

The State of South Carolina



Opinion No. 85-5 p/11

Office of the Attorney General

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April 10, 1985

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Dear Ms. Zeigler:

By your letter of April 8, 1985, you have asked whether the Governor or the Richland County Council would be the appropriate appointing authority for members of the Richland County Historic Preservation Commission.

Section 4-9-170, Code of Laws of South Carolina (1976), provides the following:

The [county] council shall provide by ordinance for the appointment of all county boards, committees and commissions whose appointment is not provided for by the general law or the Constitution. Each council shall have such appointive powers with regard to existing boards and commissions as may be authorized by the General Assembly except as otherwise provided for by the general law and the Constitution, but this authority shall not extend to school districts, special purpose districts or other political subdivisions created by the General Assembly; provided, however, that beginning January 1, 1980, the council shall provide by ordinance for the appointment of all county boards, committees and commissions whose appointment is not provided for by the

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general law or the Constitution, but this authority shall not exceed to school districts, special purpose districts or other political subdivisions created by the General Assembly.
[Emphasis added.]

To respond to your inquiry, it is necessary to determine whether the Richland County Historic Preservation Commission (hereafter "Commission") is a county board, committee or commission, or whether it is a special purpose district or other political subdivision and thus not subject to the provisions of Section 4-9-170 of the Code.

The Commission was created by Act No. 69 of 1963, for the purpose of historic preservation. The Commission is designated a body politic and corporate by Section 2 of the Act and was given all the rights and privileges associated with such corporate status; notably absent is any language referring to the Commission as a county agency or department. The Commission is specifically empowered to, inter alia, sue and be sued; adopt and use a corporate seal; to make contracts, charge admission fees, and prescribe rules and regulations with respect to its facilities, purposes, and affairs; to employ personnel; to acquire property and receive grants; and others. Property of the Commission is tax-exempt. The Commission may borrow money and mortgage or pledge its property, but it may not incur indebtedness binding upon the State or Richland County. See Section 8 of Act No. 69. No specific geographic territory is assigned to the Commission, but it is readily inferable that the Commission would serve all of Richland County. See Gould v. Barton, 256 S.C. 175, 181 S.E.2d 662 (1971).

Section 3 of Act No. 69 specifies appointment procedures for Commission members:

The Commission shall be composed of six resident electors of the county to be appointed by the Governor upon the recommendation of a majority of the Richland County Legislative Delegation, including the Senator. The Major and City Council of the City of Columbia may recommend two members and the Board of Trustees of the Historic Columbia Foundation, Inc., may recommend two members to

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the Richland County Legislative
Delegation. The members shall serve
for terms of five years and until
their successors are appointed and
qualify... .1/

Based on the following, it is the opinion of this Office that the Commission would be a special purpose district. As such, Richland County Council would have no authority under Section 4-9-170 of the Code to assume the appointive powers for Commission members; the Governor should therefore continue to appoint Commission members under the terms of Act No. 69 of 1963.

The attributes of special purpose districts are discussed in an opinion and accompanying memorandum of this Office dated November 14, 1984; copies are enclosed herewith. The Commission meets sufficient criteria to be considered a special purpose district in that it was established by an act of the General Assembly for a single, as opposed to general purpose (historic preservation); it is a body politic and corporate with attendant corporate powers and duties; the governing body is appointed by the Governor; while the Commission may not levy taxes or issue bonds, 2/ it is empowered to incur indebtedness and borrow money as long as the indebtedness is not binding upon the county or the state; and it was not created by the county pursuant to Section 4-9-30(5) of the Code or otherwise. Applying these criteria, as fully discussed in the opinion of November 14, 1984, this Office concludes that the Commission would be a special purpose district.

The Commission could also be considered a political subdivision independent of its status as a special purpose

1/Such recommendations to the appointing authority are permissible, as long as the appointing authority ultimately exercises its discretionary power to make the appointment. See People ex rel. Balcom v. Mosher, 163 N.Y. 32, 57 N.E. 88 (1900); State ex rel. Riley v. Pechilis, 273 S.C. 628, 258 S.E.2d 433 (1979); 3 McQuillin, Municipal Corporations § 12.72.

2/Lack of taxing power does not preclude an entity from being a special purpose district. See Chicago Transit Authority v. Danaher, 40 Ill.App.3d 913, 353 N.E.2d 97 (1976); Ops. Atty. Gen. dated November 14, 1984 and November 26, 1984.

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district, which status would likewise remove the Commission from the terms of Section 4-9-170 of the Code. Historic preservation, a governmental purpose, is carried out by the Commission. The Commission as an entity is a subdivision of the state and the county, and its boundaries are determinable, coexistent with Richland County's boundaries. The Commission acts autonomously, selecting its own officers from members appointed by the Governor. See Op. Atty. Gen., November 14, 1984 and attachment (Order of the Honorable George Coleman). Thus, the Commission possesses those attributes of a separate political subdivision in addition to being a special purpose district.

The conclusions reached herein are consistent with prior opinions of this Office holding that similarly constituted entities are special purpose districts and thus are outside the scope of Section 4-9-170 of the Code. See particularly Ops. Atty. Gen. dated November 26, 1984 (regional transportation authorities are special purpose districts but Section 4-9-170 not discussed); October 17, 1980 (Union Hospital District and Union Recreation District are special purpose districts to which Section 4-9-170 does not apply); July 5, 1979 (Williamsburg County Recreation Commission); December 30, 1983 (Anderson County Fire Protection Commission); July 29, 1980 (also Anderson County Fire Protection Commission).

Several years after this Office opined that the Williamsburg County Recreation Commission is a special purpose district, see Op. Atty. Gen. dated July 5, 1979, the South Carolina Supreme Court in Richardson v. McCutchen, 278 S.C. 117, 292 S.E.2d 787 (1982) stated that "[i]n 1971 the General Assembly created the five member Williamsburg County Recreation Commission as a special purpose district." 278 S.C. at 118, 292 S.E.2d at 787. A comparison of Act No. 191 of 1971, creating the Williamsburg County Recreation District and Commission, to Act No. 69 of 1963, reveals that the two acts, substantively speaking, are virtually identical. 3/ A court considering the status of the

3/The basic differences in the two acts are that in Act No. 191 of 1971, the word "district" and a geographic territory are specified for the Williamsburg County Recreation Commission. Based on authority contained in Op. Atty. Gen., November 14, 1984, such absences in Act No. 69 of 1963 for the Historic Preservation Commission would not be significant or sufficient to preclude its being a special purpose district.

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Richland County Historic Preservation Commission could certainly find the similarities in the two acts and the dicta in Richardson v. McCutchen, supra, persuasive, leading readily to the conclusion that the Historic Preservation Commission would also be a special purpose district, just as is the Williamsburg County Recreation Commission.

In conclusion, it is the opinion of this Office that the Richland County Historic Preservation Commission would be a special purpose district and a political subdivision, separate from Richland County, which district or subdivision would not be subject to the provisions of Section 4-9-170 of the Code. The Governor would continue to appoint Commission members pursuant to Section 3 of Act No. 69 of 1963.

Sincerely,

Patricia D. Petway
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Assistant Attorney General

PDP/an

Enclosure

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions