

1972 WL 25191 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 31, 1972

*1 The Honorable Thomas A. Wofford
Senator
Greenville County
1206 Augusta Street
Greenville, South Carolina

Dear Senator Wofford:

Section 15 of Article 7 of the Constitution of South Carolina, ratified March 3, 1971, authorizes:

‘—the governing body of a county or municipality, in combination with other counties and municipalities, to create, participate in, and provide financial support for organizations to study and make recommendations on matters affecting—the general welfare—as the common interest of the participating governments may dictate.’

‘The Legislature may authorize participating governments to provide financial support for facilities and services required to implement recommendations of such organizations which are accepted and approved by the governing bodies of the participating political subdivisions.’

This provision of the Constitution is not self-executing. Implementation of the provisions of this section, insofar as the creation of such organizations is concerned, was authorized by Act No. 363, approved June 4, 1971 (71 Acts 485) (Sections 14–341, et seq., Code of Laws, 1962, Supp.).

This statute authorizes two or more counties to form regional councils of government in accordance with the geographical limits provided in the Act. Municipalities lying within the geographical limits provided are authorized to participate as members of such regional councils, irrespective of whether the county within which such municipality lies is or is not a member.

Section 14–346(3) authorizes such regional councils of government to ‘study and make recommendations on matters affecting the public health—general welfare—and such other matters as the common interest of the participating governments may dictate.’

The purpose of Act No. 363 of 1971 is declared in the preamble thereto (Section 14–341) as follows:

‘The intent of this chapter is to enable municipalities and counties, acting individually or in concert, to preserve and enhance their present advantages, to overcome their present handicaps, and to prevent or minimize such future problems as may be foreseen.’

The Act provides that it shall not invalidate any other Act providing for regional council of government limited to the geographical area of a single county. Apparently, about ten such single county regional councils of government have been authorized to be established. These will be subsequently referred to.

I assume that the City of Greenville is a member of Regional Council No. 1, which includes Greenville County, and it is my understanding that such regional council is designated as the South Carolina Appalachian Council of Governments.

The constitutional provision empowers the General Assembly to authorize counties and cities to act, in combination, to create, participate in, and provide financial support for organizations to study and make recommendations on various matters relating to the general welfare of the participating governments. It further empowers the General Assembly to authorize the financial support necessary to implement the recommendations of such organizations.

*2 The question presented is whether planning requests to regional councils, created in accordance with authorizing legislation, must be submitted by the counties and cities in combination and whether implementation of recommendations which are approved can be individually authorized for a participating member, either city or county. If a combination application for planning is required, it appears that the application of the City of Greenville dated November 3, 1971, does not constitute such a combination application, in that it does not seek a joint planning effort with the City or any other authority, but merely requests a study concerning the advisability of the County of Greenville to participate in a joint venture with the State Department of Parks, Recreation and Tourism, relative to the property on Roper Mountain in Greenville County.

This appears to be a mere pro forma application.

It is my opinion, however, that the combination effort required by the constitutional provision is directed toward the formation of regional councils of government, and not to the implementation of planning recommendations which may be adopted by the participating governments. I do not find any statute implementing the constitutional provision which prescribes the manner of submitting planning applications, but the general Statewide Act merely relates to the formation of regional councils of government and, in accordance with the constitutional provisions, provides for combination action in the formation of regional councils.

The constitutional provision does provide that 'the Legislature may authorize participating governments to provide financial support to implement—,' using the words 'governments', 'governing bodies' and 'participating political subdivisions' in the plural sense. I do not believe that this requires that all applicants for planning must, jointly or in combination, act to provide financial support for the plans which may be approved, unless the plan recommended provides for such combined action. The use of the plural instances referred to above admittedly has some persuasive effect, but I do not feel that they literally require that each participating member approve a recommendation submitted to it and that each participating member must provide financial support to implement such recommendations as may be approved, the sole exception being that combination implementation and financial support will be required where the recommendation of the regional council clearly contemplates combination effort.

I reach this conclusion in consideration of the following factors:

1. The constitutional provision provides for combination action to form regional councils of government, whereas it did not so specifically provide for combination implementation. It appears reasonable to conclude that where the framers of the constitutional provision meant to require combination effort, they so stated, and that where they did not intend to require combination action, they omitted such specific requirement.

*3 2. The legislative construction of the constitutional provision is reflected also in the preamble to Act No. 363, set forth above. It is similarly reflected in the only Acts authorizing implementation of recommendations which I have found. These Acts were adopted at the same session of the Legislature which adopted Act No. 363. An Act relating to Florence County (71 Acts 148) provides:

'The City of Florence and the County of Florence are authorized to provide financial support for facilities and services required to implement recommendations of the council of government which are accepted and approved by the governing bodies of the respective governments. Such authorization shall extend to those requirements for projects to be used individually or jointly.'

A number of other countywide Acts contain the same proviso, as, for example, the Act relating to Colleton County (71 Acts 1029); the Act relating to Darlington County (71 Acts 774); the Act relating to Dillon County (71 Acts 911); the Act relating to Marion County (71 Acts 1058); and the Act relating to Spartanburg County (71 Acts 390).

Consideration of other countywide Acts is more persuasive.

Act No. 257 relating to Lee County (71 Acts 292) provides:

‘The Lee County Council, alone or in concert with other governmental instrumentalities participating in a regional planning council, may provide financial support for facilities and services required to implement recommendations of such regional council of government which are accepted and approved by the governing bodies of the participating political subdivisions.’

A similar provision is contained in Act No. 317 relating to Sumter County (71 Acts 426) and in Act No. 323 relating to Kershaw County (71 Acts 432).

Act No. 381 relating to Fairfield County (71 Acts 510) provides:

‘The Cities of Winnsboro and Ridgeway and the County of Fairfield are authorized to provide financial support for facilities and service required to implement recommendations of the council of government which are accepted and approved by the governing bodies of the respective governments.’

It is the opinion of this Office that:

In the formation of regional councils of government, there must be authorization by the General Assembly for such action which must be undertaken by counties and cities in combination;

Application for planning recommendations may be submitted to regional councils which are formed by any participating member, either alone or in concert with another member; and

Authorization for implementation of recommendations which are approved may be given by the Legislature to counties or cities, singly or collectively, but combination implementation is only required when clearly provided for by the recommendations which are approved.

Very truly yours,

Daniel R. McLeod
Attorney General

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