1984 S.C. Op. Atty. Gen. 294 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-127, 1984 WL 159933

Office of the Attorney General

State of South Carolina
Opinion No. 84-127
October 31, 1984

***1 RE: § 167, Part I, of Act 512, 1984 Acts and Joint Resolutions**

Philip G. Grose, Jr.
Director
State Reorganization Commission
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Dear Phil:
Thank you for your letter concerning the above. You requested therein the opinion of this office on certain jurisdictional and definitional issues arising out of § 167, Part I, of Act 512, 1984 Acts and Joint Resolutions (the Appropriations Act). This provision provides:
. . . That the State Reorganization Commission is directed to develop program efficiency and effectiveness measures for each agency based on the statutory authority of each agency. The Commission shall report its findings to the General Assembly by March 1, 1985, and the Budget and Control Board shall incorporate efficiency and effectiveness measures in the 1986–87 State Budget. The Legislative Audit Council, in their normal review of the state agencies, shall review the appropriateness of an agency's efficiency and effectiveness measures.

You note in your letter that several governmental entities have suggested that they are not subject to this mandate. These agencies are: (1) the Supreme Court of South Carolina; (2) the South Carolina Court Administration; (3) the Legislative Council of the General Assembly; and (4) South Carolina Public Service Authority. Accordingly, you inquire whether these referenced governmental entities are ‘agencies' as that term is used in § 167.

A review of § 167 reveals that the provision is not a self-contained legislative enactment, but however, is an adjunct to the general enabling authority of the State Reorganization Commission. Accordingly, this provision should be construed in pari materia with the enabling authority of the Commission and interpreted in a manner consistent with that legislation. Fishburn v. Fishburn, 171 S.C. 408, 172 S.E. 426 (1934).

Chapter 19 of Title 1 of the South Carolina Code of Laws, 1976 [§§ 1–19–10, et seq.] provides generally for the creation of the Reorganization Commission and sets forth its jurisdiction. As heretofore noted, § 167 of Act 512 of 1984 is in pari materia with this legislation and amends this legislation by providing the Reorganization Commission with an additional function.

While the term ‘agency’ is not legislatively defined in § 167, such term is defined for the purposes of the Reorganization Act at § 1–19–40 as the following:
When used in this Chapter, the term ‘agency’ or the term ‘executive and administrative agency’ and plural of such terms shall mean any executive or administrative department, commission, board, bureau, division, service office, officer, authority, administration or corporate entity which is an instrumentality of the State or any other establishment having executive or administrative functions in the government of the State.

Moreover, § 1–19–110 provides that:

***2** The provisions of this Chapter [Reorganization Act] shall not affect the judicial or legislative power of the State or the existence of any agency created by the Constitution or any authority having outstanding revenue bonds.

Although § 1–19–110 does not expressly further define or limit the term 'agency,' it does reflect the legislative intent to limit the reorganizational authority of the Reorganization Commission. While we recognize here that whether § 1–19–110 actually proscribes reorganizational review of certain agencies is not completely clear from the language used, to construe this provision otherwise would create an incongruity that most likely was not intended. An interpretation of a statutory provision that creates absurd results should be avoided. State ex rel. McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964). Thus, for all practical purposes, § 1–19–110 when read with § 1–19–40, reflects a legislative intent that agencies of the judicial and legislative branches of government, constitutional agencies, or agencies having outstanding revenue bonds are not generally subject to reorganizational review by the Reorganization Commission. Again, since § 167 constitutes part of this reorganization act, we believe its scope is likewise limited.

Furthermore, it is noteworthy that when the Reorganization Act was initially enacted current §§ 1–19–40 and 1–19–110 were contained within a single provision of that Act. The limiting language of present § 1–19–110 was most clearly amplification of the term 'agency' as used therein. See, Act 621 § 2, 1948 Acts and Joint Resolutions. Apparently with the codification of Act 621 in the 1952 Code, the code editors segregated § 2 into separate provisions [§§ 9–204 and 9–211, respectively]. This change in editorial format which has maintained through the years does not suggest a change in the legislative intent represented by the original Act. South Carolina Elective & Gas Co. v. Public Service Commission, 272 S.C. 316, 251 S.E.2d 753 (1979).

We conclude with regard to the South Carolina Supreme Court, that the Court is not subject to the provisions of § 167. The South Carolina Supreme Court is most clearly not an executive or administrative department of State government. The Supreme Court is a creature of the State Constitution and is within the judicial department of the State of South Carolina. Article V, § 2, South Carolina Constitution (1895, as amended). Thus, consistent with our reading of §§ 1–19–40 and 1–19–110, we believe the Supreme Court to be outside of the authority of the Reorganization Commission's scope of review.

With regard to the South Carolina Court Administration we likewise believe that the mandate of § 167 is inapplicable. The South Carolina Court Administration is not a governmental entity separate and distinct from the judiciary. We note that the South Carolina Court Administration possesses no statutory authority; but instead exists pursuant to the State's Constitution solely to provide administrative support to the Chief Justice. Article V, § 4, South Carolina Constitution. Accordingly, since the Court Administration is not an executive agency but is an arm of the judiciary and since it does not possess any statutory authority, a condition clearly contemplated by § 167, we believe such entity to be without the scope of reorganizational review by the Reorganization Commission.

***3** We reach a similar conclusion with respect to the Legislative Council. Rather than being an executive or administrative agency, the Legislative Council is an agency of the General Assembly and is composed of members of that body. §§ 2–11–10, et seq. The Council functions as a support agency for the General Assembly, providing research, reference and bill drafting. § 2–11–50. Consistent with our prior construction of § 1–19–40 and § 1–19–110, and our conclusion that this provision is applicable to § 167, we conclude that the Legislative Council, as a legislative agency, is not within the scope of § 167.

With respect to the Public Service Authority, this body is a creature of statute [§ 58–31–10, et seq.] and is generally considered to be a 'state agency' as that term is commonly used. Rice Hope Plantation v. S.C. Public Service Authority, 216 S.C. 500, 59 S.E.2d 132 (1950); Creech v. S.C. Public Service Authority, 200 S.C. 127, 20 S.E.2d 645 (1942). Nonetheless, we are here concerned with a specific statutory definition of the term 'agency' and thus whether the Public Service Authority is a 'state agency' as that term is commonly and ordinarily used is not the relevant consideration. As earlier noted, § 1–19–40 broadly defines agency to include any executive or administrative authority which is an instrumentality of the state. This definition would include the Public Service Authority. However, as noted herein we read § 1–19–110 as limiting the authorized scope of review by the Reorganization Commission, and that section specifically excludes 'any authority having outstanding revenue bonds.' Since we are informed that the Public Service Authority currently has outstanding revenue bonds, issued pursuant to

§ 58–31–20(14), South Carolina Code of Laws, 1976 (1983 Cum. Supp.) we must conclude that § 167 is inapplicable to the Public Service Authority.

Please call upon us again if we may be of further assistance.
Very truly yours,

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