

1977 WL 37268 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 11, 1977

*1 Ms. Charlotte B. Fielder
Administrative Assistant
State Development Board
Post Office Box 927
Columbia, SC 29202

Dear Ms. Fielder:

You have requested an opinion as to the power of the Beaufort City Housing Authority to extend its jurisdiction to include two incorporated towns, Bluffton and Port Royal. The inclusion of these two towns is part of a general extension of the City Authority's jurisdiction to include the entire area of Beaufort County.

This proposal is governed by Section 36-121, 1962 Code of Laws, which provides in part:

In addition to its other powers, a housing authority created for a city may exercise any or all of its powers within the territorial boundaries of any other municipality . . . if a resolution shall have been adopted (a) by the council of such municipality in which the authority is to exercise its powers and (b) by the housing authority of such municipality, if one has been theretofore established by such municipality . . .

In this instance, the appropriate resolutions from the governing bodies of the two municipalities have been secured, and presumably there are no city housing authorities already existing in the two towns. Such being the case, it is the opinion of this Office that there is no legal bar to the extension of the jurisdiction of the Beaufort Housing Authority to include the towns of Bluffton and Port Royal. However, this extension of jurisdiction is by the clear terms of Sections 36-121 and 36-122, an extraterritorial extension of jurisdiction rather than an expansion of the city housing authority's territorial jurisdiction. The effect of this rather fine distinction is to absolve the Development Board of any responsibility in connection with what the city housing authority does in those two incorporated towns. In other words, the Development Board still has to approve the territorial extension of jurisdiction into unincorporated areas, but it has no duty or power to approve the extraterritorial extension of jurisdiction into the two unincorporated areas. That is a matter which Sections 36-121 and 36-122 leave to the towns and the city housing authority.

You have also asked whether any action of the State Development Board in extending the jurisdiction of a particular housing authority pursuant to Section 36-120 or Section 36-185 is such an act which must comply with the Administrative Procedure Act of 1976. (Act No. 671; hereinafter APA). The State Development Board is a 'state agency' within Section 1(1) of the APA and it is authorized by law to make rules. Section 5 of the APA requires that all rules and documents promulgated by state agencies which have general applicability and legal effect shall be filed with the Legislative Council and published in the State Register. The term 'document' is defined as an order, regulation, rule, certificate, code of fair competition, license, notice, or similar instrument issued, prescribed, or promulgated by a state agency. The State Development Board's action in extending the territorial jurisdiction of a city housing authority is in the form of a written document which has general applicability and legal effect. It is therefore the opinion of this Office that it should be filed and published as a document.

*2 Please feel free to call me if you should have any questions.

Sincerely yours,

Kenneth P. Woodington
Assistant Attorney General

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