

## The State of South Carolina



## Office of the Attorney General

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April 3, 1990

The Honorable Thomas A. Limehouse  
Member, House of Representatives  
308-B Blatt Building  
Columbia, South Carolina 29211

Dear Representative Limehouse:

You have asked this Office to respond to an inquiry as to whether Dorchester County may require the payment of rent from "State" agencies located in an office facility which Dorchester County plans to construct. Particularly, the agencies specified were the Dorchester County Department of Social Services, the Dorchester County Health Department, the Dorchester County Commission on Alcohol and Drug Abuse and the Summerville satellite office of the Charleston Area Mental Health Center as well as the Circuit Court.

Your question can be answered with certainty as to the Circuit Court, the local health department, and the Dorchester County Commission on Alcohol and Drug Abuse. With regard to the Circuit Court, a prior opinion of this Office provides that county governments are under a duty to provide facilities and support personnel for the circuit courts. 1975 Atty. Gen. Op. No. 4194, p. 243. See also S. C. Code § 4-1-80 (County must provide probate judge and master in equity office room, furniture, stationery, fuel, lights, postage, and other necessary incidentals). Also, Section 4.2 of Act 189 of the 1989 Acts and Joint Resolutions (the Appropriations Act) requires that each county provide an office, utilities, and telephone services for resident circuit and family court judges for the fiscal year specified. While this proviso is temporary and will expire at the end of the fiscal year, Op. Atty. Gen. dated June 12, 1985, a similar proviso has been included in the 1990-1991 Appropriations Bill proposed by the House of Representatives. (See section 4.2 of section 4 of H.4800).

As to the Dorchester County health department, Section 122.5 of Act 189 of the 1989 Acts and Joint Resolutions (the Appropriations Act) provides that

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(e)ach county shall provide all ... operating expenses (except salary, fringe benefits and travel reimbursement) of the local health department in an amount at least equal to that appropriated for operations for each county in Fiscal Year 1981.

Again, this provision will expire at the end of the fiscal year, but is presently binding and has also been included in the 1990-1991 House Appropriations Bill. (See section 122.5 of section 122 of H.4800).

Also, S. C. Attorney General Opinion No. 78-194 found that the Commission on Alcohol and Drug Abuse in Dorchester County is a county agency and that minibottle funds collected and disbursed pursuant to § 61-5-130 et seq. to counties are considered local funds. See also Act 640 of 1973.

It is, therefore, the opinion of this Office that rent may not be assessed against the State for these agencies or offices due to the fact that the agencies are county entities or due to provisos which would expressly prohibit such county action. As to the Dorchester County Department of Social Services and the Summerville satellite office of the Charleston Area Mental Health Center, the answer is less clear. However, assuming arguendo that these agencies are state entities and without the necessity of making that specific determination for the reasons provided below, this Office is unable to find any specific statutory authority which empowers Dorchester County to charge rent against these agencies.

While the statute you mention in your request, S. C. Code Ann. § 10-1-50, does direct that "all State or Federal agencies ... housed in the new State office building shall pay rent", there are no similar statutes regarding the power of a county to require payment of rent from "State agencies", if, in fact, the Summerville satellite office of the Charleston Area Mental Health Center and the Dorchester County Department of Social Services could be deemed "State agencies" for the purposes of such a statute. See also Section 129.17(a) of Act 189 of 1989 Acts and Joint Resolutions, p. 1366. ("The Budget and Control Board is hereby directed to assess and collect a rental charge from all departments and agencies of the State Government occupying space in State-controlled office buildings).

It is clear that

Counties and municipalities are political subdivisions of the State and have only such powers as have been given to them by the State, such as by legislative enactment. Williams v.

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Wylie, 217 S.C. 247, 60 S.E.2d 586 (1950). Such political subdivisions may exercise only those powers expressly given by the State Constitution or statutes, or such powers necessarily implied therefrom, or those powers essential to the declared purposes and objects of the political subdivision. McKenzie v. City of Florence, 234 S.C. 428, 108 S.E.2d 825 (1959).

S. C. Atty. Gen. Op. February 8, 1990. See also S.C. Atty.Gen.Op. February 25, 1988; 20 C.J.S. Counties, §49, pp. 802-803. Powers not conferred are as prohibited as those expressly prohibited. 20 C.J.S., Counties §49. Counties as subdivisions of the State, are subordinate to and subject to legislative control as being created with view to the policy of the State and serving as its agencies. Parker v. Bates, 216 S.C. 52, 56 S.E.2d 726 (1949); Law v. City of Spartanburg, 148 S.C. 229, 146 S.E. 12 (1928); 1969 S.C. Op. Atty. Gen. 21. While it has been established that a county may not tax an agency of the State, 1947-8 Atty. Gen. Op. No. 300; 1970 Atty. Gen. Op. No. 3004; Kramer v. Co. Council of Dorchester County, 277 S.C. 71, 28 S.E.2d 850 (1981), the issue of rent has not been addressed by the courts or legislature in South Carolina.

The legislature has allowed counties to assess and levy taxes and charges for the functions and operations of the county, including social services and public health, and to establish agencies, boards, and commissions in the county as may be necessary to provide services of local public concern, S. C. Code § 4-9-30(5) & (6), but it has not specifically granted to counties the power to assess rental charges against the county departments of social services or mental health community services programs, particularly where it has granted the right in other instances. See S. C. Code § 10-1-50. Also, S. C. Code § 4-9-50 provides that the General Assembly must provide sufficient funds for county implementation whenever general law directs the use of county personnel, facilities, or equipment except for the construction of or improvement of county capital improvements or other permanent facilities.

Article VIII §7 of the South Carolina Constitution directs that the organization, powers, duties, and responsibility of counties shall be provided by the General Assembly. See also S.C. Atty. Gen. Op. No. 85-51. The powers which have been granted to the counties are subject to the general law of this State and counties lack the authority to change the general law. S.C. Atty. Gen. Ops. 12/21/88; 5/14/86; 5/22/84. As these agencies were established by the general law of this State, S.C. Code Ann §§43-3-10 and 44-5-10, I am hesitant to say that Dorchester County could impose rental charges against agencies created by the General Assembly without an express authorization. Cf. p.3, S.C. Atty. Gen. Op. 2/25/88.

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Furthermore, it appears that the budgetary requirements for the local departments of social services and local mental health centers have traditionally been shared between the state and the counties and may establish for the State Department of Social Services and State Department of Mental Health the equitable defense of estoppel. See S.C. Code Ann. §43-3-60; Fiscal Policy and Procedure Manual of the South Carolina Department of Social Services, pp. 3, 13; D.S.S. proviso in 1938 Appropriations Act, Act No. 972; see also S. C. Code Ann. § 44-6-132(5)(c) (The "cost of providing indigent care must be equitably born by the State, Counties, and providers of care").

Local departments of social services and community mental health services programs submit budget requests to the South Carolina Department of Social Services and South Carolina Department of Mental Health which, in turn, include approved requests in budget proposals to the South Carolina legislature for yearly funding. See S. C. Code §§ 44-15-20, 44-15-30, 44-15-40, 43-3-80. Funding by the State of local departments of social services and mental health entities through the Department of Mental Health and the State Department of Social Services is reflected in the 1989-1990 Appropriations Act, as well as the Appropriation Bill for 1990-1991. (See sections 40 and 43 of Act 189, pp. 1093-1094, and sections 40 and 43 of H. 4800). The local mental health entities also make funding requests from county sources, S. C. Code § 44-15-70, and funding from county sources to county social services entities was anticipated by the legislature. S.C. Code §43-3-60.

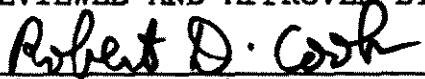
As I can find no authority which either permits or prohibits the county assessment of rent for office space occupied by the Summerville satellite Office of the Charleston Area Mental Health Center and the Dorchester County Department of Social Services, and as there has been established a tradition of sharing expenses, it will be necessary to resort to the courts or legislature for clarification.

With kind regards, I am

Sincerely,  
  
Salley W. Elliott  
Assistant Attorney General

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REVIEWED AND APPROVED BY:

  
Robert D. Cook  
Executive Assistant for Opinions

cc: The Honorable Wayne H. Reeves  
Dorchester County Council