

1978 S.C. Op. Atty. Gen. 243 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-210, 1978 WL 22678

Office of the Attorney General

State of South Carolina

Opinion No. 78-210

December 21, 1978

***1 SUBJECT: State Agencies**

The South Carolina Ports Authority and the South Carolina Public Service Authority do not come within the definition of State agency as that term is used by the General Assembly in § 24 of the General Appropriations Bill 1978–1979.

TO: Director

Division of Motor Vehicle Management

QUESTION:

Are the South Carolina Ports Authority and the South Carolina Public Service Authority covered by § 24 of the General Appropriations Act of 1978–1979.

STATUTES AND CASES:

Code of Laws of South Carolina, § 58–30–150 (1976);

Code of Laws of South Carolina, § 58–31–10, et seq., (1976);

Code of Laws of South Carolina, § 58–31–30 (1976);

Code of Laws of South Carolina, § 58–31–70 (1976);

Code of Laws of South Carolina, § 58–31–130 (1976);

Code of Laws of South Carolina, § 58–31–140 (1976);

Code of Laws of South Carolina, § 54–3–10, et seq. (1976);

Code of Laws of South Carolina, § 54–3–140(9), (1976);

Code of Laws of South Carolina, § 54–3–840 (1976);

Code of Laws of South Carolina, § 54–3–850 (1976);

Code of Laws of South Carolina, § 54–3–860 (1976);

Code of Laws of South Carolina, § 54–3–1010 (1976).

Creech v. SCPSA, 200 S.C. 127, 20 S.E.2d 645 (1942);

[Rice Hope Plantation v. SCPSA](#), 216 S.C. 500, 59 S.E.2d 132 (1950);

[SCPA v. Seaboard Air Line R.Co.](#), 124 F.Supp. 533 (1954);

[Rabon v. South Carolina Highway Department](#), 258 S.C. 154, 187 S.E.2d 652 (1972);

[South Carolina Electric and Gas v. SCPSA](#), 215 S.C. 193, 54 S.E.2d 77 (1949);

Vol. 2A, [Sutherland Statutory Construction](#), § 45.09.

DISCUSSION:

The question has been presented as to the applicability of § 24 of the General Appropriations Act of 1978–79 to the South Carolina Ports Authority and the South Carolina Public Service Authority (hereafter SCPA and SCPSA). The general purpose of this Section is set out as follows:

To create within the Budget & Control Board the Division of Motor Vehicle Management and the Motor Vehicle Management Council and provide for its powers and duties including the establishment of a comprehensive statewide motor vehicle management program.

Those entities covered by this Section are set out in Subsection D(a) of Section 24:

‘State agency’ shall mean all officers, departments, boards, commissions, institutions, universities, colleges and all persons and administrative units of State government that operate motor vehicles purchased, leased or otherwise held with the use of State funds, pursuant to an appropriation, grant, or incumbrance of State funds or operated pursuant to authority granted by the State.

It has been settled in numerous court decisions that the SCPA and SCPSA are [State agencies](#). [SCPA v. Seaboard Air Line R.Co.](#), 124 F.Supp. 533 (1954); [Creech v. SCPSA](#), 200 S.C. 127, 20 S.E.2d 645 (1942); [Rice Hope Plantation v. SCPSA](#), 216 S.C. 500, 59 S.E.2d 132 (1950). However, when the courts have held the SCPA and SCPSA to be State agencies, they have used the term State agency as a term of art. The courts adopted this term of art in order to show that there is a special relationship between the governmental functions of the State and the quasi governmental functions which have been granted to the SCPA and the SCPSA. In every decision that has labeled the SCPA and the SCPSA as State agencies, the court has gone on to point out the fact that these authorities are independent, quasi municipal corporations; designed and created with the idea that they will be self-sustaining in terms of financial operations and internal management.

***2** In essence, the term State agency as applied to the SCPA and SCPSA is only used to show that these authorities are embodied with certain governmental powers, e.g. eminent domain. The term is not used to show that the SCPA and the SCPSA are under direct day to day financial operations control by the State as is generally understood when the term State agency is used.

The independence of the SCPA and SCPSA from financial assistance from the State is evidenced by the fact that neither of these authorities is funded by the General Appropriations Bill of 1978–79. It is true that when these authorities were first created, they received State funding in the form of bonds or appropriations but the SCPA and the SCPSA have now become totally financially independent of the State of South Carolina. This financial independence excludes them from lines no. 6, 7 and 8 of Section 24, Subsection D(a) set out supra., in that the SCPA and SCPSA do not receive appropriations, grants, or the benefit of encumbered State funds. In fact, [South Carolina Code § § 58–31–30, Subsection](#)

[21, § 58–31–130](#), and [§ 54–3–140, Subsection 9](#), prohibit these two authorities from pledging the credit of the State or utilizing the taxing power of the State to cover obligations incurred by these authorities.

Section 24, Subsection D(a), line 9, sets out the final and catch all criteria regarding coverage under Section 24; ‘operated pursuant to authority granted by the State.’ Undeniably the SCPA and the SCPSA operate pursuant to authority granted by the State of South Carolina. Both authorities were created by statute and therefore have the legal capacity to operate pursuant to the State’s statutory creation of that capacity.

If this provision of Section 24, Subsection D(a) is taken at its literal meaning, then it would be possible to construe, subject to various conjectory arguments, that the SCPA and the SCPSA are covered by Section 24 of the General Appropriations Act of 1978–79. However, the literal meaning of the words used in the statutory provision has its limits insofar as the overall construction of the statute is concerned. Generally speaking, when the language of a statute is clear and unambiguous, it must be held to mean what it plainly says. [Rabon v. South Carolina Highway Department, 258 S.C. 154, 187 S.E.2d 652 \(1972\)](#). However, if it is obvious from the act itself that the Legislature intended that the language be used in a different sense than its common meaning, this test will be abandoned. Vol. 2A, [Sutherland Statutory Construction](#), § 45.09. The limitation of literal interpretation is that if the import of the text of an act is not consistent with the legislative purpose and intent, the words of the statute will be modified by the intention of the Legislature and the purpose of the act. (Ibid)

A reading of the general purpose of Section 24 of the General Appropriations Act of 1978–79, set out supra., and Subsection A(a)(b)(d)(e), set out below, clearly show that the legislative purpose of this act was to develop a plan for the regulation of State vehicles that would achieve for the State the optimum economic efficiency through the elimination of waste and unnecessary expense.

***3 (A)** There is hereby established within the Budget and Control Board the Division of Motor Vehicle Management headed by a Director, hereafter referred to as the ‘State Fleet Manager’, appointed by and reporting directly to the Budget and Control Board, hereafter referred to as the Board. The Board shall develop a comprehensive state Fleet Management Program. The program shall address acquisition, assignment, identification, replacement, disposal, maintenance, and operation of motor vehicles.

(a) to achieve maximum cost-effectiveness management of state-owned motor vehicles in support of the established missions and objectives of the agencies, boards, and commissions.

(b) to eliminate unofficial and unauthorized use of state vehicles.

(c) to minimize individual assignment of state vehicles.

(d) to eliminate the reimbursable use of personal vehicles for accomplishment of official travel when this use is more costly than use of state vehicles.

(e) to acquire motor vehicles offering optimum energy efficiency for the tasks to be performed.

The intent of this legislation was to develop a scheme which would regulate the State vehicles by maximizing ‘cost effective management’ and thereby minimizing the cost to the State of operating these vehicles.

As pointed out earlier, the SCPA and the SCPSA are financially independent. They receive no funds pursuant to the General Appropriations Bill of 1978–79. The SCPA generates its own operating expenses pursuant to the authority granted it in [§ 58–31–30, Subsection 13 and 14](#); the SCPA through the authority granted to it in [§ 54–3–840, § 54–3–850](#) and [§ 54–3–1010](#). The SCPA currently has a bond issue through the State, but these funds are specifically earmarked for capital improvements. Both authorities raise the necessary monies for operational expenses and general maintenance

from revenue earned by the services they provide. The SCPSA is specifically prohibited by § 58-31-130 from using the taxing authority of the State or its political subdivision for financing its projects or to pay any obligations incurred. The SCPA is similarly prohibited from such action by § 54-3-140.

The purpose of § 24 of the General Appropriation Bill of 1978-79 is the achievement of maximum cost effective management of State owned vehicles with the resulting reduction in cost to the taxpayer's of South Carolina. This purpose is not applicable to the SCPA and the SCPSA in that neither State funds, nor federal funds in conjunction with State authority, are used to meet operational expenses of the SCPA and the SCPSA. The SCPA and the SCPSA generate their own operational funds and are financially self-sufficient.

In addition to the foregoing argument, the specific authority enabling the SCPA and the SCPSA to management their own business operations is set out in § 58-31-70, § 58-31-30, and § 54-3-140 respectively. The power and responsibility regarding the internal management operations is granted exclusively to the authorities themselves with the General Assembly reserving the right to alter, amend or repeal the laws pertaining to these authorities. See § 58-31-150 and § 54-3-860. Applying the accepted rules of statutory construction, it would be incongruous to contend that the specific enabling provisions of § 58-31-10, et seq., and § 54-3-10, et seq., are to be overridden by general law applicable to all State agencies unless the law specifically so provides. See *S.C. Electric & Gas v. S.C. Public Service Authority*, 215 S.C. 193, 54 S.E.2d 77 (1949), 'if there be a conflict between a general law and a special law on the same subject, the latter will prevail.'

CONCLUSION:

*4 Given the independent operational, self-sufficient nature of the SCPA and the SCPSA, in light of the cost effectiveness purpose of § 24 of the General Appropriations Act of 1978-79, and the statutory construction principles set forth herein, it is the opinion of this Office that the SCPA and the SCPSA are not within the State agencies covered by § 24D(a) of the General Appropriations Act of 1978-79.

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