

1983 WL 181784 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 8, 1983

***1 Re: Richland County School District #1—Sale of Old Columbia High School**

Charles W. Knowlton, Esquire
Boyd, Knowlton, Tate & Finlay
Attorneys at Law
P. O. Box 11598
Columbia, SC 29211

Dear Mr. Knowlton:

Your letter of February 16, 1983, asking whether or not Richland County School District #1 and the Columbia Academy are contractually obligated to sell the property known as Old Columbia High School subject to the approval of the Richland County Council of the transaction has been referred to me for comment. You have furnished for my review the 'Invitation to Bid', the letter of Allan Fulmer dated September 30, 1982, submitting the 'Bid and Contract of Sale' signed by representatives of the First Baptist Church of Columbia, South Carolina, the letter of Charles W. Knowlton dated October 5, 1982, on behalf of Richland County School District #1, the minutes of the executive session of the School Board of Commissioners and the minutes of the regular meeting of the School Board of Commissioners, both dated October 19, 1982, the letter of October 25, 1983, from Charles Knowlton on behalf of the School District #1 Board and the Columbia Academy, a letter from Mr. Allan Fulmer dated November 3, 1982, on behalf of the First Baptist Church, the Contract of Sale signed by the First Baptist Church submitted by Allan Fulmer's letter dated January 21, 1983, and the Resolution of the First Baptist Church adopted February 13, 1983, approving the Contract of Sale dated January 21, 1983, for the purchase of the property in issue.

The documents prior to the meeting of October 19, 1982, of the Richland County School District #1, Board of School Commissioners, and the members of the Columbia Academy Board, owners of the Old Columbia High School property, evidence deliberation and negotiation of acceptable terms prior to entering into the proposed contract. The minutes of the executive session of the School Board show that Reverend William Bowman, Sr. made a motion in closed session to accept the bid of the First Baptist Church with stated specific modifications. The motion was seconded and passed with a majority vote. Mr. Dave Robinson of the Academy Board moved to approve the sale, as modified, with an option for purchase granted to the Library Board contingent on City and County Council approval. The motion was seconded and passed by a majority vote. An amended motion was made by Reverend Bowman of the School Board incorporating an option to the Library to purchase one piece of the property, and this motion was seconded and passed. It was stated that both Boards were in agreement to accept the Contract with modifications and to offer an option to the Library Board.

The minutes of the public session contain the ratification of the action of the School Board to accept the Contract for the sale of the Old Columbia High School with certain modifications, including the retention of a certain portion of the property for sale under option to the Richland County Public Library.

*2 The letter of Charles Knowlton, dated October 25, 1982, transmits a statement of the necessary contract modifications so as 'to adapt our instruments accordingly'.

By letter dated November 3, 1982, Allan Fulmer, as counsel for the First Baptist Church, speaks in terms of 'negotiations' and suggests a 'restructure' of the agreement, requiring a revised plat of the property, and stating the terms of the option being given to the Library Board. Page 2 of this letter in the last paragraph discusses prorating demolition costs. Page 3 of this letter states the

intention to present the purchase to the Church congregation for approval and suggests that ‘ . . . we should have a contract fully acceptable to the Academy, the School Board and with tentative approval by me, as the Church attorney, subject, however, to final approval by our Church Conference.’ The final paragraph concerns the meeting of the City Council and landmark approval stating ‘ . . . I am sure at that time City Council will want to know whether or not we have reached an agreement, even though it may be a tentative agreement.’ I believe that on this date the School Board and the First Baptist Church were in a stage of negotiation involving an offer and a counter-offer. However, on January 21, 1982, the First Baptist Church submitted to the School Board a signed Contract of Sale incorporating the required modifications and the option arrangement. On February 13, 1983, the First Baptist Church of Columbia, by resolution, voted to approve the purchase Contract, thus accepting the counter-offer of the School Board. At this point, all necessary elements for formation of the contract existed.

As to the enforceability of the contract, the minutes of the School Board meeting on October 19, 1982, if signed and approved, would, in all likelihood, be sufficient, along with the letter of October 25, 1982, from the School Board's legal counsel to show an intent to be bound so as to satisfy the requirements of [Speed v. Speed](#), 213 S.C. 401, 49 S.E.2d 588 (1948) and [Goodwin v. Hilton Head Co.](#), 273 S.C. 158, 259 S.E.2d 611 (1979), since these documents taken as a whole on their face demonstrate the identity of the parties and the subject matter of the sale. The School Board accepted some \$45,003.00 under the original bid which satisfies the requirement of consideration.

In the independent opinion of Nexsen, Pruet, Jacobs & Pollard dated February 18, 1983, obtained by the Richland County District #1 School Board, the position is taken that the Contract of purchase was accepted in the meeting of October 19, 1982, by the School Board, that the contract modifications were conditions subsequent to the absolute obligation, and that there exists a contractual obligation for performance of the contract by all parties. Under either view, it is the opinion of this office that an enforceable contractual agreement has been entered into by the parties.

It must be understood that this is a factual question since a counter-view may be argued that all parties intended the formal written document to be a condition precedent to the agreement taking effect. If it were to be found by a Court that the parties did not intend to be bound until the written contract was executed, then no valid enforceable contractual obligation would be held to arise. [Bugg v. Bugg](#), 272 S.C. 122, 249 S.E.2d 505 (1978). This intention to be bound is determined always by the surrounding facts and circumstances of each individual case and by examination of the negotiations leading to the proposed written contract so as to determine the intent of the parties, and in our opinion the intent of the parties was so expressed that they are bound.

Sincerely,

*3 Judith Evans Finuf
Assistant Attorney General

1983 WL 181784 (S.C.A.G.)