

1979 WL 42965 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 1, 1979

**\*1 SUBJECTS: Administrative Procedure, Rules and Regulations**

(1) The Greenville-Spartanburg Airport Commission is not an ‘agency’ or ‘state agency’ within the meaning of Act No. 176 of 1977.

(2) Section 1-1-210 of the 1976 Code of Laws has been repealed by Act No. 176 of 1977.

Thomas A. Evins  
Attorney for the Greenville-Spartanburg Airport  
Commission

QUESTIONS:

(1) Is the Greenville-Spartanburg Airport Commission an ‘agency’ or ‘state agency’ within the meaning of Act No. 176 of 1977?

(2) Has § 1-1-210 of the 1976 Code of Laws been repealed by Act No. 176 of 1977?

STATUTES AND CASES:

Article III, § 2 of Act 176, Statutes at Large of South Carolina (1977).

Act 95, Statutes at Large of South Carolina (1977).

Code of Laws of South Carolina (1976) § 1-1-210, [1-23-10\(1\)](#), [55-11-110](#), [55-11-120](#), [55-11-140](#) [55-11-150](#), [55-11-210](#)

Title 1, Chapter 1, Article 2 Code of Laws of South Carolina (1962).

[Lewis v. Gaddy](#), 254 S.C. 66, 173 S.E. 2d 376 (1970).

[McGlohon v. Harlan](#), 254 S.C. 207, 174 S.E. 2d 753 (1970).

[McMillen Feed Mills, Inc. of South Carolina v. Mayer](#), 265 S.C. 500, 220 S.E. 2d 221 (1975).

[Riggins v. Housing Authority of Seattle](#), 87 Wash. 2d 97, 549 P.2d 480 (1976).

DISCUSSION:

You have asked whether the Greenville-Spartanburg Airport Commission is an ‘agency’ or ‘state agency’ within the meaning of Act No. 176 of 1977 (§§ [1-23-10](#) et seq. of the 1976 Code, hereinafter Administrative Procedure Act or ‘APA’). It is the opinion of this Office that the Commission is not a ‘state agency’ within the meaning of that Act.

[South Carolina Code § 1-23-10\(1\)](#) defines the terms ‘agency’ or ‘state agency’ as meaning ‘. . . each state board, commission, department, executive department or officer, other than the legislature or the courts, authorized by law to make regulations or to determine contested cases.’ Whether the Greenville-Spartanburg Airport Commission comes within the foregoing definition is basically a matter of statutory construction. Of course, the principal rule of statutory construction is to ascertain and give effect to the intention of the legislature. [McGlohon v. Harlan](#), 254 S.C. 207, 174 S.E. 2d 753 (1970). Such intention must be given effect if it can be reasonably discovered from the language used in the statute, and such language must be construed in light of the intended purpose of the statute. [McMillen Feed Mills, Inc. of South Carolina v. Mayer](#), 265 S.C. 500, 220 S.E. 2d 221 (1975); [Lewis v. Gaddy](#), 254 S.C. 66, 173 S.E. 2d 376 (1970). It seems clear that by including in the definition of ‘state agency’ only state boards, commissions, departments, etc., the legislature was manifesting an intent that the term would only embrace those entities having statewide jurisdiction. Had it intended to include local governmental entities, it could very easily have broadened the definition to include state and local boards, commissions, departments, etc.

\*2 The Supreme Court of Washington was recently presented with precisely the same question in the case of [Riggins v. Housing Authority of Seattle](#), 87 Wash. 2d 97, 549 P. 2d 480 (1976). In [Riggins](#), it was contended that the Housing Authority of Seattle was an ‘agency’ within the meaning of the Washington Administrative Procedure Act (RCW 34.04). The court, however, felt that the language of the Act, which is remarkably similar to that in the South Carolina Act, showed a clear intent that the Act only apply to governmental entities involved in statewide, as opposed to local, programs. It was held that the Housing Authority was not an ‘agency’, since its area of operation was limited to five miles from the city limit of Seattle and the agency did not receive funding from the State Government. The court stated that the proper test to determine whether or not a governmental entity is an ‘agency’ is to analyze the function of the agency to see if the function is related to statewide or local concerns.

Applying the reasoning of the Washington Supreme Court, it immediately becomes clear that the Greenville-Spartanburg Airport Commission is not a ‘state agency’ within the meaning of this State’s Administrative Procedure Act. The Commission is designated as the governing body for the Greenville-Spartanburg Airport District. [§ 55-11-120 South Carolina Code \(1976\)](#). The District, however, is only composed of the counties of Greenville and Spartanburg ([§ 55-11-110](#)), and therefore the jurisdiction of the Commission only extends to that two-county geographical area. The Commission is composed only of persons who are residents of one of the two counties ([§ 55-11-120](#)), and it is the duty of the Commission to develop and operate ‘. . . an airport and air navigation facility to serve the people of the District.’ [§ 55-11-140](#). The Commission receives no annual appropriations from the General Assembly, and funds for its activities are derived from the operation of revenue-producing facilities [[§§ 55-11-140\(9\)](#) and [55-11-140\(10\)](#)] and issuance of revenue bonds. [§ 55-11-150](#). While the Commission is given authority to promulgate rules and regulations, such authority only covers rules and regulations governing the use of roads, streets, and parking facilities on lands of the District. [§ 55-11-210](#). There can be little doubt that, since the Commission only has jurisdiction in a two-county geographical area of the State, and its authority only relates to ongoing programs in that area, the Commission is concerned with local, rather than statewide, concerns. It is therefore the opinion of this Office that the Greenville-Spartanburg Airport Commission is not a ‘state agency’ within the meaning of Act No. 176 of 1977.

You have also asked whether South Carolina Code § 1-1-210 (1976) has been repealed by Act No. 176 of 1977. It is the opinion of this Office that it has. Article III, Section 2 of the Act provides that Article 2, Chapter 1 of Title 1 of the 1962 Code is repealed upon the effective date of the Act. Article 2, Chapter 1 of Title 1 of the 1962 Code did include that Section which later became § 1-1-210 under the 1976 Code. The APA referred to that Section under its 1962 Code designation because, at the time that the APA became effective (June 13, 1977), the 1962 Code was the only general statutory law of the State of South Carolina. Since the 1976 Code was not declared to be the only general statutory law of South Carolina until July 1, 1977 (Act No. 95 of 1977), the repealer provision of the APA properly referred to the appropriate Sections of the 1962 Code.

CONCLUSION:

\*3 Based upon the foregoing discussion, it is the opinion of this Office that the Greenville-Spartanburg Airport Commission is not a 'state agency' within the meaning of Act No. 176 of 1977. Furthermore, it is the opinion of this Office that Act No. 176 of 1977 repealed § 1-1-210 of the Code of Laws of South Carolina (1976) .

L. Kennedy Boggs  
Assistant Attorney General

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