

1973 WL 27643 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 26, 1973

*1 General William C. Westmoreland

Chairman

Task Force on Economic Growth

Office of the Governor

SCN Center

Columbia, South Carolina 29211

Dear General:

Thank you for your letter of November 19, 1973, concerning certain legal questions which have arisen in consideration of proposed participation by this State in the formation of certain types of interstate organizations.

The possible areas of action are set forth seriatim below:

1. Creation of an interstate operating or regulatory authority. This agency would be created by interstate compact between the State of South Carolina and either the State of Georgia or North Carolina. An example would be a public service authority with jurisdiction over both state portions of the interstate area.

Compacts with another state must, in general, receive congressional consent. Exactly when such consent is necessary is somewhat ambiguous, but in view of the fact that the objection of the consent of Congress, if required, will not likely present an impediment, no further discussion is considered necessary. In addition, there must be statutory authority for the State to enter into such a compact. Section 44-401, Code of Laws, 1962, is an example of the format normally followed. This section authorizes the State to enter into a compact with other states for mutual helpfulness in meeting any civil defense emergency or disaster. Once State authority is given and congressional consent obtained, if determined necessary, I see no legal obstacle to the establishment of a public service authority as contemplated in the question.

2. Pursuit of Interstate Projects. These would be joint projects of the two Councils of Government on both sides of the state line. Project funding would be on a shared basis.

Regional Councils of Government may be created by counties and municipalities for the purpose of planning without obtaining legislative authority. However, to implement the studies and recommendations which Regional Councils of Government may make to the participating political subdivisions, it is necessary that statutory authorization be obtained. This is specifically set forth in Article VII, Section 15, of the Constitution, a copy of which is enclosed herewith. You will note that the planning organizations (Regional Councils of Government) may include political subdivisions of other states. By the provisions of Section 13 of the local government amendment, which was adopted March 7, 1973, counties and other political subdivisions may 'share the lawful costs, responsibility, and administration of functions with any one or more governments, whether within or without the State.'

Regional Councils of Government may engage in joint projects with a political subdivision of another state, but the financing of such projects by a political subdivision of this State must be authorized by legislative enactment. The Regional Councils of Government approach is the most feasible, as the authority of counties, intrastate as well as interstate, is limited by the provisions which severely limit their area of permissible activity.

*2 3. Establishment of an interstate advisory agency. This type of agency would have no regulatory or taxing powers. It would be created by interstate Council of Governments with responsibilities comparable to those enumerated under S. C. Act 487 of 1967, as amended. A majority of the governing board would be local elected officials from the interstate area. Agency funding would be on a per capita assessment basis.

I can see no legal objection to this procedure. Statutory authorization would be necessary, particularly if membership on an interstate advisory agency is to be provided. I doubt that congressional assent is necessary but this can be more fully explored, as this area is somewhat obscure. Ample authority for such an organization already appears to exist by the provisions of Article VII, Section 15, although the Regional Councils of Government are presently grouped by statute along intrastate lines. Statutory provisions would seem to be indicated.

4. Creation of an interstate advisory committee. This would be an informally established body composed of local, district, and state representatives from the two involved states. The committee would meet periodically to discuss issues of mutual interest. Recommendations would be relayed to appropriate governmental units. The committee would have no regulatory. authority, budget or staff of its own.

I see no legal issues involved in this proposal.

5. As regards the above, if planned changes in county governing authority are enacted by the State Legislature, would there be any difference in the ability of local government to engage in interstate projects or programs under each of the proposed five alternative forms of government?

The answer to this is in the negative irrespective of what forms of government may be devised for the counties. The matter is basically a constitutional one and I cannot conceive of any form of government which could be devised and which would preclude a county from exercising the constitutional authority granted to it by Article VII, Section 15, of the Constitution.

If any further evaluation is required, please call upon me.

Cordially,

Daniel R. McLeod
Attorney General

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