

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 803-734-3680

October 4, 1988

Opinion 88-75

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Mr. John C. Hankinson, Jr.
Interim Director
South Carolina State Development Board
P. O. Box 927
Columbia, South Carolina 29201

Dear Mr. Hankinson:

You have requested the advice of this Office with regard to a jurisdictional dispute between the Housing Authority of Conway (HAC) and the Housing Authority of Myrtle Beach (HAMB). At the outset, I apologize for the delay in providing a written response; however, because of the joint federal-state-local nature of the housing programs, we were required to obtain information from both the federal and local authorities, necessitating some delay.

The Housing Authority of Conway was created pursuant to Article 5, Chapter 31, of the South Carolina Code as a city housing authority, and it has been in existence for several years. In 1982, pursuant to Section 31-3-390, the State Development Board extended the territorial jurisdiction of the HAC to include all of the non-incorporated areas of Horry County. (See, State Development Board Resolution dated April 7, 1982.) In 1987, the HAMB was created by the Myrtle Beach City Council pursuant to Article 5, Chapter 31, of the South Carolina Code as a city housing authority. Pursuant to the enabling Act, the HAMB's jurisdiction is "coterminous with the boundaries of the city creating the authority unless this territory is extended by the [Development] Board." Section 31-3-390.¹ The Development Board has not extended, and I presume there has not

1. Section 31-3-400 also addresses extra territorial powers of a city housing authority; however, its provisions are inapplicable to the present dispute.

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been a request to extend, the HAMB's jurisdiction and, thus, its jurisdiction tracks the city's boundaries.

Statutory language must be given its plain and ordinary meaning, Merchant's Mutual Ins. Co. v. South Carolina Second Injury Fund, 277 S.C. 604, 291 S.E.2d 667 (1982), in the manner that the words are normally understood, unless the words have a well-recognized technical meaning that has arisen in a particular context. Hughes v. Edwards, 265 S.C. 529, 220 S.E.2d 231 (1975). I am aware of no administrative history or interpretation that would dictate application of a special or technical meaning to the words "territorial jurisdiction" in this context and, therefore, the terms must be construed as they are ordinarily understood. "Territorial jurisdiction" of a governmental agency or subdivision generally means the territory over which the agency or subdivision has authority to operate. 41 WORDS AND PHRASES, "Territorial Jurisdiction." Accordingly, the plain and ordinary meaning of the provisions addressing the territorial jurisdiction of city housing authorities limits and defines the area in which the city housing authority may operate to that of its municipal creator.

The present inquiry arises because the HAMB wishes to provide assistance to clients who choose to locate or relocate into the unincorporated eastern portion of Horry County, contiguous to the City of Myrtle Beach. According to the Myrtle Beach officials, the high cost of housing within the corporate limits of Myrtle Beach significantly restricts the availability of suitable, appropriate housing for low-income families; thus, the low-income clients would have greater housing opportunity if they could locate outside of the Myrtle Beach corporate limits. On the other hand, as earlier noted, the unincorporated areas of Horry County are presently within the designated extra-territorial jurisdiction of the HAC.²

2. A letter dated May 18, 1988, from the attorney for the HAMB discusses its jurisdiction with relation to the eastern portion of Horry County. The letter is somewhat ambiguous in its conclusion that the Housing Authority of Myrtle Beach "would be permitted upon resolution passed by the Board/Authority to have jurisdiction in the eastern portion of Horry County." I assume that the reference to the "Board" is a reference to the State Development Board and I assume that the reference to the "Authority" is a reference to the Myrtle Beach Housing Authority. The letter's conclusion does not indicate whether the Development Board has enacted the resolution, and I understand that it has not.

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As earlier noted, city housing authorities receive substantial funding pursuant to federal law. 42 USC § 1401, et seq. While an extensive analysis of the federal law is not necessary to resolve the state law questions, reference to it is required for a better understanding of the operation of the programs. The federal Act provides for housing assistance funds for state or local agencies; however, the federal program is developed and administered by the state and local authorities pursuant to state law. See, 42 USC § 1402(11). Thus, there is a general deference to the state law in this context. The federal Housing Act initially emphasized the funding, construction or acquisition of housing by the local governmental authorities for the purpose of providing low-rent housing. Section 8 of the original Housing Act (1937 Act) was substantially amended in 1974 and the amendment is presently codified at 42 USC § 1437f. The emphasis of the amended Section 8 is to provide assistance payments for lower-income families in order that they may rent pre-existing dwelling units that are privately owned. 42 USC § 1437 f(b)(1) provides:

The Secretary is authorized to enter into annual contributions contracts with public housing authorities pursuant to which such agencies may enter into contracts to make assistance payments to owners of existing units in accordance with this section.

The primary federal emphasis in assistance has recently been pursuant to the Section 8 program; thus, the state and local authorities have had to concomitantly adjust their program emphasis. In contrast, however, the applicable state enabling Act (Article 3, Title 31), which was enacted prior to the change in the federal law, focuses upon the more traditional operations earlier identified, and there have not been any significant amendments (at least in this context) to accommodate this change in emphasis by the federal programs. Thus, the state law is deficient in this area; nonetheless, while the state law neither contemplated nor emphasizes the Section 8 programs, I believe the express language of the enabling Act is broad enough to authorize the city housing authorities to participate in the Section 8 programs. See, Section 31-3-450 of the South Carolina Code.

One of the significant aspects of the Section 8 programs is that it promotes flexibility and mobility by providing opportunities for lower-income families to rent existing housings in locations that are most convenient for the families and in neighborhoods that are heterogeneous. Nevertheless, because of

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the federal program's operational dependency upon the state and local programs, this desired flexibility and mobility may be somewhat constrained by the state jurisdictional restrictions applicable to the local housing authorities. I cannot say, however, that these jurisdictional limitations are not contemplated by the federal law since it appears that provision is made in the federal law to address local jurisdictional problems. Pursuant to Section 8, at least with regard to contiguous metropolitan statistical areas, if a family receiving rental assistance moves to an area outside the jurisdiction of the particular local housing authority, then the public housing authority having jurisdiction with respect to the new dwelling unit to which the family moves assumes responsibility. And if no public housing authority has such jurisdiction, then the public housing authority that has approved the assistance retains the responsibility. 42 USC § 1437f(r)(2) and 42 USC § 1437f(r)(1). Moreover, the federal regulations recognize that an eligible family may relocate to an area under the jurisdiction of another local authority and provides in that respect:

(c) PHAs [Public Housing Authorities] are encouraged to promote greater choice of housing opportunities by: . . .

(3) cooperating with other PHAs by issuing Certificates to Families already receiving the benefit of Section 8 housing assistance payments who wish to move from the operating area of one PHA to another, and

(4) developing administrative arrangements with other PHAs in order to permit Certificate Holders to seek housing in the broadest possible area. In any geographic area established for the purpose of allocating funds, HUD will give preference in funding to PHAs which provide Families the broadest geographical choice of units.³

24 CFR § 882.103(c)(3) and (4) (1988). Again, I refer to these federal provisions simply to demonstrate that the federal law

3. I refer you to Chapter 7 of HUD Handbook 7420.7 for amplification of these federal regulatory requirements.

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contemplates fragmentation in the delivery of assistance because of jurisdictional limitations imposed by state or local law. I also reiterate, however, that the federal law encourages resolution of these fragmentation problems by (1) encouraging local authorities to extend their jurisdictions in order to provide clients the fullest opportunity to secure adequate housing to the extent permitted by the applicable state law, and (2) cooperation with other local⁴ housing authorities as directed in 24 CFR 882.103(c)(3) and (4).

The conclusions reached herein do not, however, frustrate the needs of the Myrtle Beach Housing Authority to increase the available housing for low-income families. Provisions of the state enabling Act provide flexibility in order that the state and local officials may resolve this pending problem. Section 31-3-40 provides authority for enlarging a local authority's jurisdiction by cooperative agreement between local authorities. This provision is applicable to city housing authorities and appears to provide at least one available remedy to the present dilemma confronted by the HAMB. More significantly, the State Development Board, pursuant to Section 31-3-390, may in its discretion determine appropriate extra-territorial boundaries of city housing authorities in order to best serve the public's housing needs. The Board's express authority to extend the territorial jurisdiction of a city housing authority is, of necessity, an inherent authority to adjust or modify any extension of a city housing authority's extra-territorial jurisdiction as necessitated by the public's needs.

I will summarize the various conclusions reached herein. First, the state enabling Act provides authority to city housing authorities to participate in federal Section 8 rental assistance programs. Second, the statutory provisions that prescribe the territorial jurisdiction of the city housing authorities most probably define and limit the service areas of the city housing authorities. This conclusion, however, is not completely free from doubt since the state enabling law is not precisely tailored to the administration of the Section 8 programs of the federal government. Third, the state-created jurisdictional restraints do not conflict with the federal law, at least in this particular instance, although they do make the administration of the housing programs more cumbersome. Fourth, consistent with both federal and state law, local housing authorities

4. Parenthetically, the federal statutes may require local housing authorities to serve clients in a contiguous metropolitan statistical area where no other authority has jurisdiction. 42 USC § 1437f(r).

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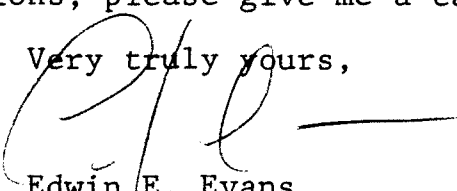
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must attempt to resolve by cooperation jurisdictional problems that interfere with the providing of adequate housing for low-income families. Fifth, the Development Board is authorized, in its discretion, to adjust or modify the extra-territorial boundaries of the HAC and HAMB to best serve the needs of the public. Finally, in response to your specific request, the state enabling Act is deficient in the sense that it does not contemplate nor emphasize the administration of the Section 8 federal housing programs, and legislative changes to more clearly address the administration of these programs would be desirable.

If I may answer any questions, please give me a call.

Very truly yours,


Edwin E. Evans
Chief Deputy Attorney General

EEE/shb

REVIEWED AND APPROVED:



ROBERT D. COOK
EXECUTIVE ASSISTANT FOR OPINIONS