

1977 S.C. Op. Atty. Gen. 134 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-165, 1977 WL 24507

Office of the Attorney General

State of South Carolina

Opinion No. 77-165

June 1, 1977

*1 Mr. Steve Mayfield
South Carolina Housing Authority
1122 Lady Street
Suite 1101
Columbia, SC 29201

Dear Mr. Mayfield:

The Section 8 Existing Housing Program, [42 U.S.C. Section 1437f](#) (Act of September 1, 1937, Section 8, as amended by Act of August 22, 1974), authorizes the Secretary of Housing and Urban Development ‘to enter into annual contributions contracts with public housing agencies pursuant to which such agencies may enter into contracts to make assistance payments to owners of existing dwelling units . . .’ [42 U.S.C. Section 1437f\(b\)\(1\)](#) (emphasis added).

A regulation promulgated under Section 8, 24 C.F.R. Section 882.204(d) requires that the applicant housing authority, in this case the State Housing Authority, ‘[d]emonstrate that [it] qualifies as a Public Housing Agency and is legally qualified and authorized to participate in the proposed Section 8 Existing Housing Program for the area in which the Existing Housing program is to be carried out . . .’ A question has arisen as to whether Section 36–295, 1962 Code of Laws of South Carolina, which imposes certain prerequisites on the Authority’s power to perform certain functions within the territorial limits of existing housing authorities, applies to the Existing Housing Program. It is the opinion of this Office that it does not, at least where no locally-administered Existing Housing Program is in existence.

Section 36–295, which must be quoted in its entirety in order for its terms to be fully understood, provides as follows:

Authority may operate in any and all counties; operation where there is county housing authority; approval of local governing bodies.—The Authority may conduct its operations in any or all of the counties of the State. If an existing housing authority is operating in a county where the South Carolina State Housing Authority determines that a need exists for additional housing for low-income families, the South Carolina State Housing Authority shall advise that housing authority of its findings of need for that county and shall urge that housing authority to make appropriate plans to meet that need. If, within sixty days after a housing authority has received such notification of need, that housing authority has not submitted an acceptable plan of action for meeting that need, the South Carolina State Housing Authority may construct and operate housing for low-income families in such county; provided, however, that before any such operation by the South Carolina State Housing Authority occurs, the South Carolina State Housing Authority shall first obtain the written approval of the governing body of the county, if such proposed operation is intended for an unincorporated area of the county or, if the proposed operation is intended to take place within the jurisdiction of an incorporated municipality, then in such instance the South Carolina State Housing Authority shall obtain the written approval of the governing body of such municipality and shall then have authority over the same jurisdiction as that municipality had.

*2 It is apparent that the proviso was intended to apply only to one specific type of operation, namely, the typical publicly-constructed, publicly-operated low-cost housing project. The words ‘such operation’ and ‘the operation’ emphasized in the above quotation, refer to the single operation described in the body of the section, i.e., the Authority’s power to ‘construct and operate housing for low-income families . . .’

An earlier opinion of this Office dated May 29, 1974, did not reach the present issue, because only new construction was contemplated at the time of the issuance of the opinion.

While it would appear from the terms of Section 36–295 that where no new construction is contemplated, no local approval is necessary, I express no opinion as to the need for local approval where a Section 8 Existing Housing Program is already being administered by local authorities.

Sincerely yours,

Kenneth P. Woodington
Assistant Attorney General

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