

The State of South Carolina

2277 Library



Office of the Attorney General

T. TRAVIS MEDLOCK
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
TELEPHONE 803-734-3636

August 5, 1986

Representative Charles R. Sharpe
Box 652
Wagener, SC 29164

Dear Representative Sharpe:

You have requested the opinion of this Office as to the validity of lease-purchase agreements for school buildings. A previous opinion of this Office has concluded generally that, if a lease-purchase agreement contains a "non-appropriations" clause, the agreement would be likely to be upheld. Ops. Atty. Gen. (December 9, 1985). The reasoning was that because the incorporation of the "non-appropriations" clause would bind the State only to the extent of currently appropriated revenues, such an agreement would not constitute a debt or indebtedness within the meaning of existing constitutional and statutory provisions and thus would not have the same affect as general obligation bonds. These conclusions should be applicable to a lease-purchase agreement involving a school district provided that the school district otherwise had statutory authority to enter such an agreement. This letter to you addresses the question of whether various statutory provisions for school districts concerning land and buildings would permit a school district to enter a lease-purchase agreement that had a non-appropriations clause.

No express statutory authority exists for school districts in general, and the Aiken School District in particular, to enter a lease-purchase agreement for school buildings; however, school districts do hold fairly broad powers with respect to the provision of school buildings. See §§59-19-90 and 59-19-190 of the Code of Laws of South Carolina, 1976. These powers have been previously interpreted by this Office to include authority to lease buildings for school purposes as well as purchase property for that purpose. Ops. Atty. Gen. (February 21, 1978). Because of these broad powers of leasing and purchasing, the acquisition of buildings for school purposes under a lease-purchase arrangement should be permissible. No local law provision limits this conclusion for Aiken County. See Act 268, Acts and Joint Resolutions of South Carolina, 1977.

Representative Charles R. Sharpe

Page 2

August 5, 1986

Although a previous opinion of this Office concluded that specific legislation would be needed to authorize construction of school buildings on a lease-purchase basis, the opinion relied primarily on the reference in §59-19-180 to the vesting of fee simple title to land acquired by school districts for the purposes of erecting school buildings, etc. (Ops. Atty. Gen. September 20, 1971). A subsequent opinion indicates that §59-19-180 merely requires that, when land is purchased, the title be acquired in fee simple absolute. Ops. Atty. Gen. January 21, 1977. (See also Ops. Atty. Gen. March 21, 1969). ^{1/} These opinions concerning §59-19-180 should not serve to invalidate a lease-purchase contract which involved a building or a building and land, provided that fee simple title to the land were held or would be acquired ultimately by the school district.

If a lease-purchase agreement involved the sale or leasing of property owned by the school district, the approval of the County Board of Education would need to be obtained or, in those counties which do not have a County Board of Education, the approval of the governing body of the county would need to be obtained. See §59-19-250 of the Code of Laws of South Carolina, 1976. See also Beach Company v. Charleston County School District, 207 S.E.2d 406 (S.C. 1974). Because the Aiken County School District has a County Board of Education but no separate Board of Trustees, approval of the lease-purchase agreement would probably have to be obtained from the Aiken County governing body. See §59-19-100 of the Code. In setting up an alternative approval body, the statute indicates the legislative intent that the decision of a school district to sell or lease property should be reviewed by a separate political body. Spartanburg Sanitary Sewer District v. City of Spartanburg, 321 S.E.2d 258 (S.C. 1984).

The use of State money for a lease-purchase contract may require the approval of the State Board of Education (See §59-21-350 of the Code of Laws of South Carolina, 1976, and, generally, §59-21-310, et seq., of the Code); however, the statutory provisions for State aid do not appear to preclude the use of this money for a lease-purchase contract. This money may be utilized for "capital improvements," which are defined as meaning the cost of ". . . constructing, improving, equipping, renovating and repairing school buildings or

^{1/} A subsequent South Carolina Supreme Court case declined to interpret the meaning of §59-19-180 except that the court found that the statute did not operate so as to convert a lesser fee into a fee simple absolute title. Beach Co. v. Charleston School District, 207 S.E.2d 406 (S.C. 1974). This construction of a statute by the Supreme Court would have no affect on the question you have raised.

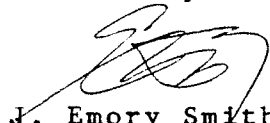
Representative Charles R. Sharpe
Page 3
August 5, 1986

other school facilities or the cost of the acquisition of land whereon to construct or establish school facilities . . ." See §§59-21-350 and 59-21-420 of the Code. Although capital improvements are not expressly defined so as to include lease-purchase contracts, the broad wording of the powers for capital improvements indicates that a lease-purchase contract for a school building and land would constitute a "capital improvement" for the use of this State money. See Spartanburg, supra, and Sutherland Statutory Construction, Volume 2A, §46.05.

Because no local law provisions for Aiken County limit the broad powers of school districts generally, the Aiken County School District should have the authority to enter a lease-purchase agreement for the acquisition of a building for school purposes provided that the agreement contains a non-appropriations clause. Of course, this letter does not comment upon the validity of any particular lease-purchase agreement.

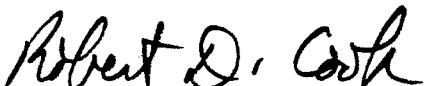
If you have any questions, please let me know.

Yours very truly,


J. Emory Smith, Jr.
Assistant Attorney General

JESJr/rho

REVIEWED AND APPROVED:



ROBERT D. COOK
Executive Assistant for Opinions