



Office of the Attorney General

*Spencer 10-1-19*  
*P. 21*

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July 10, 1986

The Honorable William S. Branton, Jr.  
Senator, District No. 38  
100 East Dorchester Road  
Summerville, South Carolina 29483

The Honorable George H. Bailey  
Member, House of Representatives  
100 Metts Street  
St. George, South Carolina 29477

Gentlemen:

You have asked that this Office examine two ordinances of Dorchester County Council relative to the Dorchester County Aeronautics Board and render an opinion on whether the Board has the authority to enter into leases independent of Dorchester County Council. You have also asked whether the purported resignation of a member of the Board was effective. We confine our comments herein to the two questions raised.

Section 3 of Ordinance No. 79-17 is virtually identical to Section 3 of the 1982 ordinance, substituting "Board" for the "Commission" created in 1979, and otherwise providing:

[The Board] may also sell, lease, trade, convey and exchange property and rights theretofore acquired for such purposes which in its opinion are not needed for which they were acquired, with the approval of a majority of the County Council. ...

It should be noted that Section 3 is captioned "MAY ACQUIRE PROPERTY."

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Section 4 of the 1982 ordinance is likewise virtually identical to Section 4 of Ordinance No. 79-17, captioned "MAY LEASE PROPERTY," which provides:

The Board may lease to the United States of America or to any agency thereof or to any person, firm or corporation, municipal or private, any and all of the property and rights acquired by the Board under the provisions of this Ordinance or under the provisions of any other Ordinance, statute or law. The Board may also enter into agreements with the United States of America or any agency thereof or any person, firm or corporation, municipal or private, relative to the establishment, operation and maintenance of an airport and aeronautical field in such County. All such leases and agreements shall be valid and binding upon the Commission and the County.

It appears at first glance that Sections 3 and 4 have conflicting provisions, in that a majority of County Council must approve leases or other conveyances entered into pursuant to Section 3, but no such approval is required for leases entered into pursuant to Section 4.

In interpreting such a legislative enactment as an ordinance, full effect must be given to each portion of the ordinance, and apparent conflicts must be reconciled and construed harmoniously if at all possible. Cf., State ex rel. McLeod v. Nessler, 273 S.C. 371, 256 S.E.2d 419 (1979); Adams v. Clarendon County School Dist. No. 2, 270 S.C. 266, 241 S.E.2d 897 (1978). It is possible to reconcile these apparently conflicting sections and give effect to both in this instance. Section 3 would apply to those leases or other means of alienating property when the Dorchester County Aeronautics Board has determined that the property or property interest is no longer needed for the purpose for which it was acquired; County Council's approval would be required in those cases. If, on the other hand, the lease is merely an ordinary lease entered into pursuant to Section 4 and does not involve alienation of property no longer needed for aviation purposes, the ordinance apparently would not require approval of County Council.

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Although we have not seen any lease agreement, it appears from information provided to this Office that the lease falls outside Section 3 of the ordinance, though this determination remains with the Board and County Council upon a review of all relevant facts.

If the relevant facts reveal that real property is being leased, it will be necessary to follow the provisions of Section 4-9-130, Code of Laws of South Carolina (1976, as revised). In pertinent part, that section provides:

Public hearings, after reasonable public notice, must be held before final council action is taken to:

\* \* \*

(6) sell, lease or contract to sell or lease real property owned by the county.

\* \* \*

By Section 5 of the 1982 ordinance, it appears that lands held by the Board are actually county lands. This Code section has been interpreted in an opinion dated June 18, 1980 (enclosed); lands held by the Charleston County Community Development Department on behalf of Charleston County were not exempted from the provisions of Section 4-9-130 concerning notice and public hearing requirements prior to sale of the land. Thus, if real property is to be sold or leased, or a contract to sell or lease such real property is contemplated by the Board, the requirements of Section 4-9-130 must be followed by Dorchester County Council. See also Amick v. Richland County, 273 S.C. 300, 255 S.E.2d 855 (1979); Cps. Atty. Gen. dated November 6, 1979 and January 26, 1979.

It should be noted that this Office has not examined any lease agreements which may be contemplated by either the Board or County Council, and we thus make no comment as to the feasibility or desirability of any particular lease. We also observe that Sections 4 and 5 of the 1982 ordinance permit the Board to enter into agreements in the name of Dorchester County; contracts could come within the purview of Sections 4 and 5 and no action would be required by County Council unless the contract

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were for the sale or lease of real property. Moreover, an Attorney General's opinion does not make factual determinations, and it is for the Board and County Council to determine, depending upon the actual facts and terms of the lease, the applicability of Sections 3, 4, or 5 of the 1982 ordinance or whether further action by County Council (notice, public hearing, an ordinance) would be required pursuant to Section 4-9-130 of the Code. Accordingly, we confine our comments herein to the legal interpretation of the 1982 ordinance and Section 4-9-130 of the Code.

You have also asked whether one who had announced his intention to resign from the Dorchester County Aeronautics Board, but had taken no other action to effectuate his resignation, had effectively resigned from the Board. The law is stated in Jernigan v. Stickley, 80 S.C. 64, 61 S.E. 211 (1908), citing State v. Aucker, 2 Rich. 245:

The question is whether such a resignation has been made and accepted according to law and in a way obligatory on all the parties to this controversy. To make it so there must have been both a resignation, cum animo, and an acceptance of it on the part of the ... government ... .<sup>1/</sup>

80 S.C. at 71. To have an effective resignation, the resignation must be tendered by the official and accepted by the appropriate governmental body (here, County Council). There must be an intent on the part of the individual to resign. Furthermore, a resignation may be revoked at any time before the date upon which the resignation was to take effect. See Ops. Atty. Gen. dated November 28, 1941 and December 1, 1965; (enclosed) Jernigan v. Stickley, supra.

As with the case of the lease, because investigation of the many facts necessary to determine whether the individual's purported resignation may have been effective, we confine our comments to the relevant law and leave resolution of the fact of resignation to the individual and County Council. We would also note that, in the event of a resignation, Section 1 of the 1982 ordinance under consideration herein requires a Board member to serve until his successor has been appointed and qualifies.

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<sup>1/</sup> The phrase cum animo means, essentially, with intention. See Black's Law Dictionary 80 ("animo") (5th Ed. 1979).

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We trust that the foregoing has adequately responded to your inquiry. Please advise if further assistance or clarification should be needed.

Sincerely,

*Patricia D. Petway*

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Assistant Attorney General

PDP:hcs

Enclosures

REVIEWED AND APPROVED BY:

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