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The State of South Carolina



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September 29, 1993

The Honorable Alex Chatman
Supervisor of Williamsburg County
Post Office Box 330
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Dear Mr. Chatman:

You have advised that the School District of Williamsburg County is contemplating a lease-purchase arrangement whereby financing would be obtained for construction of certain school facilities. The County Council of Williamsburg County has been asked for its consent to the leasing of certain property, owned by the School District, to the Williamsburg County School District Public Facilities Corporation for the purposes just described. You have asked whether the consent of the Williamsburg County Council is necessary in a lease-purchase arrangement.

When a school district determines to use the lease-purchase arrangement to finance improvements to facilities within the district, there are at least two statutes which must be considered as to leasing the parcel of real property (with improvements, if any) involved. One requires the consent of the governing body of the county or the county board of education, as appropriate; the other statute permits the school district board of trustees to proceed without additional consent. Each statute must be examined, to determine when its use might be appropriate.

Section 59-19-250, S.C. Code Ann. (1976), provides in relevant part:

The school trustees of the several school districts may sell or lease school property, real or personal, in their school district whenever they deem it expedient to do so and apply the proceeds of any such sale or lease to the school fund of the district. The consent of the county board of education or, in those counties which do not have a county board of

education, the governing body of the county, shall be first obtained by the trustees desiring to make any such sale or lease. ...

This Office observed, by an opinion dated August 5, 1986, that the consent requirement of § 59-19-250 is indicative of legislative intent "that the decision of a school district to sell or lease property should be reviewed by a separate political body."

Section 59-19-125, S.C. Code Ann. (1992 Supp.), is another statutory means by which a school district may enter into a lease-purchase arrangement. In relevant part, § 59-19-125 provides:

Each district board of trustees may lease any school property for a rental which the board considers reasonable or permit the free use of school property for:

- (1) civic or public purposes; or
- (2) the operation of a school-age child care program Under this section the board may enter into a long-term lease with a corporation, community service organization, or other governmental entity, if the corporation, organization, or other governmental entity will use the property to be leased for civic or public purposes or for a school-age child care program. ...

This Code section was recently construed in Whiteside v. Cherokee County School Dist. No. 1, _____ S.C. _____, 428 S.E.2d 886 (1993). Without consent or approval of Cherokee County Council, the school district trustees entered into a lease-purchase agreement to finance construction and renovation of school district facilities. Taxpayers in the district instituted a declaratory judgment action to determine whether county council's consent would be required by § 59-19-250. The Supreme Court stated:

We are persuaded that from its inception until the most recent amendment in 1973, Section 59-19-250 contemplated the term "lease" in the conventional sense. In 1989, during the evolution of lease-purchasing as a prevailing method of acquiring school facilities, the legislature enacted Section 59-19-125. This court has held that where there is one statute

addressing an issue in general terms and another statute dealing with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect. [Cite omitted.] Moreover, later legislation supersedes earlier laws addressing the identical issue. [Cites omitted.]

IV. CONCLUSION

We conclude that it is logical to believe the legislature was cognizant of lease-purchasing transactions in the enactment of the later statute, and hold that the lease-purchase arrangement under consideration is within the scope of Section 59-19-125. Therefore, this Court holds that Section 59-19-125 will be considered an exception to, or qualifier of, Section 59-19-250 and given such effect.

Whiteside v. Cherokee County School Dist. No. 1, 428 S.E.2d 884, 888-89.

As to which of the two statutes applies in a given situation, the facts of each lease-purchase transaction will be crucial. The court in Whiteside extensively outlined the lease-purchase arrangements and focused on the non-appropriation clause in particular. Id., 428 S.E.2d at 887 ("Should the District fail to renew the project lease prior to the expiration of the base lease, the corporation may lease the property to another tenant provided it is used for a public purpose." (Emphasis added.)) This dicta strongly points out the necessity of examining each of the documents comprising the lease-purchase transaction to determine to what use the property may be put by the parties to the transaction. If it is clear from the documents comprising the transaction that the parties intend that the property to be leased will be used only for "civic or public purposes," then the school district could proceed under § 59-19-125 without the approval of the county board of education or county council, as may be appropriate. If, however, the parties to the transaction contemplate that the property to be leased could conceivably be used for a purpose other than a "civic or public purpose," then the school district should proceed under § 59-19-250, at least as to approval of the ground lease.

Considerations other than the legal issues discussed above also enter into the determination to proceed under a particular statute. The availability of financing, the requirements and intentions of the parties involved in the transaction, and other similar matters must be considered. Williamsburg County Council might wish to consult the

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attorneys who are advising the Williamsburg County School District in the proposed lease-purchase arrangement, to be apprised of why the School District is proceeding under § 59-19-250 so that consent of council is required and to determine whether the option to proceed under § 59-19-125 may be viable in this instance.

Lease-purchase arrangements are very technical. The foregoing does not attempt to detail the necessary steps to be followed in such transactions but is intended to comment on when the use of each statute may be appropriate. Please advise if clarification or additional assistance should be required.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

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REVIEWED AND APPROVED BY:

Robert D. Cook

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