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July 27, 1988

Mr. Wyman D. Shealy
Deputy Executive Director
State Board for Technical and
Comprehensive Education
111 Executive Center Drive
Columbia, South Carolina 29210

Dear Mr. Shealy:

You have requested the advice of this Office as to the affect of §59-53-52(3) of the Code of Laws of South Carolina, 1976, as amended on the ownership of real property on which Williamsburg Technical College (TEC) is located. An audit has shown that title to the real property has been retained by the Williamsburg County Council. Section 59-53-52(3), provides that "...all real property is the possession of the Area Commission [for a technical college] regardless of the source of funds for its purchase or construction, except for those campuses currently owned by the State[;]" however, an earlier Act that created the predecessor to the Williamsburg Technical Vocational and Adult Education Center Commission provides that any land purchased and buildings erected thereon by the Commission will be the property of Williamsburg County. Act 58 §3(3), Acts and Joint Resolutions of South Carolina, 1969; see also Act 2 of 1975. Therefore, a question here is to what extent §59-53-52(3) affects Act 58.

The following rule of statutory construction is applicable to the provisions of §59-53-52(3) and Act 58 §3(3) concerning real property:

"Statutes in apparent conflict should, if reasonably possible, be construed so as to allow both to stand and give effect to each."
Yahnis Coastal Inc. v. Strobe Brewery, (South Carolina Supreme Court, Opinion No. 22853, April 4, 1988).

Here, differences in the terms of the statutes can be resolved so as to give effect to both statutes. Therefore, Ops. Atty. Gen., September 6, 1983 is applicable here in its reference to the controlling effect of the general laws for technical education in the event of conflicts with earlier local legislation for individual technical colleges.

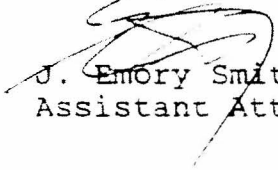
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Act 58 §3(3) is the only provision of the two statutes that expressly addresses ownership. "Possession", which is used in §59-53-52(3), has been given a variety of meanings, all of which appear to include the element of control, but this term is not always construed to include ownership. People v. Matthews, 18 Ill. 164, 163 N.E.2d. 469, 472 (1960); Words and Phrases, "Possession", Black's Law Dictionary (Fifth Edition), "Possession". The following comments from Matthews, supra, are useful here.

"It is argued that both according to the dictionary definition of "possession" and the legal meaning thereof, that there is a great distinction between "possession" and "ownership". It is argued that a person may possess something without being the owner and, conversely, may own something without possessing it. As an abstract legal proposition this argument is correct, for there are numerous instances in the law and in everyday life where the ownership and possession of personal property are in different persons."

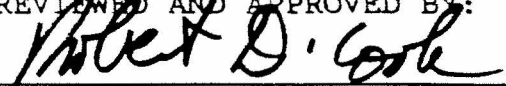
These differences in meaning given to the word "possession" in a particular case appear to turn on the context in which the term is used. Matthews, Words and Phrases, and Black's Law Dictionary, supra. Here, §59-53-52 was passed subsequently to Act 58 and uses the word "possession", which normally means "control" even if it does not also include "ownership". This usage of the word "possession" indicates that the legislative intent in §59-53-52(3) was to give the Area Commissions control of the real property on which the technical colleges' buildings were located although title to the buildings might be in the name of another entity as under Act 58. Therefore, title to Williamsburg Technical College appears to continue to be in the name of Williamsburg County under Act 58, but "possession" or control of the property is with the Area Commission; however, this letter expresses no opinion as to the ownership of land at other technical colleges.

Yours very truly,


J. Emory Smith, Jr.
Assistant Attorney General

JESJR/srcj

REVIEWED AND APPROVED BY:


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