

1983 WL 182014 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 29, 1983

*1 Honorable Edgar A. Vaughn, Jr., CPA
State Auditor
Wade Hampton Office Building
Box 11333
Columbia, South Carolina 29211

Dear Mr. Vaughn:

You have requested the advice of this office as to ownership of equipment and library books at the various technical colleges. I regret the delay in responding to this request.

Under § 59-53-52(3), 'possession' of real property is in the area TEC Commission, regardless of the source of funds for it; while 'possession' of personal property is only in the area commission when purchased with local funds. Personal property includes items such as equipment and library books.

Possession has been defined to mean 'retention and control; and [t]hat condition of facts under which one can exercise his power over a corporal thing at his pleasure to the exclusion of all other persons.' BLACK'S LAW DICTIONARY (5th Ed. 1979). Here, the degree of control contemplated by the use of the word 'possession' should be construed as ownership in that no provision is made elsewhere as to title. This conclusion is supported by the reference in § 59-53-52(3) to 'owned' in a manner which indicates that 'possession' is synonymous with it in that statute. Moreover, the title to the Act on which § 59-53-52(3) is based, which is a proper aid to construction here, refers to the Act's 'establish[ing] ownership of certain property.' Act 654, Acts and Joint Resolutions of South Carolina, 1976; See [Lindsay v. Southern Farm Bureau Casualty Co.](#), 258 SC 272, 188 SE2d 374 (1972).

The authority of the State Board of Technical and Comprehensive Education to require accountability for and maintain inventory records over equipment does not appear to affect or to be limited by the actual ownership of the equipment. § 59-53-50(a). The property may also be subject to other applicable State Board policies, but the ownership remains in the area commission if the personal property was purchased with local funds. See attached opinions.

Although it does not appear that area commissions own personal property such as equipment or library books purchased with State funds, they may also own such property given to them by gift or bequest. Section 59-53-52(3) does not address that issue but Sections 59-53-52(4) & (5) permit the area commission to acquire and accept gifts and bequests, etc., of personal property. The terms of the transfer of the property may determine whether the area commissions or some other public body owns the property.

For your information, I am enclosing several recent opinions of this office concerning the technical education system. If we may be of further assistance, please contact us.

Yours very truly,

J. Emory Smith, Jr.
Assistant Attorney General

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