

The State of South Carolina



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December 12, 1989

The Honorable Paul Gault, Chairman
Western Carolina Water and Sewer Authority
c/o Leo H. Hill, Esquire
P. O. Box 2585
Greenville, South Carolina 29602

Dear Chairman Gault:

You have requested our opinion whether the Western Carolina Regional Sewer Authority may sell real property held in its name to a private industry in order that the land can be used for industrial development. The concept, as I understand, is that the Western Carolina Regional Sewer Authority [hereinafter "Authority"] desires to sell certain of its real property, for reasonably equivalent value, to a major private industry. The Authority and the State's development officials anticipate that if the property is transferred to this private industry, the development of the property would most probably involve a multi-million dollar commitment of capital and ultimately be responsible for the creation of several hundred new jobs in the State of South Carolina. I further understand that this transaction is dependent upon the opinion of the Attorney General, first, that the Authority is authorized under state statutory law to sell its real property and, second, that there is no state statutory law that governs¹ the procedure for the sale of real property by the Authority. My legal conclusions are that the authority possesses the statutory authorization to sell its real property and that there is no statutory provision that governs the procedure for the sale of public property by the Authority.

1. Your request imposes a severe time constraint upon this Office in that it requires an immediate response; however, because of the importance of this request, I issue this emergency opinion upon a priority basis.

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With regard to the first question, 1933 Act No. 509 expressly provides that the Authority² has the statutory authority to acquire and sell real estate as the Authority determines to be necessary. We have reviewed the numerous special laws that relate to the Authority (and its predecessors) and believe that this enabling provision continues in full force and effect.

With regard to your second question, this Office has previously advised that "[t]here is no statutory procedure governing the sale of public property by a public service district." Op. Atty. Gen., October 28, 1986. We have further researched the several special laws that govern the Western Carolina Regional Sewer Authority and believe that there are no special statutory provisions that would alter this general conclusion.

We caution that the applicable law requires that a public entity receive "reasonably equivalent value" for the sale of public property.³ Haesloop v. City Council of Charleston, 123 S.C. 272, 115 S.E. 596, 600 (1923). In this context, we have previously said that:

... Article III, § 31 [Constitution of South Carolina, 1895, as amended] provides that 'lands belonging to or under the control of the state shall never be donated, directly or indirectly, to private corporations or individuals....' While our Court has clearly stated that neither this provision nor the Due Process Clause in themselves require public bidding or a maximum price for the sale of property, Elliott v. McNair, 250 S.C. 75, 156 S.E.2d 421 (1967), it is also clear that the consideration from such a sale must be of 'reasonably equivalent value ...' or 'adequately equivalent...'. Haesloop v. Charleston, 123 S.C. 272, 283, 285, 115 S.E. 596 (1923). In determining 'what is a fair and reasonable return for disposition of its properties,' a public body 'may properly consider indirect benefits resulting to the public...'. McKinney v. City of

2. 1984 Act No. 393 changed the name of the Greater Greenville Sewer District to the Western Carolina Regional Sewer Authority.

3. The Authority has advised that it has retained an independent M.A.I. appraiser in order that it may be fully appraised of the fair market value of the subject property.

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Greenville, 262 S.C. 227, 242, 203 S.E.2d 680 (1974).
But such benefits must not be 'of too incidental or
secondary a character....' Haesloop, supra. In
short, when public officials sell the state's land,
they are acting in a fiduciary relationship with the
public and are thus held to the 'standard of dili-
gence and prudence that [persons] ... of ordinary
intelligence in such matters employ in their own like
affairs.' Haesloop, 123 S.C. at 284.

Op. Att. Gen., August 27, 1985.

Finally, we understand that the proposed industrial de-
velopment will bring significant public benefits, such as a
substantial increase in both employment opportunities and
revenues in the county. This significant public benefit would
constitute the type of indirect public benefit that may pro-
perly be considered in determining whether the public entity
receives a fair and reasonable return for its property. Cf.,
Nichols v. South Carolina Research Authority, 290 S.C. 415, 351
S.E.2d 155 (1986).

In summary, we have expedited our response because of the
emergency nature of your request and the importance of the
issues raised. We continue to support and encourage the efforts
of public agencies to facilitate industrial and economic devel-
opment in the State of South Carolina in order to bring in
higher paying jobs and enhance the quality of life of our citi-
zens. In short, economic development and the creation of new
jobs is fundamental to South Carolina's continued progress and
growth. If this Office can be of further assistance, please
call upon us.

Sincerely,



T. Travis Medlock
Attorney General

TTM/shb

cc: Mr. John C. Hankinson, Jr.