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# The State of South Carolina



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February 15, 1989

The Honorable Charlie G. Williams  
State Superintendent of Education  
Department of Education  
Rutledge Office Building  
1429 Senate Street  
Columbia, SC 29201

Dear Dr. Williams:

You have requested the Opinion of this Office as to two issues related to lease/purchase financing for school building projects. You reference the recent South Carolina Supreme Court decision in Caddell vs. Lexington County School District No. 1 (Opinion No. 22917, filed October 27, 1988) which held that lease/purchase agreements do not constitute debt under Art. X, §15 of the South Carolina Constitution.

Your first question is whether the State Department of Education can distribute school building aid monies pursuant to sections 59-21-320 et seq. and 59-21-420 of the Code of Laws of South Carolina, 1976, as amended, for the acquisition of school facilities under lease/purchase agreements. A previous Opinion of this Office concluded that the acquisition of school facilities by lease/purchase agreements would constitute a "capital improvement" for the use of state money under sections 59-21-320 and 59-21-420 of the Code of Laws of South Carolina, as amend-

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ed. 1/ Ops. Atty. Gen. (August 5, 1986). See also Ops. Atty. Gen. (September 28, 1979). Therefore, the building fund money under sections 59-21-320 and 59-21-420 may be used, in accordance with the terms of the applicable statutes, to pay for school facilities acquired pursuant to lease/purchase contracts; however, local laws should be checked as to this question for any school district considering such a contract. See Ops. Atty. Gen. (August 5, 1986).

Your second question is whether taxes levied for the payment of lease/purchase obligations can be excluded from the calculation of the maintenance of local effort requirement under section 12-35-1557 of the Code as amended. That statute imposes requirements for school districts to "...maintain at least the level of financial effort per pupil for non-capital programs as in the prior year adjusted for an inflation factor..." (emphasis added) Although section 12-35-1557 does not define "non-capital programs" reference may be made to related statutory definitions for guidance as to the meaning of this term. See Lewis v. Gaddy, 254 S.C. 66, 173 S.E.2d 376 (1970); Sutherland, Vol. 2A, §51.02. Here, section 59-20-20(b) as to "capital outlay" and section 59-21-310(a) as to "capital improvement" indicate that a "non-capital program" would not include the cost of "capital improvements" as defined in those statutes. Because lease/purchase agreements for the acquisition of school facilities constitute capital improvements under section 59-21-310(a) (Ops. Atty. Gen. (August 5, 1986), the cost of payments for lease/purchase contracts for school facilities may be excluded from calculations of financial effort per pupil for non-capital programs under section 12-35-1557.

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1/ Although not expressly addressed in the August 5, 1986 Opinion, the definition of "capital improvement program" (emphasis added) in section 59-21-420(c) as "...incurring debt for school building purposes..." clearly does not limit the term "capital improvement" as used in paragraph (a) of section 59-21-420 and defined in section 59-21-310(a). The term "capital improvement program" is used only in paragraph (b) of section 59-21-420 which addresses the reduction of millage required to pay debt service for the bonds for such programs. Sutherland Statutory Construction, Vol. 2A §§46.05 and 51.05.

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In conclusion, the school building fund money under section 59-21-320 et seq. and section 59-21-420 of the Code, as amended, can be used, in accordance with the terms of those statutes, to pay for lease/purchase contracts for the acquisition of school facilities. Such payments for lease/purchase contracts may be excluded from calculation of the "level of financial effort per pupil for non-capital programs" for the purposes of the maintenance of local effort requirements in section 12-35-1557.

If you have any questions, please let me know.

Yours very truly,

  
J. Emory Smith, Jr.  
Assistant Attorney General

JESjr/jps

REVIEWED AND APPROVED BY:



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