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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY MCMASTER
ATTORNEY GENERAL

May 8, 2003

The Honorable James H. Harrison
Member, House of Representatives
512 Blatt Building
Columbia, South Carolina 29211

Dear Representative Harrison:

You have enclosed a copy of the State Department of Education Regulation pertaining to the purchase of property by a school district. It is your understanding that Richland District One has acquired property adjacent to Dreher High School without obtaining the necessary approval from the State Superintendent of Education and that a number of these purchases were made prior to the submission of the District's F-2 form for approval, dated February 12, 2003. You have asked the following questions regarding this situation:

(1) Do SDE Regulations and State laws make this purchase of property a matter for approval in the discretion of the Superintendent of Education?

(2) If this is a state matter, what is the role of the State Superintendent and what factors would she consider?

(3) What is the effect of Section 6-29-950, does it apply to a school district, and what other statutes and regulations may be applicable to this matter?

(4) Is a school district required to comply with local zoning?

(5) Are citizens entitled to be heard by the State Superintendent prior to a final decision to authorize this purchase?

(6) What would be the effect if a district purchased property without obtaining required prior approval?

(7) If property is acquired without compliance with law, could it have a legally adverse impact upon the issuance of bonds related to the project?

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Request letter

(8) If related property purchases were not disclosed prior to the bond referendum, could that constitute withholding a material fact which could have misled the voters or undermined the referendum?

Law / Analysis

General Legal Principles

It is well recognized that the powers of a school district, as well as its governing board, are limited. As we noted in an opinion of this Office, dated May 21, 1979,

> [s]chool districts are political subdivisions of the State created by Act of the General Assembly. See, § 59-17-10 et seq. The powers and authority of boards, commissions and other public bodies are defined and limited by law. Moreover, the courts have held that boards have, by implication, such additional powers as are necessary for the due and efficient exercise of expressly granted duties and powers. However, under this additional authority, boards may not abridge or enlarge their authority or exceed the powers given them by statute. 67 C.J.S., Officers, § 107, p. 378.

Op. S.C. Atty. Gen., May 21, 1979.

Moreover, this Office has also emphasized that an agency's regulation is presumed valid. Op. S.C. Atty. Gen., October 20, 1997; Op. S.C. Atty. Gen., November 27, 1995, referencing U.S.C. v. Batson, 271 S.C. 242, 246 S.E.2d 882 (1978) (Littlejohn, J., concurring). Furthermore, substantive regulations duly promulgated by an administrative agency possessing the specific delegated authority for such promulgation carry with them the force and effect of law. We have noted that "[a] legislative or substantive regulation carries the force of law and after promulgation becomes an integral part of the regulatory statute." Op. S.C. Atty. Gen., September 16, 1987. See also, Op. S.C. Atty. Gen., June 19, 1979 ["... if a State agency has followed the procedures in the promulgation of rules and regulations as set forth in § 1-23-210, et seq. ... such duly promulgated rules and regulations have the force and effect of law immediately upon going into effect."].

In addition, it is elementary that an administrative agency must follow its own rules promulgated by it. As the South Carolina Supreme Court emphasized in Triska v. DHEC, 292 S.C. 190, 355 S.E.2d 531 (1987), "DHEC must also follow its own regulations and the provisions of the Administrative Procedures Act ... in carrying out the legitimate purposes of the agency." 292 S.C. at 195. Moreover, we stated in Op. S.C. Atty. Gen., June 19, 1979 that

> [i]t is axiomatic that '[a] valid rule or regulation duly promulgated by a public administrative agency is binding on the agency and on all of those to whom its terms apply ... .' 73 C.J.S. Public Administrative Bodies and Procedure, § 107 (1951). Also see Mace v. Berry, 225 S.C. 160, 81 S.E.2d 276 (1954); Faile v. South Carolina

Employment Sec. Com'n., 267 S.C. 536, 230 S.E.2d 219 (1976); 1 Am.Jur.2d Administrative Law, § 96 (1962).

Applicable Law

S.C. Code Ann. Section 59-19-190 provides as follows:

> [w]henever a board of trustees deems it expedient to acquire lands for public school purposes with any State funds, it may purchase, subject to the prior written approval of the State Board of Education, the lots or parcels of land necessary for such purpose. The reassignment or disposal of such parcels of land purchased after 1952 with any State funds shall be subject to the prior written approval of the State Board of Education.

(emphasis added). The purpose of this statute is obviously to insure prior written approval by the State Board of Education for any purchase of land with state funds by a school district.

Consistent therewith, a Regulation promulgated by the State Board of Education – S.C. Code of Regulations R. 43-190 – provides that "[a]ll new school facilities and sites shall meet minimum requirements listed in 'South Carolina School Facilities Planning and Construction Guide ... .'" The Regulation further states that this publication is "available from the State Department of Education."

The South Carolina School Facilities Planning and Construction Guide, which is incorporated by reference in R. 43-190, provides in § 2.03 as follows:

SITE APPROVAL

1. Subject to Approval Before Acquisition

a. Except as noted under Paragraph b below, all real property subject to acquisition by a district, whether unimproved land or land with existing improvements, shall first be approved by OSP&B. All property shall be acquired in fee simple title as per state statute.

b. Approval by OSP&B is not required before acquisition of property when both of the following conditions occur.

- The property is to be used for non-student-related purposes (such as for administration, maintenance, or storage buildings).

- No state funds are to be used in the purchase of the property.

2. On-site Inspection Before Acquisition

a. At discretion of OSP&B, site inspections may be made of any property where approval by OSP&B is required before acquisition.

b. If boundary plat of property is available, same shall be furnished to OSP&B at time of inspection. If plat is not available, corner irons should be identifiable.

c. At discretion of OSP&B, any of the following may be asked to participate in a site inspection in addition to district personnel.

Architect, landscape architect, professional engineer, or construction manager
DHEC District Engineer
Department of Highways and Public Transportation Traffic Engineer
Local or Regional Planning Agency
Soil Conservation Service

3. Written Approval Before Acquisition

a. In all cases where OSP&B approval is required, after tentative approval of site by OSP&B, district superintendent shall submit the form "Application for Approval of Property Acquisition" to OSP&B for final approval. A boundary plat prepared by a registered land surveyor indicating acreage, bounds, adjoining roads, and other pertinent information, shall be attached to form.

b. See DIVISION 13–SAMPLE FORMS for copy of above form.

The Guide also enumerates certain "Site Selection Factors" found at § 2.06. Section 2.06 provides as follows:

2.06 SITE SELECTION FACTORS

1. The district, after careful consideration of all factors, will select the tentative site for inspection by OSP&B. In some cases, more than one site may be considered and a comparative evaluation made jointly by the district and OSP&B before final selection.

2. The school district when considering sites may wish to enlist the aid of any of the following:

   Architect, landscape architect, professional engineer, or construction manager
   DHEC District Engineer
   Department of Highways and Public Transportation Traffic Engineer
   Local or Regional Planning Agency
   Soil Conservation Service

3. If OSP&B has tentatively approved a site that does not have access to an approved municipal or county water and/or sewage system, or if soil conditions are questionable, it is recommended that an "option to purchase" be secured, in order that proper engineering studies might be first obtained to assure that problems related to the above factors will not be encountered later.

4. **Miscellaneous Factors**

   a. Location: Should be near student population center with consideration given to growth direction.

   b. Shape: A rectangular shape is generally preferable, with an approximate ratio of 5:8 considered ideal. Avoid long, narrow sites.

   c. Topography: Avoid steep slopes and excessive "cut and fill" situations where possible.

   d. Access: Consider highway access, width of roads, and future development patterns. Avoid congested traffic areas. Especially important is consideration of "sight lines" on main road frontage where cars and busses enter traffic. Main road frontage should be ample to allow for separate care and bus entrances and exits.

   e. Noise: Area should be free of disturbing noises resulting from high-speed vehicular traffic, airport approaches, shopping centers, industrial plants, and the like.

   f. Utilities and Services: Consider availability of water, sewer, gas, telephone, electricity, and fire/police protection.

   g. Soil Conditions: Soil investigations, such as borings or percolation tests, are recommended prior to site acquisition.

h. Easements: Give prior consideration to type and location of easements that may be inherent with the property.

i. High-Tension Transmission Power Lines: These shall not cross any portion of a school site, unless otherwise waived by OSP&B.

(emphasis added).

In accordance with the foregoing authority, the Director of the Office of School Planning and Buildings of the South Carolina Department of Education (now known as Office of School Facilities or OSF) requires a school district to submit a Form F-2 or "Application For Approval of Property Acquisition" prior to such acquisition of property by the district. OSF requires the submission of two copies of the form along with the plat of the property to be purchased. The F-2 form also requires a written description of the site as well as information concerning the property's accessibility and topography. Moreover, the number of acres involved and the cost of the purchase must be submitted. A description of utilities available and whether the property will have fee simple title is also requested on the F-2 form. The school district seeking approval from OSF is required to disclose the source of fire protection for the property to be acquired.

With the foregoing general law and factual background, we will address each of your questions in turn.

1. Do SDE Regulations and State laws make this purchase of property a matter for approval in the discretion of the Superintendent of Education?

The answer to this question is yes. Regulation R.43-190 makes it clear that "all real property subject to acquisition by a district, whether unimproved land or land with existing improvements, shall first be approved" by OSF. Just as any statute, "where the language of a regulation is plain and unambiguous ... further inquiry is not required." Burns v. Barnhart, 312 F.3d 113, 125 (3d Cir. 2002). Here, the Regulation provides that the Office of School Planning and Building of the State Department of Education (now, OSF) shall "first" approve purchase of land by the school district. The word "first" means "preceding all others" or "foremost." Black's Law Dictionary (5th ed.). We are advised that Richland School District One's stated purpose in the purchase of the property in question is to construct a student parking lot or a student green space at Dreher High School. R.43-190 mandates that the only exception to the requirement of prior approval by OSF is if the property is to be used for "non-student related purposes (such as for administration, maintenance or storage buildings)" and "[n]o state funds are to be used in the purchase of the property." In other words, the Regulation expressly states that approval by OSF "is not required before acquisition of property when both ... conditions occur." Here, such is not the case as the purchase of land to be used by a school, such as Dreher, for student parking or a student green space would appear to fall outside the exception to the Regulation. Accordingly, it is our opinion that Regulation 43-190 is applicable here, therefore requiring prior approval by OSF before any purchases by Richland School District One could be made. Both § 59-19-190 as well as the broader regulation, R.43-190, thus transform

the decision concerning a school district's purchase of property from a local matter to the State's concern.

Regulation 43-190 also places it within the discretion of OSF to make "site inspections" of the property which the school district desires to purchase. If a boundary plat is available, it must be provided to OSF at the time of inspection. Further, the Office may ask school district personnel as well as a number of persons or agencies (i.e. architect, DHEC engineer, DOT traffic engineer etc.) to participate in the on-site inspection.

Once tentative approval is given to the purchase by OSF, then the district superintendent must submit the so-called F-2 Form "Application For Approval of Property Acquisition" to OSF for final approval.

OSF possesses the discretion, even after it has tentatively approved a site, to recommend that the district secure an "option to purchase" if the site does not have access to an approved municipal or county water and/or sewage system, or if soil conditions are questionable. This is to allow "proper engineering studies to be first obtained to assure that problems ... will not be encountered later."

The Regulation also specifies a number of "miscellaneous factors" which OSF should consider in determining whether to give its approval to the school district prior to purchase. These include location, shape, topography, access, noise, utilities and services, soil conditions, easements and the presence of high-tension power lines.

It is apparent that approval by the Department of Education is a pivotal step necessary at the State level before a local school district may purchase property. In order to insure that there exists a uniform procedure which will serve as a check upon any inappropriate purchase of real property by a school district, such approval is mandatory. The purpose of the Regulation is obviously to insure student health and safety and to maintain the appropriate setting of serenity and solitude conducive to quality education. The state approval process guards against unwise or inappropriate purchases of property and, in this way, protects the taxpayer. In our opinion, that is why the Regulation requires OSF to give "prior approval" before the purchase of the property may be made by the school district. Accordingly, in answer to your first question, the purchase of property by a school district is a matter for approval within the discretion of the State Department of Education. The Department may either approve or disapprove the application, as it deems appropriate. However, approval must first occur before purchase by the District is made.

2. <u>If this is a state matter, what is the role of the State Superintendent and what factors would she consider</u>?

This question is answered in large part by our response to Question 1. We would add only that the Superintendent of Education is the administrative head of the State Department of Education and, ultimately, responsible for any approval or disapproval by OSF.

If real property is purchased by a school district without prior approval by the State Department of Education, in contravention of the foregoing Regulation, the underlying purpose of a uniform procedure for the purchase of property by school districts would be thwarted. The State's purpose – to ensure that a district does not purchase property which would adversely affect student safety, or disturb an appropriate school environment, or result in an unwise expenditure of funds – would be undermined. Thus, a prior approval by OSF is mandatory.

3. What is the effect of Section 6-29-950, does it apply to a school district, and what other statutes and regulations may be applicable to this matter?

4. Is a school district required to comply with local zoning?

Section 6-29-950 deals with the enforcement of zoning ordinances by a county or municipality and provides various mechanisms for enforcement thereof.

The statute provides as follows:

> (A) The governing authorities of municipalities or counties may provide for the enforcement of any ordinance adopted pursuant to the provisions of this chapter by means of the withholding of building or zoning permits, or both, and the issuance of stop orders against any work undertaken by an entity not having a proper building or zoning permit, or both. It is unlawful to construct, reconstruct, alter, demolish, change the use of or occupy any land, building, or other structure without first obtaining the appropriate permit or permit approval. No permit may be issued or approved unless the requirements of this chapter or any ordinance adopted pursuant to it are complied with. It is unlawful for other officials to issue any permit for the use of any land, building, or structure, or the construction, conversion, demolition, enlargement, movement, or structural alteration of a building or structure without the approval of the zoning administrator. A violation of any ordinance adopted pursuant to the provisions of this chapter is a misdemeanor. In case a building, structure, or land is or is proposed to be used in violation of any ordinance adopted pursuant to this chapter, the zoning administrator or other appropriate administrative officer, municipal or county attorney, or other appropriate authority of the municipality or county or an adjacent or neighboring property owner who would be specially damaged by the violation may in addition to other remedies, institute injunction, mandamus, or other appropriate action or proceeding to prevent the unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use, or to correct or abate the violation, or to prevent the occupancy of the building, structure, or land. Each day the unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use continues is considered a separate offense.

> (B) In case a building, structure, or land is or is proposed to be used in violation of an ordinance adopted pursuant to this chapter, the zoning administrator or other designated administrative officer may in addition to other remedies issue and serve upon a person pursuing the activity or activities a stop order requiring that entity stop all activities in violation of the zoning ordinance.

As is evident, a violation of a zoning ordinance is a misdemeanor. Moreover, authorities of the municipality or county may, in addition to other remedies, seek an injunction, mandamus or take other appropriate action or file other proceedings to enforce the zoning ordinance by preventing building activities done inconsistent therewith. Each day's violation is a separate offense. Further, the zoning administrator is empowered to issue and serve upon a violator "a stop order requiring that entity to stop all activities in violation of the zoning ordinance."

Nothing in § 6-29-950 suggests that the statute is not applicable to a school district. Indeed, § 6-29-770(A) provides that "[a]gencies, departments, and subdivisions of this State that use real property, as owner or tenant, in any county or municipality in this State are subject to the zoning ordinances." (emphasis added).

Further, in Charleston County School District v. Town of McClellanville, Order dated February 5, 1991, the South Carolina Supreme Court wrote:

> [w]e clarify any earlier intimations we may have made previously on this issue and explicitly hold that we know of no law allowing a school district or other similar agency to ignore valid, local zoning requirements and therefore they may not ignore such.

This statement was reaffirmed by the Court in City of Charleston v. South Carolina State Ports Authority, 309 S.C. 118, 420 S.E.2d 497 (1992). Accordingly, Richland School District One is required to comply with existing zoning requirements. Non-compliance is a violation thereof.

5. Are citizens entitled to be heard by the State Superintendent prior to a final decision to authorize this purchase?

The Regulation in question does not expressly mention any entitlement to be heard before the Superintendent of Education. In addition, we presume that this is not a "contested case" for purposes of the Administrative Procedures Act, § 1-23-10 et seq., nor a "judicial or quasi-judicial decision of an administrative agency" under Article XI, § 22 of the South Carolina Constitution ["No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard ...." Nevertheless, the essence of due process is to be treated fairly by government decisions and be provided with an opportunity to be heard regarding agency decisions. Koester v. Citizens' Pub. Co. Carolina Nat. Bank, 154 S.C. 154, 151 S.E. 452 (1930); S.C. Dept. of Social Services v. Wilson, 352 S.C. 445, 452, 574 S.E.2d 730 (2002) ["The fundamental requirement of due process is the opportunity to be

heard at a meaningful time and in a meaningful manner."] While public comment is not required pursuant to any specific provision of law, it is entirely consistent with the principles of due process and fundamental fairness for the Superintendent of Education to afford citizens in the community the opportunity to provide input prior to any final decision by the Department of Education concerning whether Richland District One may purchase the property in question.

6. What would be the effect if a district purchased property without obtaining required prior approval?

Of course, as noted earlier, a school district is a creature of statute. A district's powers are limited by the General Assembly and existing law. Any action taken beyond such authority is ultra vires and void. Fulk v. School Dist. No. 8 of Lancaster County, 155 Neb. 630, 53 N.W.2d 56 (1952). As this Office stated in Op. S.C. Atty. Gen., Op. No. 2493 (August 16, 1968),

> "[t]he powers and authority of the boards and officers of school districts and other local school organizations are ordinarily purely statutory and are limited to those powers expressly conferred by statute or necessarily implied from those conferred or from duties imposed by statute." 78 C.J.S. Schools and School Districts, § 119.

As the Nebraska Supreme Court commented in Fulk v. School Dist. No. 8 of Lancaster Co., supra, "where a contract is entered into by a school district without power so to do such contract may be declared void and invalidated in an appropriate action." 53 N.W.2d at 60. Thus, where the school district's purchase is ultra vires and beyond the district's authority, the Court in Fulk concluded that a taxpayer possesses a remedy in a court of equity for cancellation of the deed. Moreover, in Williams v. Wylie, 217 S.C. 247, 60 S.E.2d 586 (1950), the Supreme Court of South Carolina addressed a situation in which the county commissioners of Lancaster County were deemed by the Court to be acting beyond their authority and ultra vires. In that case, the Court ordered the deed cancelled.

Of course, Richland District One possesses the general authority to buy, sell, mortgage and own real estate. See, 1962 S.C. Code Ann. § 21-3918. However, such general authority must clearly be read in conjunction with and controlled by R.43-190. In this particular instance, the Superintendent of Education has acknowledged that the agency possesses jurisdiction to approve purchases made by Richland District One. See, Letter dated April 7, 2003 from Superintendent Tenenbaum to Fred Easley, President Melrose Neighborhood Association ["When District One was made aware of the requirement that OSF is to approve the acquisition of additional property for Dreher, District One ceased to purchase property."]

Thus, any purchases of property by Richland District 1 not approved by the Department of Education prior to the purchase would potentially be subject to a court action. The remedy of deed cancellation could thus be available.

7. If property is acquired without compliance with law, could it have a legally adverse impact upon the issuance of bonds related to the project?

8. If related property purchases were not disclosed prior to the bond referendum, could that constitute withholding a material fact which could have misled the voters or undermined the referendum?

Certainly, a bond referendum cannot vest a school district with any greater authority than that allowed by existing law. Op. S.C. Atty. Gen., April 27, 2001. Moreover, a ballot referendum may not confuse or mislead the voter. Op. S.C. Atty. Gen., October 26, 1962. The general test applied by our Supreme Court as to whether a particular referendum is upheld or set aside is whether "when viewed as a whole, [the referendum] ... would likely mislead the average voter." Lowery v. Bright, 234 S.C. 279, 107 S.E.2d 769 (1959). It is the purpose of a bond referendum to "determine the will of the voters upon the assumption of a public debt to the amount of and for the object proposed." Fairfax County Taxpayers Alliance v. Bd. of County Supervisors of Fairfax, 202 Va. 462, 117 S.E.2d 753 (1961). The general purpose of the debt "must be stated with sufficient certainty to inform and not mislead voters as to the object in view ...." The painstaking details of the proposed work or improvements, of course, need not be set out in the ballot. Id.

In Tipton v. Smith, et al., our Supreme Court articulated the general standard for legal sufficiency of a referendum. Quoting with approval the Massachusetts case, In re Opinion of Justices, 271 Mass. 582, 171 N.E. 294, 297, 69 A.L.R., the Court stated that the referendum

> ... must be complete enough to convey an intelligible idea of the scope and import of the proposed law. It ought not to be clouded by undue detail, nor yet so abbreviated as not to be readily comprehensible. It ought to be free from any misleading tendency, whether of amplification, of omission, or of fallacy. It must contain no partisan coloring. It must in every particular be fair to the voter to the end and that the intelligent and enlightened judgment may be exercised by the ordinary person in deciding how to mark the ballot.

93 S.E.2d at 642.

In the Tipton case, the Court found that the ballot in question was materially misleading and thus declared the election invalid. See also, Heinitsh v. Floyd, 130 S.C. 434, 126 S.E. 336, 337 ["To give effect to the [wording of the ballot] would be to approve the submission of constitutional amendments under forms which would procure their adoption by deceit."].

Your specific questions regarding last November's vote in favor of the Richland One bond referendum concern the legal impact upon the bond referendum should it be determined that the voters in that referendum were misled by the facts presented. In short, should a court find that a material fact was omitted – i.e. adjacent property purchases by the district which were not disclosed and which could have misled voters – you wish to know the legal ramifications thereof.

Specifically, it is your concern that voters were not properly apprised of the fact that School District One was in the process of purchasing the equivalent of an entire city block in property adjacent to the present Dreher site. You are troubled by the fact that notwithstanding ongoing plans to purchase a large tract of additional property in the adjacent neighborhood, voters were led to believe that any construction, equipping and furnishing of a replacement facility for or renovations and/or expansions would be made on the present Dreher High School property site.

This Office has recognized repeatedly that it cannot make factual determinations in a legal opinion. Op. S.C. Atty. Gen., December 12, 1983. Of course, this rule would include any factual determination as to whether the statements made leading up to a particular bond referendum were misleading. In an opinion, dated September 3, 1999, we stated that

> [b]ecause this Office does not have the authority of a court or other fact-finding body, we are not able to adjudicate or investigate factual questions. Op. Atty. Gen., dated October 9, 1985.

Thus, the ultimate determination of whether the information provided as part of the Richland One bond referendum was materially misleading or undermined the referendum must be made by a court. However, we may advise you as to what we perceive the applicable law in this area to be.

As noted above, it is clear that our Supreme Court has recognized in the Tipton case that a referendum must "accomplish[] the fair and intelligible submission of the question to which the electorate is entitled and which the law requires." 93 S.E.2d at 644. If in fact some or all of the electorate in the Richland District One were led to believe that the Dreher High School renovations or expansions would be made on the existing Dreher property without any additional property acquisition, it is our opinion that such could result in a serious legal challenge by a taxpayer to that portion of the bond issuance.

A somewhat similar situation was addressed by the North Carolina Supreme Court in Sykes v. Belk, 278 N.C. 106, 179 S.E.2d 439 (1971). There, a suit was brought to enjoin the expenditure of funds on the basis of misleading representations by city officials as part of a bond issuance for a civic center. It was alleged that as part of the campaign leading up to the referendum, voters were led to believe that the civic center would be built on the "Brevard Street" site. No site location was actually specified in the ballot. After the election, city council approved construction of the civic center on the "Trade Street" site located four blocks away.

On appeal, the North Carolina Supreme Court noted that "[n]either the ballot, the ordinance, nor any officially adopted document, mentioned the site of the civic center." 1709 S.E.2d at 441. While newspaper articles and speeches given by individuals favoring the referendum mentioned the "Brevard Street" site, no "official action on the part of the City Council concerning the site of the civic center prior to the election" was made. Id.

Recognizing that material misrepresentations in conducting a bond referendum could result in setting the election aside, the Court summarized the general law in this area as follows:

> [i]n most jurisdictions which permit the use of such broad and general referendum ballots, in determining whether there have been misrepresentations sufficient to void the bond election, the courts have consistently looked to the notice of the election, the ballot and the ordinance authorizing the issuance of bonds, i.e. matters which constitute official proceedings in connection with the bond issue.

179 S.E.2d at 444.

In addition, the Court emphasized that pursuant to generally applicable legal principles, the motives which induce voters to authorize a bond issuance cannot be inquired into by the judiciary. Id., at 445-446. Moreover, the doctrine of equitable estoppel was deemed inapplicable to the City because "[i]t is generally recognized in North Carolina that the doctrine of estoppel will not be applied against a municipality in its governmental, public or sovereign capacity." Id., at 448. In the final analysis, given the presumption of validity which must be afforded municipal bond elections, as well as all elections, the court refused to set the election aside, concluding that

> The record fails to show that enough voters relied on the representations as to the site of the civic center to change the result of the election. The facts are not such as to require this Court to infer that a sufficient number of voters were misled. Nickel v. School Board of Axtell, 157 Neb. 813, 61 N.W.2d 556; Talbott v. City of Lyons, 171 Neb. 186, 105 N.W.2d 918. See also 1 A.L.R.2d 350; Gordon v. Commissioners' Court of Jefferson County, 310 S.W.2d 761 (Texas 1958); Scott v. City of Orlando, 173 So.2d 501 (Fla.App., 1965).
>
> The courts will not interfere with the exercise of discretionary powers of a municipal corporation unless its actions are so unreasonable and arbitrary as to amount to an abuse of discretion. Burton v. Reidsville, 240 N.C. 577, 83 S.E.2d 651; Housing Authority of the City of Wilson v. Wooten, 257 N.C. 358, 126 S.E.2d 1010.
>
> Applying the authorities above set forth, we conclude that the misrepresentations made as to the site of the civic center did not vitiate Question No. 1 as submitted to the voters of Charlotte in the bond issue election held on 12 December 1969.

179 S.E.2d at 448-449.

Based upon information provided this Office, it appears that the purchase of tracts of property adjacent to Dreher High School began prior to the conduct of the referendum last November. We have also been provided material from District One's Web Site which described the referendum. The Web Site is quoted as saying that "Dreher will be rebuilt or renovated on site of the present school facility". The November ballot itself states that the purpose of the bond issuance as it affects

Dreher would be to "construct, equip or furnish a replacement facility for or renovations and/or expansions to the existing Dreher High School." (emphasis added). We have been provided no documentation as to contemporaneous statements by school district officials concerning expansion plans or the lack of same.

Again, these and other facts would have to be gathered and considered by a court as part of any suit which might challenge this portion of the bond issuance. However, based upon the facts provided above, it appears likely that at least some facts to support a legal challenge to this portion of the referendum are in the public domain. If such a challenge were successful, a court could permanently enjoin expenditure of these bond revenues by the District.

Thus, a court might conclude that the ballot question as it related to Dreher was ambiguous, particularly in light of the language used regarding "the existing Dreher High School." (emphasis added). A reasonable voter might easily interpret wording such as the "existing Dreher High School" to mean that no additional property purchases by the district were anticipated.[1] When coupled with the statement on the District One Web Site that "Dreher will be rebuilt or renovated on the site of the present school facility," an argument of material misrepresentation becomes even stronger. It appears that nothing in the information contained on the District's Web Site regarding the referendum mentions property purchases whatever. A court ultimately would need to determine factually the extent to which voters were influenced by the information provided on the Web Site and whether that information constituted a material misrepresentation; however, the court could conclude that this is the type of material misrepresentation concerning "matters which constitute official proceedings in connection with the bond issue" deemed necessary by the Supreme Court of North Carolina in Sykes to set a portion of a bond referendum aside.

Conclusion

In conclusion, based upon the information provided, and assuming its accuracy, a legitimate legal challenge could be asserted both to the purchases of the property for Dreher High School

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[1] It is true that the precatory paragraph to the ballot question mentions that the $381,000,000 bond issuance would include "costs of acquisitions of land upon which to construct facilities ...." However, the portion relating to Dreher High School speaks to the "existing Dreher High School ...." The voter might well conclude that the "costs of acquisitions of land" related to those schools whose location would clearly be moved such as Keenan High School. The voters are told that the "existing Keenan High School" would be used as "a new location for W. G. Sanders Middle School" and thus there could be no doubt that Keenan would be moved and new properties acquired for such move. Funds for Dreher, on the other hand, would be used either for a replacement facility or for renovations and/or expansions "to the existing Dreher High School." Thus, the voter could have been led to believe that bond funds would not be used for the acquisition of additional property for Dreher High School, particularly in light of the fact that the Keenan and Dreher projects are markedly different from each other.

expansion as well as to any expenditure of bond revenues for such expansion. We are assuming, for purposes of our analysis, that the Department of Education has not given prior approval to any purchases of property for this expansion project as required by its mandatory regulations. Accordingly, a court could conclude that such purchases are ultra vires and beyond the authority of the District. Furthermore, if the District does not make full and complete disclosure, such could invalidate any approval, if given.

Moreover, the District is not exempt from compliance with the City of Columbia's zoning laws. Any action to violate or which intends to violate local zoning laws is a misdemeanor pursuant to § 6-29-950.

Finally, there appear to exist undisputed facts from which a court could determine that voters were materially misled into the belief that the Dreher expansion would occur on the present Dreher property. If the court were to find such material misrepresentation, the bond referendum could be threatened and the expenditure of funds authorized thereby could be enjoined.

Of course, as we have emphasized throughout, only a court could decide these issues. This Office cannot make factual determinations nor relate those factual findings to the law in question here. However, in our opinion, substantial legal issues are raised by your letter, issues which traditionally are adjudicated either through a taxpayer suit or other legal action.

Yours very truly,

Henry McMaster

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