

The State of South Carolina



Office of the Attorney General

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October 5, 1989

The Honorable Glenn F. McConnell
Senator, District No. 41
27 Bainbridge Drive
Charleston, South Carolina 29407

Dear Senator McConnell:

By your letter of September 19, 1989, you have asked for the opinion of this Office as to several questions about regional transportation authorities. You have asked:

1. Does "financial contribution," as defined in Section 58-25-20(17), South Carolina Code of Laws (1988 Cum. Supp.), include the vehicle registration fees in relation to determining membership on the regional transportation authority (RTA) board?
2. Are active military personnel exempt from vehicle registration fees?
3. Can a city or town withdraw from membership in an RTA without a dissolution of the RTA?

Each of your questions will be addressed separately, as follows.

Question 1

The term "financial contribution" is defined in Section 58-25-20(17) of the Code to mean "the sum of actual cash plus the actual value of any materials or in-kind services supplied." The term "actual cash" is not defined, however, and it is necessary to examine other statutes relative to financing RTA operations to give it an appropriate meaning.

When an RTA is being established, a favorable referendum to obtain the approval of the electorate in the service area is required. Section 58-25-30(4) requires that the referendum question include "the proposed method of financing, including the level of

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tax to be initially imposed... ." Thus, a participating political subdivision may contribute certain taxes to finance the RTA; such would be "cash."

Rates, fees, and fares may be charged by the RTA for use of services or facilities of the authority pursuant to Section 58-25-50(i) of the Code. An authority may accept gifts, grants, or loans of money or other property, by Section 58-25-50(p) of the Code. Rates, fees, and fares would not be attributable to a particular political subdivision and thus would not be considered a part of one's "financial contribution." Whether a gift or grant would be considered "actual cash" or "any materials or in-kind services supplied," so as to be attributable to a particular political subdivision would necessarily depend upon the nature of the gift or grant.

Other sources of funding are mentioned in Section 58-25-60 of the Code; other local, state, and federal sources of funding are contemplated as possibilities. Specifically authorized is the imposition of a vehicle registration fee to "be levied by the governing bodies of the member cities and counties on the motor vehicles registered within the service area of the authority." These fees are to be collected as a part of the personal property tax and rebated to the authority. Clearly, such would be "cash" and would be attributable to a particular political subdivision.

Giving effect to all parts of the statutes relative to regional transportation authorities, as must be done whenever possible, Bradford v. Byrnes, 221 S. C. 255, 70 S.E.2d 228 (1952), it would be appropriate to consider a participating city's or county's "financial contribution" to be the sum of taxes levied on behalf of the RTA, vehicle registration fees collected, any outright gifts or grants or cash, and the actual value of materials or services supplied to the RTA.

Membership on the governing body of an RTA is provided for in Section 58-25-40 of the Code and provides in subsection (1) in pertinent part:

The membership of the governing board must be apportioned among the member cities and counties proportionate to population within the authority's service area or the financial contribution to the authority by the member municipalities and counties. The method of appointment must be determined as follows: If the financial contribution of governmental members is consistent with the population base, the method is by population

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as provided in this section. If the financial contribution is not consistent with the population base, then the method is by a ratio of financial contributions.

No guidance is offered therein as to what should constitute a member-government's "financial contribution." Therefore, it is our opinion that the sum of taxes and vehicle registration fees plus whatever contributions may be considered as "materials or in-kind services supplied" to the RTA by a particular political subdivision may be considered to be its "financial contribution" for purposes of determining membership on the governing body of an RTA. If this result was not intended by the legislature, perhaps legislative clarification would be in order.

Question 2

Referencing the Soldiers' and Sailors' Civil Relief Act of 1940, you have asked whether active military personnel would be required to pay a vehicle registration fee if such were levied on behalf of an RTA. The Soldiers' and Sailors' Civil Relief Act of 1940 is codified at 50 U.S.C. Appx. §501 et seq.

In particular, 50 U.S.C. Appx. §560(1) exempts from property taxes any personalty or realty of active military personnel. The purpose of the Soldiers' and Sailors' Civil Relief Act generally and this section specifically is to relieve nonresident military personnel of the burden of supporting the government of a state in which they are present solely in compliance with military orders. United States v. Illinois, 287 F. Supp. 638 (E.D. Ill. 1975); California v. Buzard, 382 U. S. 386, 86 S. Ct. 478, 15 L. Ed.2d 436 (1966). For a serviceman to be afforded relief under the Act, however, such an imposition must be found to be a tax.

Section 58-25-80 declares a regional transportation authority to exist for public and nonprofit purposes and that it is a public agency existing for the benefit of the public. As noted above, member-governments may levy taxes on its behalf, and by Section 58-25-60 may also levy a "vehicle registration fee," to be "added to the personal property tax notice collected as a part of the personal property tax and the fee rebated to the authority."

While the amount to be so collected is called a "fee," it may well be a tax in actuality. In an opinion of this Office dated September 16, 1988, in reliance on Casey v. Richland County Council, 282 S. C. 387, 320 S.E.2d 443 (1984), this Office advised:

To be an assessment [i.e., a surcharge or fee], there must be a benefit and, if none, it is a tax. Taxes are imposed on all property for the maintenance of government while assessments are placed only on the property to be benefitted by the proposed improvements.

Id., 282 S. C. at 389. ...[P]roperty for which the fee is not paid would not benefit from the fire protection service. Thus, a fee rather than a tax is being imposed... .

Considering the above, no particular piece of property will benefit from imposition of the fee. Instead, such will imposed on all vehicles registered in the political subdivisions so affected for the benefit of the public agency, an arm of government. Thus, the fee is most probably a tax in actuality. 1/

The fee thus most probably being actually a tax, vehicles registered to active military personnel subject to the benefits of the Soldiers' and Sailors' Civil Relief Act would not be subject to the vehicle registration fee.

Question 3

The means for withdrawal from a regional transportation authority is the gist of your third question. Joining an RTA as an initial member is covered by the provisions of Section 58-25-30 of the Code relative to activation of an authority; joining an RTA once it has become established is governed by Section 58-25-40(3). No statute specifically governs withdrawal from membership, however.

Dissolution of an authority is provided for in Section 58-25-30(5), which provides:

Dissolution of the authority created pursuant to this chapter must be in the same manner as that for creation of the authority as set forth in

1/ Should such be determined to be a tax by a court considering the issue, certain constitutional issues may be raised. See, for example, Article X, Section 6 of the State Constitution as to requirements of uniformity. Equal protection might also be a problem.

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this chapter. All resources of the authority including, but not limited to, real and personal property, structures, improvements, buildings, equipment, plants, rolling stock, vehicle improvements, vehicle parking, or other facilities and rights-of-way must be disposed of and the proceeds distributed among the authority's government members proportionate to their financial contribution.

Even this statute does not cover a situation in which one member-government wishes to withdraw from membership.

We note that withdrawal of a member-government from an RTA would affect the service area of the RTA, the service plan as duly adopted, service procedures, capital input and ongoing financial support, and governance of the authority. Of course, each member-government's proportionate financial contribution would change, and such change would potentially affect the composition of the governing board of the RTA. To dissolve an RTA because a member wished to withdraw would apparently require a favorable referendum, according to the strict terms of Section 58-25-30(5), and arguably another favorable referendum would then be required to re-create the authority for those member-governments wishing to continue their participation. Because there is no clear answer as to the withdrawal process, this may be an area which the General Assembly would wish to address legislatively.

Conclusion

Based on the foregoing, it is the opinion of this Office that:

1. The term "financial contribution" would include the sum of taxes and vehicle registration fees plus whatever contributions may be considered as "materials or in-kind services supplied" to the RTA by a particular political subdivision.

2. The vehicle registration fee permitted to be levied by the terms of Section 58-25-60 of the Code would most probably actually be a tax, in spite of being called a fee, and for that reason the vehicles belonging to active military personnel subject to the terms of the Soldiers' and Sailors' Civil Relief Act of 1940 would not be subject to the levy.

3. There is no clear answer as to how a member-government may withdraw from membership in an RTA without dissolving the RTA. The General Assembly may wish to consider addressing this question legislatively.

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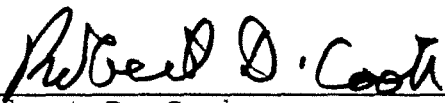
With kindest regards, I am

Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP/nnw

REVIEWED AND APPROVED BY:



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