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STATE OF NORTH CAROLINA
DEPARTMENT OF JUSTICE

**NC BOARD OF EXAMINERS
FOR ENGINEERS AND SURVEYORS**

ROY COOPER
ATTORNEY GENERAL

REPLY TO:
Richard G. Sowerby
Transportation Section

April 14, 2010

Andrew L. Ritter
Executive Director
North Carolina Board of Examiners
for Engineers and Surveyors
4601 Six Forks Road, Suite 310
Raleigh, NC 27609

Re: Advisory Letter in Response to Request for Opinion as to the applicability of the Engineering and Land Surveying Act to employees of Regional Councils of Governments (COG)

Dear Mr. Ritter:

This will respond to your letter to the Attorney General in which you ask various questions including whether and to what extent G.S. 89C-25(7) of The Engineering and Land Surveying Act applies to Regional Councils of Governments (COG).

As you are aware, G.S. 89C-25(7) excepts "any political subdivision of the State" or any "municipality" from certain requirements of the Engineering and Land Surveying Act. Your letter appears to seek a determination as to whether a COG would be subject to the same exceptions and powers under G.S. 89C-25(7) as are granted to municipalities and political subdivisions of the State.

The creation of a COG is governed by G.S. 160A-470 which provides that : "Any two or more units of local government may create a regional council of governments by adopting identical concurrent resolutions to that effect ..." The statute further provides that a "unit of local government means a county, city or consolidated city-county." G.S. 160A-470(b). Because cities and counties are both government agencies of the State, Town of Saluda v. Polk County, 207 NC 180, 176 S.E.2d 298 (1934), it would certainly appear that cities and counties would be "political subdivisions of the State," for purposes of G.S. 89C-25(7). Further, since cities, counties and consolidated city-counties are the sole authorized members of a COG, the question becomes whether a COG is subject to the same rights and exceptions under G.S. 89C-25(7) as its member governments are.

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With respect to the powers of a COG, Subsections (1) through (7) of G.S. 160A-475 expressly sets out certain powers, while subsection (8) of the statute provides that a COG possesses “any other powers that are exercised or capable of exercise by its member governments and desirable for dealing with problems of mutual concern to the extent that such powers are specifically delegated from time to time by resolution of the governing board of its member governments that are affected thereby.” G.S. 160A-475(8). See Kloster v. Region D. Council, 36 N.C. App. 421, 245 S.E.2d. 180 (1978). Thus we conclude that, so long as a COG has been so authorized by resolution of its member governments, the COG can perform engineering and surveying work to the same extent as can “political subdivisions of the State” or “municipalities” as set out in G.S. 89C-25(7). However, a COG not so authorized by its members would not be granted the same powers and exceptions set out in the statute.

Thus, with respect to the first three questions in your letter, our conclusion is that a COG, if it is so authorized by its members, would be permitted to conduct the same engineering and surveying work, by and through its employees or members, as would municipalities and political subdivisions of the State as set out in G.S. 89 C-25(7).

In question (4) of your letter, you ask whether a COG can use unlicensed employees to perform engineering or land surveying services for member municipalities. We note that G.S. 89C-25(7) allows political subdivisions to perform certain unlicensed work “provided that the internal engineering or surveying activity is not a holding out to or an offer to the public of engineering or of any service thereof as prohibited by this chapter.” (Emphasis added). Since a COG’s performance of work for a member government would be “internal” to the COG and would not constitute a holding out or offer of engineering services to the public, we believe that such work would be allowable to the extent that it is consistent with the other provisions of Chapter 89C.

In question (5), you ask whether “the providing of services that fall within the practice of engineering or land surveying under G.S. 89C to another municipality [is] a ‘holding out or an offer to the public of engineering or any services thereof as prohibited by this Chapter’ under the language of G.S. 89C-25(7) that negates the possible exception.” We believe the answer to this question is no. This is based on our belief that the “public,” as the term is used in the statute would not include local governments. Thus we do not believe that the provision of engineering or surveying services to a member municipality would be a “holding out or offer to the public.”

In question (6) you ask: “What if in #4 it is providing the survey data from the graphic information system database (GIS) to the public as a public record for use as a survey.” We understand question (4) to ask whether a COG can perform unlicensed engineering or surveying work for a member municipality or county rather than for the public. Since we concluded above that providing the service to a municipality or county is not offering the service to the “public” we see no problem with a COG providing a municipality or county with GIS data. We note that information from a GIS database would generally be publically available information anyway.

In question (7) you ask: “What if in #4 it is advertised to the public as an alternative to hiring a professional land surveyor to do a survey?” We do not believe that the provision of services by a COG to its member governments to be work that is “advertised to the public as an alternative to hiring a professional land surveyor to do a survey.” However, it does not appear that

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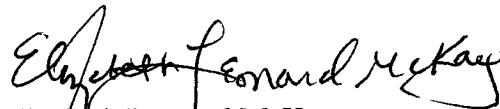
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the local government can hold the data out to the public as an alternative to surveys unless the work was done in compliance with Chapter 89C by a licensed professional land surveyor.

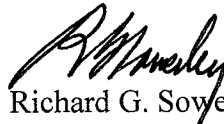
In your final question you ask: "If it is determined that a COG is a political subdivision of the State or a municipality, how does the fact that the COG may be incorporated as a non-profit corporation affect the determination in general, or as to the specific COG that is incorporated?" Assuming that the COG has been authorized to incorporate by its members pursuant to G.S. 160A-475(8), we fail to see how such incorporation would make any difference as to whether the COG could perform engineering or surveying work. Again, the analysis would be the same as is set out in the first portion of this letter. The COG, incorporated or not, could perform whatever services could be performed by its members, to the extent that it has been authorized to do so by resolution of its member governments.

We hope you find this letter helpful in answering your questions. Please note that this is an advisory letter. It has not been reviewed and approved in accordance with procedures for issuing an Attorney General's opinion.

Sincerely,



Elizabeth Leonard McKay
Special Deputy Attorney General



Richard G. Sowerby
Assistant Attorney General

RGS/jt

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