



ALAN WILSON  
ATTORNEY GENERAL

May 6, 2013

Susan DeVenny, Director  
S.C. First Steps to School Readiness  
1300 Sumter Street  
Concord Bldg., Suite 100  
Columbia, South Carolina 29201

Dear Ms. DeVenny,

You have requested an opinion of this Office as to whether the Richland County First Steps Partnership's (the "Richland Partnership") Board has the authority under State law to purchase a building in which to house its operations. By way of background, you provide the following information:

South Carolina First Steps to School Readiness ("First Steps") is the state's comprehensive early childhood education initiative, authorized under Title 59, Chapter 152 of the South Carolina Code of Laws. A network of 46 independent, non-profit First Steps County Partnerships provides service to children and families statewide using grant funding allocated to them, via our state-level entity, by the General Assembly.

.... After 13 years of renting commercial office space in downtown Columbia, Richland County First Steps proposes to purchase a building in which to house its operations. As a grantee of both SCFS [S.C. First Steps to Readiness] and the U.S. Department of Health and Human Services (through which the Partnership operates an Early Head Start program), the Partnership proposes to enter into a loan agreement with a local bank and build equity using the same state and federal funds (1/3 state funds, 2/3 federal) previously utilized to underwrite rental space. At the end of a planned 8-year period, the Partnership would own the building outright, allowing it to invest a greater share of its revenue into direct service to children and families.

Section 59-152-120 of First Steps' enabling legislation prohibits the use of state funds for new capital construction, but is silent as to the permissible use of state funds for the purchase of property.

We also note that the Richland Partnership's Articles of Incorporation indicate it is incorporated in South Carolina as a nonprofit public benefit corporation. The articles go on to state the following with regards to its purpose for incorporation:

Ms. DeVenny  
Page 2  
May 6, 2013

The purposes for which the Corporation is organized are exclusively charitable, educational and/or scientific within the meaning of Section 501(c)(3) of the Internal Revenue Code .... The Corporation is organized and will operate (i) in accordance with The South Carolina First Steps to School Readiness Act, 1999 Act No. 99; and (ii) as a supporting organization for the benefit of, to perform the functions of, or to carry out the purposes of the South Carolina First Steps to School Readiness Board of Trustees ....

With this information in mind, you specifically ask for an opinion “as to the permissibility of such a purchase under applicable state law.” In addition, you ask “what, if any, ownership and/or liability implications arise for S.C. First Steps or the State of South Carolina as a result of using state funds for this purpose?”

#### Law/Analysis

Established in 1999,<sup>1</sup> First Steps is described as “a comprehensive, results-oriented initiative for improving early childhood development by providing, through county partnerships, public and private funds and support for high-quality early childhood development and education services for children by providing support for their families’ efforts toward enabling their children to reach school ready to learn.” S.C. Code § 59-152-10. The initiative is overseen by the First Steps Board of Trustees. § 59-152-40. As stated in § 59-152-20:

The purpose of the First Steps initiative is to develop, promote, and assist efforts of agencies, private providers, and public and private organizations and entities, at the state level and the community level, to collaborate and cooperate in order to focus and intensify services, assure the most efficient use of all available resources, and eliminate duplication of efforts to serve the needs of young children and their families. First Steps funds must not be used to supplant or replace any other funds being spent on services but must be used to expand, extend, improve, or increase access to services or to enable a community to begin to offer new or previously unavailable services in their community. The South Carolina First Steps to School Readiness Board of Trustees, Office of First Steps to School Readiness, and the County First Steps Partnerships shall assure that collaboration, the development of partnerships, and the sharing and maximizing of resources are occurring before funding for the implementation/management grants, as provided for in this chapter, are made available.

§ 59-152-20.

The formation of county first step partnerships is provided for in § 59-152-60. Each county partnership “must be a private nonprofit corporation organized under Section 501(c)(3) of the Internal Revenue Code” or, at least for the purpose of receiving grants, must “have received a state charter for incorporation ....” § 59-152-70(E). As indicated by its Articles of Incorporation, the Richland Partnership is incorporated under State law as a nonprofit, public benefit corporation.

---

<sup>1</sup> See First Steps to School Readiness Act, 1999 Act No. 99 (codified at S.C. Code §§ 59-152-10 et seq.).

The powers of a nonprofit corporation organized under South Carolina law are generally governed by the South Carolina Nonprofit Corporation Act, §§ 33-31-101 *et seq.* S.C. Code § 33-31-302 provides that nonprofit corporations have the express power, *inter alia*, “to purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with, real or personal property or any legal or equitable interest in property ....” § 33-31-302(5). However, the powers granted a corporation under the Nonprofit Corporation Act may be limited by other statutes applicable to the particular corporation or the corporation’s articles of incorporation. As stated in § 33-31-301:

(a) Every corporation incorporated under this chapter has the purpose of engaging in any lawful activity *unless a more limited purpose is set forth in the articles of incorporation.*

(b) A corporation engaging in an activity that is subject to regulation under another statute of this State may incorporate under this chapter only if incorporation under this chapter is not prohibited by the other statute. *The corporation is subject to all limitations of the other statute.*

§ 33-31-301 (emphasis added). Therefore, the Richland Partnership has the power under the Nonprofit Corporation Act to purchase real property for the purpose of its incorporation unless prohibited by the provisions of §§ 59-152-10 *et seq.* See 19 C.J.S. Corporations § 740 (“In the absence of constitutional, statutory, or charter restrictions, a corporation may purchase or contract to purchase property, real or personal, for the purpose of its incorporation”).

As stated in its Articles of Incorporation, the Richland Partnership’s purpose is essentially to carry out the purposes of the South Carolina First Steps to School Readiness Act, §§ 59-152-10 *et seq.* The purpose of First Steps is, generally, to improve early childhood development. See § 59-152-10, *supra*. We have no doubt that the purchase of real property to be used as a facility for the Richland Partnership’s operations is reasonably related to such purpose since, logically, access to some facility is necessary for the corporation to operate and provide services to young children and families. See 18B Am. Jur. 2d Corporations § 1760 (“The power to acquire property is ordinarily essential to corporations, if the purposes for which they are created are to be accomplished; therefore, and as a general rule, corporations have the power to acquire and hold property as an incident to their existence and operation”). Thus, the pertinent question is whether the Richland Partnership’s power to purchase property is statutorily restricted by any provision in §§ 59-152-10 *et seq.*

The only provision restricting a county partnership’s use of funds which is relevant to the matter at hand is found in § 59-152-120 which provides:

Funds received for implementation of a county partnership's implementation/management grant may not be used for capital expenses for *new construction*. However, funds may be made available for *renovating, refurbishing, or upgrading of existing facilities* used to support First Steps to School Readiness activities and services for children, families, and providers from funds made available to the partnerships in Section 59-152-150(C) and Section 63-11-1750(A). The county partnership must demonstrate to the satisfaction of the First Steps to School Readiness Board that the capital expenditure is:

(1) a priority need for the local initiative and other state or federal funds for such projects are insufficient; and

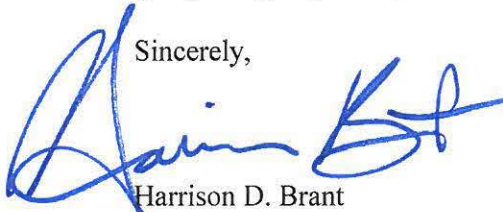
(2) necessary to provide services to under-served children and families.

§ 59-152-120 (emphasis added). The restrictions this section places on the use of certain funds only applies to capital expenses for new construction or renovations to existing facilities; it says nothing about a county partnership's power to purchase real property or a facility to be used for its operations. In light of this omission, we believe the Legislature had no intention of prohibiting county partnerships from exercising their general power as nonprofit corporations to purchase property.

With that being said, we caution that any public funds the Richland Partnership has received must be expended in accordance with any specific purposes or conditions associated therewith. See State ex rel. McLeod v. McInnis, 278 S.C. 307, 313-14, 295 S.E.2d 633, 637 (1982) ("The General Assembly has ... the duty and authority to appropriate money as necessary ... and has the right to specify the conditions under which the appropriated monies shall be spent"); Op. S.C. Att'y Gen., 2001 WL 1215450 (Oct. 1, 2001) ("It is well recognized that public funds must be expended only for their designated purpose"). Therefore, the Richland Partnership may not expend funds received pursuant to a federal or state grant to purchase a facility if such a purchase would be inconsistent with the specific purpose for which such funds were granted.

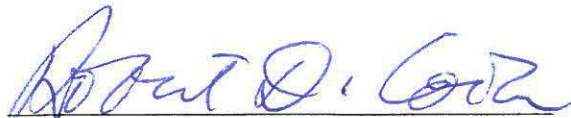
You also generally ask about the potential liability of the State and/or First Steps if state funds are used by the Richland Partnership to purchase a facility. Such an open-ended question raises a multitude of hypotheticals which could implicate numerous issues in various subject areas of the law. Thus, the potential liability of the State and First Steps is a matter too broad and complex to address in an opinion of this Office. We suggest you consult an attorney regarding any such potential liability issues.

Sincerely,



Harrison D. Brant  
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook  
Deputy Attorney General