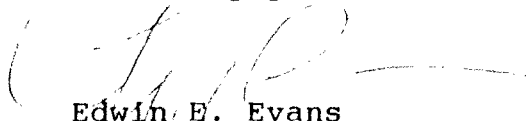
1/ Whether council has authorized the Commission to enter into contracts is a matter which can be determined only by county officials. Such a determination is factual rather than legal and, as such, is outside the scope of an opinion of this Office.

2/ We realize that the question you have presented is not whether the County may agree to indemnify a third party; however, as to that limited question, we advise that this Office has previously opined that State agencies, as a general rule, lack authority to enter into open-ended indemnification agreements. Op. Atty. Gen., April 10, 1991. We have no doubt that a similar conclusion would be reached with regard to counties. See Wright v. Colleton County School District, 301 S.C. 282, 391 S.E.2d 564 (1990) [A political subdivision may not waive immunity provisions provided by State law]; see also, S. C. Const. Art. X, Section 8 (1990 Cum. Supp.) ["Monies shall be drawn from ... the treasury of any of [the State's] political subdivisions only in pursuance of appropriations made by law."]; Id., Art. X, Section 7 (b) [Annual expenditures shall not exceed annual revenues].

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We emphasize, however, that this Office has previously resolved that § 1-7-140 is an enabling provision that authorizes the Budget and Control Board to provide tort liability insurance; nonetheless, it "neither mandates [liability] coverage nor prescribes the limitations or scope of any coverage." Op. Atty. Gen., Nov. 27, 1990. Whether the Budget and Control Board offers tort liability insurance coverage, and the limits or scope of any tort liability coverage, are policy decisions for the Board.

Sincerely yours,




Edwin E. Evans  
Deputy Attorney General

*Patricia D. Petway*  
Patricia D. Petway  
Assistant Attorney General

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Enclosures

REVIEWED AND APPROVED BY:



Robert D. Cook  
Executive Assistant for Opinions