

1983 WL 182094 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 30, 1983

***1 Re: Construction of Hangers at Owens Field**

Mr. Richard Black
Richland County Administrator
Box 192
Columbia, South Carolina 29202

Dear Mr. Black:

You have asked this office to review the matter of state funding from a Capital Improvement Bond issue on a county matching basis for construction of a maintenance hanger at Owens Field. The request made by Richland County to the State Aeronautics Commission for approval of this funding was denied.

The Aeronautics Commission, pursuant to the authority granted it in the bond authorization act, denied Richland County's request on June 27, 1983, stating that the Commission had a 'long-standing policy against approval of state funding participation for revenue producing airport projects which do not substantially benefit the general public.' The Commission may, of course, exercise its lawful discretion as to the types of projects it will approve. See Act No. 179 of 1981, South Carolina Acts and Joint Resolutions [62 STAT. 1962]; see also [§ 55-5-86, Code of Laws of South Carolina](#), 1976 (as amended).

The letter from the Commission further stated, however, that 'there is also a potential legal problem if public funds or credit are used for private benefit [i.e., hangers that would be leased to and operated by private persons.]' Based on our review, such a use of bond proceeds generally would not appear to violate any requirements of state law. The South Carolina Supreme Court has held that the construction of airport facilities is a lawful public purpose for which general obligation bond funding is authorized under Article X of the State Constitution. [Evatte v. Cass](#), 217 S.C. 62, 59 S.E.2d 638 (1950). Hangers for the repair and maintenance of aircraft are properly deemed to be 'airport facilities.' See e.g., [Peter Kiemit Sons Co. v. State](#), 116 N.W.2d 619, 622 (N.D.). It is obvious without the availability of services provided by such facilities, the use of a public airport could be materially restricted. See [Charleston County Aviation Authority v. Wasson](#), 277 S.C. 480, 289 S.E.2d 416, 421 (1982). Thus the construction of aircraft maintenance hangers incident to a public airport project would most probably constitute a lawful public purpose under the Constitution.

Furthermore, no constitutional problem would be presented by the fact that the hangers would be leased to private parties and be revenue producing, so long as the facilities are fully available for use by the public. The General Assembly has, on other occasions, authorized the issuance of general obligation bonds for the construction of airport facilities that would, thereafter, be leased to private persons for use by the public. See, e.g., Act No. 681, South Carolina Acts and Joint Resolutions, 1962, §§ 1, 5(6). It was expressly contemplated by the General Assembly that some airport projects funded by general obligation bonds would be revenue producing. [§ 11-23-10, Code of Laws of South Carolina](#), as amended (1976). It is undisputed that a public airport in this state may lease parts of its facilities to airlines for ticketing and baggage handling service to the traveling public. [Charleston County Aviation Authority v. Wasson](#), *supra*. In addition space is customarily leased to auto rental companies, restaurants, banks, gift shops, and other private businesses. These services generate revenue for the private businesses involved and thus to the airport itself in the form of lease payments, while providing a benefit or service to the public using that airport. *Id.*

***2** In like manner, an aircraft maintenance facility, leased to a private operator, would provide a benefit to the public insofar as it would provide maintenance service for aircraft using that airport, thus making the airport more available or useful to the

public. Any lease arrangement, of course, must be structured so that the public benefit would stand in proper relation to any incidental private benefit to the operator of the maintenance facility. See [Anderson v. Baehr](#), 265 S.C. 153, 163, 217 S.E.2d 43, 47 (1975). To that end, the lease arrangement with the operator of the maintenance facility must be an arms length transaction and the lease term must not be for so long a period as would be deemed a sale of public property.

For the foregoing reasons there would appear to be no constitutional prohibition on the use of general obligation bond proceeds to construct maintenance hangers at a public airport, which hangers would be leased to private persons. The lease and other business arrangements incident to the operation of the hangers would have to be properly structured as indicated above to continue to meet the public purpose requirements of Art. X of the Constitution.¹ In spite of this legal conclusion, however, the Aeronautics Commission would still have the discretion, under existing state law, to deny state funding for such a project as a matter of policy which it may establish.

Sincerely yours,

David C. Eckstrom
Assistant Attorney General

Footnotes

- ¹ This opinion does not address any particular lease arrangement that may be contemplated by the county for the operation of such a hanger. Nor does it address such other matters as property tax consequences for such a hanger. See [Charleston County Aviation Authority v. Wasson](#), *supra*. It is intended that this opinion address solely the question of the legality of the use of general obligation bond revenues for the construction of a maintenance hanger at a public airport that would be leased by the airport to a private operator.

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