

1980 S.C. Op. Atty. Gen. 27 (S.C.A.G.), 1980 S.C. Op. Atty. Gen. No. 80-8, 1980 WL 81892

Office of the Attorney General

State of South Carolina

Opinion No. 80-8

January 23, 1980

*1 Honorable Robert J. Sheheen
Judiciary Committee
House of Representatives
P. O. Box 11967
Columbia, South Carolina 29211

Dear Mr. Sheheen:

Your letter of December 10, 1979, raises the Question:

‘Is it within the PSA scope of authority, both expressly and necessarily implied, to use PSA bond funds to grant a private loan to a private person, thereby obligating those funds for purposes other than those set forth in [Section 58–31–30, Code](#) of Laws, 1976?’

I have been informed by Authority officials, and I am satisfied, that the loan was not made from the proceeds of bond monies, but instead, was made from revenues accruing to the Authority which are placed in a special reserve fund in accordance with a trust indenture executed in 1949 between the Authority and the South Carolina National Bank, as Trustee.

The creation of the reserve fund in 1949 was apparently in implementation of [Section 58–31–110, Code](#) of Laws, 1976, which requires that all net earnings of the Authority not necessary or desirable were the prudent conduct and operation of its business or to secure its bonded indebtedness are required to be paid to the State of South Carolina. The loan was made from the revenues accruing to the Authority and not from the proceeds of bond issues.

The purpose of the loan, as I have been given to understand, was to enable the President of the Authority to live in Moncks Corner near the Authority in a house commensurate with the position. Another consideration was the fact that housing facilities in Moncks Corner were not adequate for the accommodation of persons whom the Authority seeks to attract as customers of the Authority. A significant number of very large industries have been attracted to the service area of the Authority and have become purchasers of very large amounts of electric power. It was desired to make provision for the proper reception of such persons. Another consideration was the fact that housing in the Moncks Corner area is limited. The General Counsel of the Authority who was employed approximately six or seven years ago was unable to find the type of house he desired in the Moncks Corner area and, therefore, lives today in Summerville which is some distance from the headquarters of the Authority.

The authority of Santee Cooper to make such a loan must, in my opinion, be found from consideration of the authority given it by legislative enactments. Santee Cooper is established essentially to produce and distribute hydroelectric power and it possesses ‘all powers which may be necessary or convenient for the exercise of such powers.’ It also has specifically the following enumerated authority:

(4) To acquire, lease, mortgage, . . . real or personal property.

(12) To appoint officers, agents and employees and servants and to prescribe their duties and to fix their compensation.

(17) To make contracts of every kind and nature and to execute all instruments necessary or convenient for the carrying on of its business.

*2 (20) To do all acts and things necessary or convenient to carry out the powers granted to it by its organic act or by any other law.

(21) The Board of Directors shall have full authority to manage the property and business of the Authority and to prescribe, amend, and repeal bylaws, rules and regulations governing the manner in which the general business of the Authority may be conducted. [Sections 58–31–30, et seq.](#), Code of Laws, 1976.

Santee Cooper serves a public and governmental function engaging in the hydroelectric power business for the benefit of the people. It is a public corporation in the nature of a quasi municipal corporation exercising certain governmental functions as an agency of the State. It has been termed a quasi municipal corporation as an agency of the State and is also in a real sense a part of the State and shares in its sovereignty; it was created for the convenient accomplishment of what must be regarded as an important governmental function. It is completely identified within the State in the performance of its public functions, which are unquestionably of a governmental character.

The construction to be given the powers conferred on it have been fairly well established by the decisions of the Supreme Court of South Carolina. In view of its status as a quasi municipal corporation, its powers have been held to be subject to strict construction and any fair, substantial and reasonable doubt concerning the existence of any power or any ambiguity under the statute upon which the assertion of such power rests is to be resolved against the corporation and the power denied. Generally, a municipal corporation such as the Authority, in a limited sense, has been held to be, can only exercise those powers granted in express words or those necessarily or fairly implied in, or incident to, the powers granted or those essential to the declared objectives and purposes of the corporation, which powers are not simply convenient but are indispensable.

The foregoing rules of construction were established by earlier decisions of the Supreme Court of this State. The most recent opinion of the Court appears to be [Cooper v. S. C. Public Service Authority](#), 264 S.C. 332, which appears to lessen the strict rule of construction heretofore laid down in prior decisions. The general rule recognized in that case was stated to be that ‘the discretion of a governing body of a municipal corporation in the exercise of its granted powers should not be disturbed in the absence of illegality, fraud, or clear abuse of authority.’ This case, decided in 1975, cited [Haesloop v. City Council of Charleston](#), 123 S.C. 272, which upheld the donation of certain lands owned by the City to a privately owned company for the consideration that the company erect a tourist hotel thereon which later was known as the Fort Sumter Hotel in Charleston. No monetary consideration was paid the City for the property by the company, but the Supreme Court of this State held that the financial benefit accruing to the City was such that it was not a donation or gift of land to a private entity. I consider [Cooper](#) of controlling interest in the determination of the proper construction to be given the powers vested in the Authority.

*3 While I doubt that the mere power vested in the Authority to appoint officers and employees and to fix their compensation would be, itself, sufficient to authorize a loan to the employee, it is my opinion that this power, together with consideration of the general powers granted the Authority to undertake such measures as it should determine are necessary or convenient for the exercise of its specifically granted powers and to manage the property and business of the Authority, is a proper basis for the making of the loan in this instance. It is my understanding that this is the only transaction of this nature in which loans have been made and I do not feel that additional loans can be made unless there are similar unusual circumstances or unless specific statutory authority is granted.

I am not convinced that the Authority, in making the loan, exceeded its granted powers or that its action was an abuse of the discretion vested in it to manage the property and general business of the Authority.

It is, therefore, my opinion that the transaction was proper in this instance.

Very truly yours,

Daniel R. McLeod
Attorney General

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