

1983 WL 181859 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 21, 1983

***1 SUBJECT: State Budget and Control Board Property, Public Property, State**

Pursuant to [Section 11-9-630, Code of Laws of South Carolina](#), 1976, as amended, the State Budget and Control Board is empowered to determine which real estate belonging to the State is not in actual public use and subject to sale by it.

George L. Schroeder
Director
Legislative Audit Council

QUESTION:

1. Under [Section 11-9-630, Code of Laws of South Carolina](#), 1976, as amended, does the State Budget and Control Board have authority to determine whether real estate belonging to the State is not in actual public use and subject to sale by it?

STATUTES AND CASES:

[Section 11-9-630, Code of Laws of South Carolina](#), 1976, as amended; [Carolina Water Service Inc. v. South Carolina Public Service Commission](#), 272 S.C. 81, 248 S.E.2d 924 (1978); [State ex rel McLeod v. Montgomery](#), 244 S.C. 308, 136 S.E.2d 778 (1964); [Beaufort County v. Jasper County](#), 220 S.C. 469, 68 S.E.2d 421 (1951)

DISCUSSION:

1. [Section 11-9-630](#), *supra*, in pertinent part, provides as follows:

The State Budget and Control Board shall sell and convey, for and on behalf of the State, all such real property, assets and effects belonging to the State as are not in actual public use, such sales to be made from time to time in such manner and upon such terms as it may deem most advantageous to the State.

Although this section, which vests wide discretion in the State Budget and Control Board (the Board), does not specifically state that the Board itself is to determine whether real estate belonging to the State is not in actual public use, the Board's power to sell such real estate in such manner and upon such terms as it deems best must necessarily include, or imply, the power to make that determination. Otherwise, the delegation of the power to sell such real estate would be ineffective. It should be noted that the power to make that determination is not vested elsewhere by [Section 11-9-630](#) or any other statute of general applicability.

In [Carolina Water Service Inc., v. South Carolina Public Service Commission](#), 272 S.C. 81, 248 S.E.2d 924, the Court considered the issue of whether the Public Service Commission had the power to construe a contract in a proceeding before it dealing with the reasonableness of a rate charged by a public utility. While the Court noted that the Commission was not expressly given the specific power to construe contracts involving rates charged by public utilities, it concluded that the Commission's power to determine the reasonableness of rates necessarily included the power to interpret contracts involving rates. The Court, quoting an earlier decision, said:

Even a governmental body of admittedly limited powers is not in a strait jacket in the administration of the laws under which it operates. Those laws delimit the field which the regulations may cover. They may imply or express restricting limitations of public policy. And of course they may contain express prohibitions. But in the absence of such limiting factors it is not to be doubted that such a body possesses not merely the powers which in terms are conferred upon it, but also such powers as must be inferred or implied in order to enable the agency to effectively exercise the express powers admittedly possessed by it. S.E.2d, at 927.

*2 The same reasoning is applicable to the issue posed by you with respect to [Section 11-9-630](#) and supports the conclusion that the Board is empowered to determine whether real property belonging to the State is not in actual public use. A construction of [Section 11-9-630](#) to the contrary, i.e., that the Board does not have such power, likely would defeat the legislative purpose expressed in the statute that such real estate 'shall' be sold by the Board and for that reason should be rejected. See, [State ex rel McLeod v. Montgomery](#), 244 S.C. 308, 136 S.E.2d 778, 782 (1964); [Beaufort County v. Jasper County](#), 220 S.C. 469, 68 S.E.2d 421, 427 (1951).

CONCLUSION:

1. Pursuant to 11-9-630, supra, the State Budget and Control Board has the power to determine whether real estate belonging to the State is not in actual public use and subject to sale by it.

James M. Holly
Assistant Attorney General

1983 WL 181859 (S.C.A.G.)

End of Document

© 2015 Thomson Reuters. No claim to original U.S. Government Works.