

1977 WL 37370 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 23, 1977

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QUESTION

For purposes relevant under Environmental Protection Agency regulations 40 CFR, Part 30.620.3, are Regional Councils of Government in South Carolina classified as state agencies under state law?

CONSTITUTIONAL AUTHORITY

South Carolina Constitution, Article 7, Section 15, Regional Councils of Government; Article 8, Section 13, Joint Administration of Functions and Exercise of Powers.

STATUTES

Section 14-341-349.4 of the South Carolina Code of Laws (1962).

RELATED OPINIONS

1968-1969 Opinions of the Attorney General, Number 2795, Page 289 (attached).

1972-1973 Opinions of the Attorney General, Number 3498, Page 94 (attached).

DISCUSSION

The Regional Councils of Government in South Carolina trace their authority to two state constitutional provisions:

1.) Article 7, Section 15. Regional Councils of Government. The General Assembly may authorize the governing body of a county or a municipality—to create organizations to study and make recommendations on matters affecting the general welfare —.

The Legislature may authorize participating governments to provide financial support for facilities and services required to implement recommendations of such organizations which are accepted and approved by the governing bodies—.

2.) Article 8, Section 13. Any county, incorporated municipality, or other political subdivision, may agree with the State or any other political subdivision for the joint administration of any function and exercise of powers and the sharing of the costs thereof.

Nothing in this Constitution shall be construed to prohibit the State or any of its counties, incorporated municipality, or other political subdivisions from agreeing to share the lawful costs, responsibility, and administration of functions with any one or more governments, whether within or without the State.

Article 7, Section 15 empowers the General Assembly to provide legislative authority for the creation of regional councils of government and for the vesting of broad planning and advisory powers in such organizations. Section 15 further requires legislative authorization before implementation of such plans and programs as are developed by the regional councils of government.¹ The required legislative authorization was enacted in 1967, Act 487 (67 Acts 863), and the pertinent sections are now codified as Title 14-341-14-349.4, 1962 Code of Laws. While the powers given to the regional councils of government are sufficiently broad to be akin to state agency powers, the application of the enumerated powers (14-346(1)-(7)) is advisory: 14-346(7). After coordination with the appropriate State, local and Federal agencies, the regional council of government may adopt such plans and programs as it may from time to time prepare. Such plans and programs as are adopted shall constitute the recommendations of the regional council of government.

***2** The advisory nature of the referenced powers was emphasized in a 1968 opinion of the State Attorney General in the following language:

1968-1969 Opinions of the Attorney General, Number 2795.

... regional planning commissions serve merely as advisory and recommending authorities only. It is not, therefore, considered that they exercise a portion of the sovereignty in making and submitting plans for possible adoption by the governing bodies of the members.

The first referenced Opinion quoted above, assisted in establishing the nonapplicability of South Carolina's dual office holding prohibition to service by county officers on regional councils of government. It should be noted that the dual office holding prohibition is applicable to both county and state governmental officers. In view of the Opinion and the fact that its conclusion was subsequently made a part of Article 7, Section 15 by amendment in 1971, it can be concluded that if such local governmental officers do not violate the dual office holding prohibition by dint of their service on regional councils of government,² they do not serve such regional councils of government as state officers.

Moreover, the regional councils of government do not exercise a portion of the sovereignty and are not governed and controlled by state officers, except insofar as the Legislature has specified limited powers; therefore, the regional councils of government are not state agencies under Article 7, Section 15 and the authorizing legislation thereunder, Title 14-341-14-349.4. It is apparent that if the General Assembly had intended to classify the regional councils of government as state agencies, the intent would have been expressed in Section 14-349.2, wherein the councils are declared to be 'public agencies,' as follows:

Section 14-349.2. Each council of government established under authority of this article exists for nonprofit and public purposes and is a *public agency*, and it is hereby found and declared that the carrying out of the purpose of each council of government is exclusively for public benefit and its property is public property, thus no council of government shall be required to pay any State or local ad valorem tax, income tax or other taxes from which public agencies are exempt. Council of government may participate in the State Retirement System and utilize the services of the State Purchasing Department of the Division of General Services (*italics added*).

While the designation as public agencies is for the specific purpose of tax exemption, it is obvious that such a provision would not have been necessary if the regional councils were state agencies or had been designated as state agencies by the Legislature, nor would it have been necessary to provide for optional participation in the State Retirement System and the optional use of the State Purchasing Department services. Finally it should be noted that the regional councils of government are expressly authorized to coordinate with and accept funds from other agencies, including federal agencies:

*3 Section 14-347. A regional council of government may cooperate with, contract with, and accept funds from Federal, State or local governments, public or semipublic agencies or private individuals or corporations. It may expend such funds and it may carry out such cooperative undertakings and contracts.

Dependent upon the federal act in question and unless there is a specific legislative direction to the contrary, state agencies have the inherent power to coordinate with, and accept funds from federal programs within their functional area.

The remaining question is whether or not Article 8, Section 13, which provides for joint administration of functions and exercise of powers by local units of government, authorized the regional councils—when functioning under such joint programs or contracts—to serve as state agencies. This question is quickly disposed by reference to the second referenced Opinion of the Attorney General, Number 3498. When a regional council of government functions under an agreement for joint administration authorized by Article 8, Section 13, its amalgamated powers are not greater than the specifically authorized powers of the local units of government represented on the council. It is clear from a reading of the second referenced Opinion that the regional councils of government operating under Article 8, Section 13 function within the limits of Article 10, Section 6 and Article 8, Section 7, as reconciled therein at page 98. The discussion in that Opinion with respect to the limits of county powers, while not pertinent here, clearly establishes that the powers exercised jointly are not greater than the powers authorized for counties acting singly.

CONCLUSION

The Regional Councils of Government in this State, whether functioning under Article 7, Section 15 and the authorizing legislation thereunder, Section 14-341-14-349.4, or under Article 8, Section 13, are not state agencies within the meaning, intent or effect of the authorizing provisions.

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Footnotes

- 1 Regional councils of government are also called planning districts, planning commissions, and regional planning councils. These references are used interchangeably.
- 2 Section 14-345 requires that at least a majority of the members of the regional council be members of the governing bodies of the participating cities and counties.

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