1973 WL 26669 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
March 19, 1973

***1 Re: Coastal Plains Regional Commission Contract No. 10340014 regarding air service to Beaufort, South Carolina**

Mr. Archie L. Todd
Acting Director
Office of Coastal Plains Affairs
915 Main Street
Columbia, South Carolina 29201

Dear Mr. Todd:
Under the referenced contract between the Coastal Plains Regional Commission and Air South, Inc., the Commission has guaranteed Air South, Inc., remuneration for any operating losses sustained in providing air service to Beaufort, South Carolina, over the first year of this contract. The amount of loss for which the Commission is liable is up to $75,000.00 and the period of liability extends from August 1, 1972, through July 31, 1973.

The $75,000.00 identified to support this guarantee comes entirely from federal monies appropriated by Congress to support Regional Action Planning Commissions, see 42 U.S.C.A. § 3185, and does not represent an allocation of any State tax monies. The question presented is whether or not the guarantee clause of this contract could be properly executed by an agency of this State, in place of the Commission, assuming that the $75,000.00 reserve of federal monies is retained to support the guarantee. This question arises due to the possibility that the federal government will withdraw from the Regional Action Planning Commission program, and at that time will seek to assign its contractual rights and obligations to the participating states themselves.

Under Article 10, Section 6 of the South Carolina Constitution, it is forbidden to pledge or loan the credit of he State for the benefit of any individual, company, association or corporation.' This section has been interpreted to mean that the credit and taxing powers of the State or any of its political subdivisions cannot be pledged either directly or contingently for the payment of private obligations. Clarke v. South Carolina Public Service Authority, 177 S.C. 427, 181 S.E. 481 (1935). It is not sufficient to avoid this prohibition that public benefits might accrue from the expenditures due to increased taxable values, enhancement of property values generally, or increased commercial impetus. Haesloop v. City Council of Charleston, 123 S.C. 272, 115 S.E. 590 (1923).

Nevertheless, it apppears that in this instance, because the monies necessary to support the guarantee are entirely federal appropriations, that the provisions of Article 10, Section 6 of the South Carolina Constitution would not be violated provided that Air South, Inc., be forbidden by the express terms of the contract from ever suing the State of South Carolina for any losses suffered. C.F. Hunt v. McNair, 255 S.C. 71, 177 S.E.2d 362 (1970). Such is not the case now and consequently this express prohibition would have to be incorporated into the contract before a South Carolina agency could legally agree to the guarantee provision. The defect in the present contract is that whereas the $75,000.00 in federal support funds are currently identified and on deposit, yet should these monies be spent for some other purpose there is not now any provision in the contract which would prevent Air South, Inc., from suing a contracting State agency and thereby treating a contingent liability against State tax resources. Consequently, in the opinion of this office, so long as the monies supporting the guarantee clause considered are from strictly federal appropriations, are in no way a part of matching state-federal monies, and the guarantee clause is modified

to expressly exclude suit against the State of South Carolina, a State agency could validly execute a guarantee provision similar to that contained in Article II(A) of the subject contract (copy attached).

***2** If this Office can be of further assistance, please correspond. With best wishes, I am
Sincerely,

John B. Grimball
Assistant Attorney General

1973 WL 26669 (S.C.A.G.)