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The State of South Carolina



*Opinion No 85-79
PRIR*

Office of the Attorney General

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August 6, 1985

The Honorable David M. Beasley
House of Representatives
304 C Blatt Building
Columbia, South Carolina 29211

Dear Mr. Beasley:

You have requested an Opinion from this Office as to whether or not rural electric cooperatives "may enter into the home entertainment business." Based on information provided by this office, the facts which I shall consider for the purposes of this opinion are that a rural electric cooperative has become the sole shareholder (i.e. owner) of a subsidiary which markets television receiving only satellite systems and related television equipment and supplies.

The question which I shall address and about which I shall opine is the following: Does the South Carolina Rural Electric Cooperative Act (S.C. Code §§33-49-10, et seq.) allow a rural electric cooperative to wholly own a subsidiary which markets television receiving only satellite systems and related television equipment and supplies? For the reasons set out hereinafter, it is the opinion of this Office that the answer to this question is "yes."

I note initially that our Legislature has given broad latitude to the actions available to rural electric cooperatives to promote and extend the use of electricity in rural areas. A liberal construction of the Rural Electric Cooperative Act appears to be contemplated by §33-49-210 which provides:

§33-49-210. Purpose of organization under this chapter.

Cooperative nonprofit membership corporations may be organized under this chapter for the purpose of supplying electric

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energy and promoting and extending the use thereof in rural areas.

The Rural Electric Cooperative Act was passed "as a result of and to take advantage of the Federal Rural Electrification Act." (7 USC §§901-914) Byrd v. Blue Ridge Rural Electrical Cooperative, Inc., 118 F. Supp. 868 (1954) rev'd on other grounds 215 F. 2d 542 (1954), cert. den. 348 U.S. 915 (1955). This fact suggests that the South Carolina Legislature intended to grant rural cooperatives the power to engage in any lawful activity assisting rural families in obtaining or utilizing electric service. By way of example, Section 5 of the Rural Electrification Act (7 USC §905) authorizes the making of "loans (from REA funds) for the purpose of financing the wiring of the premises of persons of rural areas and the acquisition and installation of electrical and plumbing appliances and equipment." (Emphasis added) Thus, it is clear that the South Carolina Rural Electric Cooperative Act grants expansive powers to rural electric cooperatives.

In considering the question you have raised it is not necessary to call upon a liberal reading of the Rural Electric Cooperative Act or to analyze the Federal Rural Electrification Act in that the instant question is addressed specifically by our South Carolina Act. South Carolina Code §33-49-250 provides in part that:

§33-49-250. Powers of cooperative.

In addition to the powers conferred on all private corporations by §33-3-20 a cooperative shall have power:

* * * *

(4) To become a member in one of more other cooperatives or corporations or to own stock therein;...(emphasis added)

When a statute is plain and unambiguous, it should be applied literally because the legislative design is unmistakable. Duckworth v. Cameron, 270 S.C. 647, 244 S.E. 2d 217 (1978).

No ambiguity exists in §33-49-250. The statute clearly states that a rural electric cooperative shall have the power to own stock in one or more other cooperatives or corporations. There is no limiting language as to the purpose of the other cooperatives or corporations in which stock may be owned. Therefore, it is our opinion that a rural electric cooperative may own stock in a subsidiary which markets television only

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receiving satellite systems and related television equipment and supplies. We are aware of no reason why a rural electric cooperative could not own 100% of the stock of another corporation or cooperative. 1/

As stated hereinabove, S.C. Code §33-49-250 provides that a rural electric cooperative shall have "the powers conferred on all private corporations by §33-3-20." Section 33-3-20 provides that a corporation shall have the power to:

- (9) With respect to any property of any description or interest therein:
 - (A) To acquire, by purchase, lease, gift, will or otherwise:
 - (B) To own, hold, use, improve, and otherwise deal in and with, and
 - (C) To sell, convey, encumber, lease, or otherwise dispose of such property.

* * *

- (14) In any lawful manner to acquire, hold and dispose of and exercise any power or right with respect to:
 - (A) The share or other interests in, or obligations of, other domestic or foreign corporations, associations, partnerships, or individuals; and
 - (B) The obligations of the United States or any other government, state, territory, municipality, or governmental district, or of any instrumentality thereof.

1/ While we have been furnished an unofficial Opinion of the Georgia Attorney General which concluded that "under Georgia law an electric membership corporation is not authorized to sell to its subscribers television antennas or satellite dishes, we note that the Georgia enabling statute is much more restrictive than the South Carolina statute.

Specifically the Georgia Act cited in the opinion provided that an electric membership corporation may serve one or more of the following purposes.

- (1) To furnish electrical energy and service;
 - (2) To assist its members in the efficient and economical use of energy;
 - (3) To engage in research and to promote and develop energy conservation and sources and methods of conserving, producing, converting, and delivering energy; and
 - (4) To engage in any lawful act or activity necessary or convenient to effect the foregoing purposes.
- O.C.G.A. §46-3-200.

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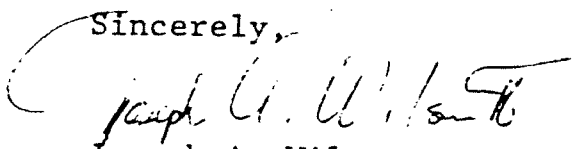
Sub-sections (9) and (14) above indicate the authority of a rural electric cooperative to own stock (up to 100%) in a subsidiary corporation.

The information you provided addressed the question of whether or not a rural electric cooperative could use its tax-preferred, non-profit status to acquire a favorable position in the marketplace. An inquiry of this type would require factual findings which this Office is not empowered to make in the context of issuing opinions. This Office cannot usurp the fact finding functions of the courts of the State of South Carolina. We are only in a position to issue opinions on matters of law where there is no factual dispute.

Depending upon the facts it is certainly possible that a rural electric cooperative could engage in unfair competition within the meaning of our state statutes as well as endanger the loss of its non-profit, tax preferred status. This inquiry, however, is one that would require factual analysis and, therefore, is one that must be left to the courts.

As I am sure you are aware, a private cause of action is available under the South Carolina Unfair Trade Practices Act (the Act), S.C. Code §§39-5-10, et seq. Section 39-5-140 of the Act provides a private cause of action and under appropriate circumstances an award of treble damages, attorneys fees and costs. Additionally, if you are aware of any facts that a specific rural electric cooperative has utilized its tax-preferred, non-profit status unfairly within the meaning of S.C. Code §39-5-20, a formal request for an investigation of such facts may be made pursuant to the Act.

Sincerely,


Joseph A. Wilson, II
Chief Deputy Attorney General

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