

The State of South Carolina



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December 1, 1987

Mr. Burnet R. Maybank, III
Assistant Counsel to the Governor
Office of the Governor
Post Office Box 11369
Columbia, South Carolina 29211

Dear Mr. Maybank:

You have requested an opinion whether the Board of Trustees for the Governor's School of Science and Mathematics may contract with Coker College for the lease of facilities without the necessity of going through the request for proposal (RFP) process or other mandatory state process. It is our opinion that the Board must follow the provisions of §11-35-1590, S.C. CODE, 1976 (as amended) and applicable regulations to obtain the approval of the Budget and Control Board Division of General Services for any such lease, but that there is no requirement that an RFP be employed.

The Consolidated Procurement Code designates the Budget and Control Board as the "single central broker for the leasing of real property for governmental bodies," and provides further that the Division of General Services must ordinarily approve all such leases, § 11-35-1590, supra. See also Regulation R19-445.2120, supra.¹ The Procurement Code does not mandate any formal procedures which the Division of General Services must follow in approving such a lease, and specifically an RFP is not required. See § 11-35-1590, supra.

We have noted that the legislation creating the Board of Trustees provides that it "shall explore use of the facilities of

¹ The Board of Trustees is clearly a "governmental body" as defined in the Procurement Code in that the Procurement Code applies to "any state government ... board" § 11-35-310(18), supra. See § 23, Part II, South Carolina General Appropriations Act, 1987-88.

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Coker College for the school's campus." Part 11, § 23, supra. This provision, standing alone, would not exempt the Board of Trustees from the requirement of obtaining the approval of the Division of General Services for any such lease. Ordinarily, a Court would not recognize an exception to a general law (in this instance the Procurement Code) unless the exception plainly appears in the legislation from "express words or necessary intendment." 73 Am.Jur. 2d "Statutes," § 14. The wording in the act creating the Board of Trustees can be harmonized easily with the leasing provisions of the Procurement Code in that the code provides that a "specific location[] ... may be suggested and preferred by the governmental body concerned." § 11-35-1590, supra. Clearly the Board of Trustees would be authorized in this situation to make its position known to the Division of General Services regarding any such specific location as set forth in the enabling act.

For all these reasons it is our opinion that the Board of Trustees must follow the provision set out in § 11-35-1590, supra, and applicable regulations in leasing facilities for the school. However there is no requirement that an RFP be used in the procurement.

Sincerely yours,

David C. Eckstrom /DCE

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Reviewed and Approved By:

Robert D. Cook

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