

1984 WL 249871 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 26, 1984

***1** Ms. Betty E. Callaham
Librarian
The South Carolina State Library
P. O. Box 11469
Columbia, SC 29211

Dear Ms. Callaham:

Please accept my apologies for the delay in replying to the question from the Greenville County Library whether it must follow the statutes concerning bids when purchasing materials with donated funds. As we believe Mr. Joseph Earle, the Greenville County Attorney, correctly advised in answer to this question by his letter of May 24, 1983, we will not issue a formal opinion; however, we trust the following comments may be of some assistance to you.

Generally speaking, both by common law and by statutes and ordinances, the expenditure of funds by a public body must conform to procurement laws and regulations in absence of specific exemptions or conditions. For example, [Section 11-35-40, Code of Laws of 1976](#), as amended (South Carolina Consolidated Procurement Code), states specifically that every expenditure of funds by the State or its agencies shall be in accordance with the Code 'irrespective of the source of the funds'. This is typical language which appears in appropriations bills and in local ordinances. Act No. 431 of 1965, which applies to Greenville County, is a local law which provides for purchasing procedures. While it was amended slightly by Act No. 1114 of 1966, in 1976, pursuant to home rule legislation, Section 4-9-10, et seq., Code of Laws of 1976, as amended, Greenville County adopted a procurement ordinance. This local act, as Mr. Earle noted, and the more recently adopted procurement ordinance, would control purchases by Greenville County or County governmental bodies. Therefore, the statutory procurement procedures which govern and the procurement ordinance should be followed by a State or local governmental body when making purchases, unless the purchases are exempt.

We would invite your attention to the fact that so far as State purchasing is concerned, [Code Section 11-35-710](#) specifically exempts the purchase of certain items such as works of art, published books, periodicals and technical pamphlets. [Code Section 11-35-1550](#) exempts purchases in certain small dollar amounts and [Code Section 11-35-1560](#) permits 'sole source procurement' of an item or service which is obtainable from only one source. Some or all of these exemptions might apply to library items.

Another form of procurement which would be legally permissible would be where the donor of a gift has made specific conditions that the funds must be used to purchase a specific item or items which could not be obtained through the normal procurement process. Such situations would have to be considered on a case by case basis. For example, one might be given a gift or grant from a foundation to purchase equipment or supplies, but the grant would not limit the purchase to any particular equipment or supplier; therefore, normal bidding procedures should be followed.

In summary, all expenditures by a public body should be made in accordance with governing laws and regulations no matter what the source of the funds; but each situation may be examined to determine whether exemptions or other conditions apply which might limit the normal procurement process in whole or in part.

***2** We trust these comments are helpful to you. Please call upon us if we can ever be of assistance to you.
Sincerely,

Frank K. Sloan
Deputy Attorney General

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