

EX-100 166

The State of South Carolina



Office of the Attorney General

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Opinion No. 85-14057

February 21, 1985

Ms. Alice T. Hite, Executive Director
Old Ninety Six Tourism Commission
Post Office Box 1305
Greenwood, South Carolina 29648

Dear Ms. Hite:

Chief Deputy Attorney General Joe Allen has referred your letter of February 2, 1985, to the Opinion Section for response. You have asked whether the Old Ninety Six Tourism Commission would be considered a political subdivision of the State of South Carolina for the purposes of exemption from certain taxation regulations. While the Commission would not be a separate political subdivision, there are ways in which charitable or tax-exempt contributions can be made for the use of the Commission under Section 170 of the Internal Revenue Code.

No one decision by the South Carolina Supreme Court has established all of the attributes of a political subdivision. A reading of the decisions indicates that the following are to be considered: how the subdivision is created, whether it serves a specific geographic area, how the governing body is selected, the purpose for existing, taxation or assessment powers, power to issue bonds or notes or incur indebtedness, and possession of corporate powers and duties. See, for example, Bagnall v. Clarendon & Orangeburg Bridge District, 131 S.C. 109, 126 S.E. 644 (1925); Jackson v. Breeland, 103 S.C. 184, 88 S.E. 128 (1915); Evans v. Beattie, 137 S.C. 496, 135 S.E. 538 (1926); Mills Mill v. Hawkins, 232 S.C. 515, 103 S.E.2d 14 (1957); Wagener v. Johnson, 223 S.C. 470, 76 S.E.2d 611 (1953); and Article X, Sections 6 and 14 of the State Constitution.

Applying the rationale of these and other cases and provisions of the State Constitution, it would appear that the

REQUEST LETTER

Continuation Sheet Number 2
To: Ms. Alice T. Hite
February 21, 1985

Commission was not established as a body politic and corporate; the Commission does not possess corporate powers, nor is it authorized to incur indebtedness, issue notes or bonds, or levy or assess taxes. The Commission is organized to serve a governmental purpose, and a specific geographic area is served by the Commission. Considering all of the aspects of a political subdivision, it must be concluded that the Old Ninety Six Tourism Commission is not a political subdivision of the State.

While its enabling legislation, Act No. 59, 1981 Acts and Joint Resolutions, created the Commission, its exact status other than a state commission is not completely clear. The Commission receives some funding from the State through the Department of Parks, Recreation, and Tourism. See Act No. 512, Part I, Section 66, 1984 Acts and Joint Resolutions. By its language Act No. 59 does not appear to create a new state agency, contrast Act No. 145 of 1984 (Job-Economic Development Authority) and Act No. 179 of 1981 (Family Farm Development Authority), nor does the Act specifically make the Commission a part of the Department of Parks, Recreation, and Tourism. It can only be said that the General Assembly has created an entity regional in scope to carry out a certain local governmental function, promotion of tourism.

This Office is advised that there is precedent in South Carolina for making tax-exempt or charitable contributions to the State for tourism purposes. Prior to the Springdale steeplechase course in Camden becoming a part of the Department of Parks, Recreation, and Tourism, that state department shared in the promotion of the fall steeplechase. Tax-exempt donations were made to the Department for the (unspecified but understood) purpose of funding the steeplechase. By Rev. Rul. 72-194, I.R.B. 1972-17, 11, the Internal Revenue Service granted charitable contribution status to donations made for the steeplechase, since the race was an official State event to promote tourism, which is an exclusively public purpose. In the same manner, contributions could be made for use by the Commission through the State by its Department of Parks, Recreation, and Tourism, to be accorded the same tax-exempt status under Section 170 of the Internal Revenue Code. You may wish to talk with officials at the Department to work out the details.

In conclusion, while the Old Ninety Six Tourism Commission is an entity created by the General Assembly to promote tourism, it is not a state agency or political subdivision. There are

Continuation Sheet Number 3
To: Ms. Alice T. Hite
February 21, 1985

methods which can be utilized to confer tax-exempt status on contributions made to the Commission through the State, however."

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP:djg

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions