

## The State of South Carolina



## Office of the Attorney General

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March 3, 1992

Gayle B. Nichols, Staff Counsel  
The Public Service Commission  
Post Office Drawer 11649  
Columbia, South Carolina 29211

Dear Ms. Nichols:

In a letter to this Office you questioned whether the term "municipality" as used in Section 58-23-60(1) of the Code includes a county.

You stated that the Public Service Commission (the Commission) issues certificates of public convenience and necessity and regulates motor carriers who transport persons or property for compensation over improved highways in this State. Pursuant to the referenced provision, the Commission does not regulate motor vehicles which transport passengers or property "within the limits of a municipality." The term "municipality" is not specifically defined. However, in other statutes relating to Commission regulation, the term "municipality" is given a broad definition which includes a county. See: Sections 58-27-10; 58-29-20(11); 58-33-20(4) of the Code. You stated that you disagreed with assertions that motor carriers are not subject to Commission regulation if they are operating within a county.

The term "municipality" has been construed in certain situations to include a county. See: Farson v. Board of Education of Perry County, 100 F.2d 974, 976 (6th Cir. 1939) (a county is for school purposes a "municipality.") Kosydar v. Collins, 270 P.2d 132, 135 (Ore. 1954) (a county is a "municipality or district" within the meaning of a constitutional provision which reserved initiative and referendum powers to the voters of each municipality and district). However, the term "municipality" has also been construed as not including a county. See: E.T.O. Inc. v. Town of Marion, 361 N.W.2d 91, 94 (Minn. 1985) (a county

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is not a municipality for purposes of a statute which prohibits the sale of intoxicants within 1500 feet of a public school outside a municipality; the term "municipality" only includes a city.); State v. Crandon, 141 So. 177, 178 (Fla. 1932) (a county is not a "municipality" for purposes of a constitutional provision providing for abolishment of municipalities.) Black's Law Dictionary (6th Ed. 1991) defines a "municipality" as

A legally incorporated or duly authorized association of inhabitants of limited area for local governmental or other public purposes. A body politic created by the incorporation of the people of a prescribed locality invested with subordinate powers of legislation to assist in the civil government of the state and to regulate and administer local and internal affairs of the community ... A city, borough, town, township or village. Also, the body of officers taken collectively, belonging to a city, who are appointed to manage its affairs and defend its interests.

Political subdivision or public agency or instrumentality of a State.

As you also indicated, while subsection (1) of Section 58-23-60 refers to a "municipality", subsections (2), (3) and (5) make specific reference to a "county." Therefore, it appears that the term "county" is used in contrast to "municipality", a term which appears earlier in the same statute. As a result, it appears that such terms are distinguishable. See: Opin. of the Atty. Gen. dated August 23, 1984.

You also stated in your memorandum that:

... if Section 58-23-60(1) included a county within the definition of a municipality, the Commission would have no authority to regulate motor carriers within counties. Because of the contiguous nature of the counties in South Carolina, this exception would effectively nullify the Commission's authority to regulate motor carriers.

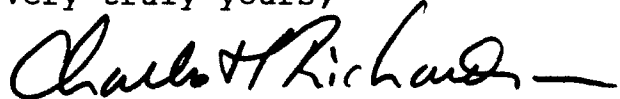
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As referenced in a prior opinion of this Office dated January 4, 1991 "... the Legislature is presumed not to pass legislation with an ineffective or absurd result." See also: Sutherland Statutory Construction, Vol. 2A, § 45.12; State v. Board of Dental Examiners v. Breeland, 208 S.C. 469, 38 S.E.2d 644 (1946).

Referencing the above, I am in agreement with your opinion that the term "municipality" as used in Section 58-23-60(1) should not be construed as including a county within its definition. I am also in agreement that an amendment specifically defining the term "municipality" would be useful to conclusively remove any ambiguity.

With kind regards, I am

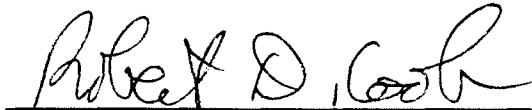
Very truly yours,



Charles H. Richardson  
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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