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August 27, 1985

Stephen A. Kern, Esquire  
City Attorney, City of Greenville  
Post Office Box 2207  
Greenville, South Carolina 29602

Dear Mr. Kern:

This Office has been asked by Joseph M. Jenkins, Jr., attorney for the City of Greenville Housing Authority, to review our opinion of August 1, 1985, concluding that persons appointed to serve as commissioners of a municipal housing authority must be qualified electors of the municipality for which the housing authority has been established. It is contended that our assumption that the commissioners of the City of Greenville Housing Authority are not municipal officers was erroneous. We reaffirm our opinion of August 1, 1985.

The City of Greenville Housing Authority was established pursuant to general law in 1938. While the General Assembly basically created a housing authority in every municipality, a resolution by the city council was necessary to effectuate the law; should a city council have determined that no need for a housing authority existed, council could have prohibited operation of an authority by its failure to enact a resolution. See Act No. 956, 1938 Acts and Joint Resolutions, § 1; Woodworth v. Gallman, 195 S.C. 157, 10 S.E.2d 316 (1940). We would also note that the successor statutes to Act No. 956 of 1938 are codified in Article 5, of Chapter 3 of Title 31, entitled "City Housing Authorities."

Section 31-3-750, Code of Laws of South Carolina (1976), provides for the extension of jurisdiction of a city housing authority into the county:

The territorial jurisdiction of a housing authority of a county shall be coterminous with the boundaries of the

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county in which such authority is situated but shall not include that portion of the county within the territorial jurisdiction of any housing authority of a city. But notwithstanding the provisions of this section the [State Development] Board may extend the territorial jurisdiction of a housing authority of a city over territory contiguous thereto, including territory included within the territorial jurisdiction of the housing authority of a county, and such extension of the territorial jurisdiction of a housing authority of a city and limitation of the territorial jurisdiction of the housing authority of the county affected thereby shall not be deemed to conflict with the housing authority of the county within the meaning of § 31-3-390 unless a housing project shall have been constructed or acquired or the [State Development] Board shall determine that such a project is about to be constructed or acquired by the housing authority of such county within the territory proposed to be included within the territorial jurisdiction of the housing authority of the city. [Emphasis added.]

There does not appear within this statute any intent of the legislature that a city housing authority lose its identity as such following extension of its territorial jurisdiction into the county. See also the last paragraph of the Resolution of the State Development Board dated June 3, 1981, extending the territorial jurisdiction of the City of Greenville Housing Authority. It must be concluded that the Authority remained a municipal entity following the extension of its territorial jurisdiction by the State Development Board.

Finally, Section 31-3-340 of the Code, which provides for appointment of commissioners to a municipal housing authority, provides in part:

When the council of a city adopts a resolution as aforesaid, it shall promptly notify the mayor of such adoption. Upon receiving such notice the mayor shall appoint five persons as commissioners of the authority created for the municipality. ... No commissioner of an authority

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may be an officer or employer of the city for which the authority is created. ... [Emphasis added.]

There is no contention that appointments to the City of Greenville Housing Authority were made under any other statute but this one. Because of the repeated references to cities in Section 31-3-340 and further because the State Housing Authority is provided for by Sections 31-3-110 through -150 and county housing authorities by Sections 31-3-710 et seq., we must conclude that the City of Greenville Housing Authority is a municipal entity and therefore that the commissioners appointed pursuant to Section 31-3-340 would be municipal officers.

A review of the law relevant to the status of housing authorities reveals a split of authority as to status. See 40 Am. Jur. 2d Housing Laws and Urban Development § 10. In declaring housing authorities created similarly to the City of Greenville Housing Authority to be administrative agencies of the various cities, the Supreme Court of Alabama stated:

The Housing Authority is to be a corporation brought into existence upon the order of a city government, public in nature, and charged with the duty of performing an important element of the police power of the city under whose sanction it shall come into existence. [Citations omitted.]

... When the city is performing a governmental function, it is none the less so because it is done by the instrumentality of some administrative agency, such as a board, commission, or even a corporation set up for that purpose, created by or for the city's use in that connection.

The mere fact that it is a corporation does not deprive it of the qualities of a governmental agency ... .

The Housing Authority is an administrative agency of a city ... .

In Re Opinions of the Justices, 235 Ala. 485, 179 So. 535, 536 (1938). While we have located no case in which the South Carolina Supreme Court has determined explicitly the status of a

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housing authority vis a vis the municipality which created it, we believe our courts would find persuasive the reasoning of the Alabama Supreme Court, supra.

In conclusion, this Office reaffirms its opinion of August 1, 1985, concluding that commissioners of the City of Greenville Housing Authority must be registered and qualified electors of the City of Greenville, in keeping with Article XVII, Section 1 of the Constitution of the State of South Carolina, as well as Resolution No. 84-R-50 of the City Council of Greenville.

With kindest regards, I am

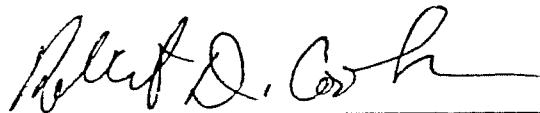
Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General

PDP:hcs

REVIEWED AND APPROVED BY:



Robert D. Cook  
Executive Assistant for Opinions