

1972 S.C. Op. Atty. Gen. 22 (S.C.A.G.), 1972 S.C. Op. Atty. Gen. No. 3241, 1972 WL 20389

Office of the Attorney General

State of South Carolina

Opinion No. 3241

January 6, 1972

*1 Mr. L. Steve Mayfield
Executive Director
S.C. State Housing Authority
The Columbia Building, Suite 1000
1203 Gervais Street
Columbia, South Carolina 29201

Dear Mr. Mayfield:

Your letter of December 20, 1971, has been received. Specifically, your request was to outline what actions must be taken by those counties in the State, so desiring, to enable them to participate in the LRPH program. Additionally, what actions are necessary to permit the S.C. State Housing Authority to operate within the political jurisdiction of counties desiring the services of the State Housing Authority.

Counties in South Carolina are empowered to initiate low-rent housing programs provided there is a Housing Authority to act in their behalf. (Section 36–181, et seq., 1962 Code of Laws of S.C.). So far as I am able to determine, there are only three (3) legally existing County Housing Authorities in the State: Darlington, Lexington and Richland. Chesterfield and Dillon Counties have also taken some actions to create a County Housing Authority but I am unsure as to their legal status at this time. After certain conditions specified by State legislation are met, a County can use a Regional Housing Authority if one exists. Counties can also utilize the services of the State Housing Authority if certain conditions are met.

In theory, all the counties in the State except Darlington, Lexington and Richland are in the jurisdiction of one of the State's three (3) Regional Housing Authorities. There is some question, however, as to the status of Region # 2 and I will have to do additional research on this matter. The State legislation prescribes two procedures for a County to, in effect, exclude itself from the jurisdiction of a Regional Housing Authority. These methods are: (1) to decrease the area of operation of a regional housing authority to exclude one or more counties (Section 36–216, et seq., 1962 Code of Laws of S.C.); and (2) by withdrawal from a regional housing authority and the creation of a county authority (Section 36–218.1, et seq., Supp., 1962 Code of Laws of S.C.). Conditions are set forth in order to exercise the option available in (1) above. A county must have a population of more than fifty thousand and meet other conditions before option (2) specified above can be exercised.

The State Housing Authority may conduct its operations in any or all counties of the State. It may also operate in any municipality. The State legislation specifies the procedures necessary for the State Authority to act within the political boundaries of a county or city. If an existing Housing Authority is operating in a county or city where the State Housing Authority determines a need for additional housing exists, then the State Authority shall advise the Housing Authority involved. If the State Housing Authority fails to receive appropriate plans by the housing authority involved to meet the housing need within sixty (60) days, then the State Authority may operate in the county after written approval from the governing body.

*2 A pivotal phrase in the legislation authorizing operations in any or all counties of the State is the phrase “is operating” as evidenced in the following quote:

The authority (SCSHA) may conduct its operations in any or all of the counties of the State. If an existing housing authority is operating in a county where the S.C. State Housing Authority determines that a need exists for additional housing for low

income families, the S.C. State Housing Authority shall advise that housing authority of its findings of need for that county and shall urge the housing authority to make appropriate plans to meet that need.

The phrase “is operating” I would interpret to mean having some specific activities underway to provide housing for low income families. This could mean either: (1) the operation of existing housing units for low income families; (2) the prior submission of a request or requests for Federal funds to construct and operate housing units for the low income citizens in the political jurisdiction involved; or (3) an agreement with the governing body involved prior to the finding of deficiency by the State Housing Authority that the housing authority intends to make a submission on behalf of the governing body involved. prior to the finding of deficiency by the State Housing Authority that the housing authority intends to make a submission on behalf of the governing body involved. Lacking either of the conditions specified in items (1), (2) and (3) in the above paragraph, it is the opinion of this office that a housing authority would not be actively operating in a political jurisdiction.

In the event that a housing authority were not actively operating in a political jurisdiction, it is the opinion of this office that the S.C. State Housing Authority may operate in the political jurisdiction after obtaining the written approval of the governing body involved. No notification by the State Housing Authority of any inactive housing authority would be legally required.

You have previously received from this office a typical resolution that would seem to satisfy the requirements of the State legislation to enable the State Housing Authority to operate in any political jurisdiction of the State. This resolution, if passed by the governing body of the political jurisdiction, would suffice to meet the legislation requiring written approval of the governing body.

Very truly yours,

Daniel R. McLeod
Attorney General

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