

1978 WL 34783 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 20, 1978

***1 RE: Newberry County Airport Commission**

T. W. Hunter
County Attorney
Newberry County Council
P. O. Box 156
Newberry, S. C. 29108

Dear Mr. Hunter:

You requested an opinion of this Office relating to the Newberry County Airport Commission. Concerning an agreement between the Newberry Airport Commission and a private party, you asked whether the Commission, County Council, City Manager, the individual Commission members, or others might be actually liable if there were legal action brought by the private party to enforce the contract. You also asked how the Airport Commission could disband if the Commission so desired. Finally you asked if the present statute is still binding since the county owns the entire airport.

To a large extent, the answer to your first question depends entirely upon the theory of the cause of action, if a suit were brought. The fact situation is complex, and the answer to the question of liability, if any, could turn upon a number of factors. The law is unsettled in this state as to the viability of a defense of sovereign immunity in a contract action brought by a private entity against the State and/or its political subdivisions. This question is currently pending before the S.C. Supreme Court. Of course, an official or employee of the State or a political subdivision can be sued in his individual capacity, but defenses are available to the individual depending upon how the suit is brought. As to your second question, nothing in the statute defining the power and duties of the Newberry Airport Commission provide for disbandment or abolition of the Commission itself. See 58 STAT. Act No. 837 (1973). Unless otherwise provided for by the General Assembly, the power to create an office also includes the power to modify or abolish it, the two powers being essentially the same. Where an office is of legislative creation, 'the Legislature may, unless prohibited by the Constitution, control, modify, or abolish it whenever such course may seem necessary, expedient or conducive to the public good'. 63 Am.Jur.2d, Public Officers and Employees § 33 (1972). Therefore, it is our opinion that only the General Assembly can disband the Newberry Airport Commission.

As to your third question, it appears under the terms of the legislation creating the Newberry Airport Commission that it is empowered and authorized to 'manage the Newberry Airport and make all necessary rules and regulations' in relation thereto. It is the opinion of the Office that this duty continues despite the fact that the county now owns all of the property on which the Airport is located.

I apologize for the delay in responding to your letter, and I appreciate your cooperation and patience.

With kind regards, I remain
Very truly yours,

Nathan Kaminski, Jr.
Assistant Attorney General

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