

1981 WL 157903 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 10, 1981

\*1 E. P. Riley, Esquire  
Attorney at Law  
Post Office Box 10084  
Greenville, South Carolina 29603

Dear Mr. Riley:

In response to your request for an opinion from this Office concerning whether or not the Greenville Memorial Auditorium District Commission is authorized to donate to Greenville County real property purchased with proceeds of general obligation bonds issued several years ago, my opinion is that it is not so authorized.

As I understand the facts, pursuant to Section 5 of Act No. 762 of 1971 [57 STAT. 1483 (1971)], the Greenville County Council authorized the issuance of general obligation bonds of the District in the amount of \$1,500,000, the proceeds of which were to be used to finance 'certain additional capital improvements.' The proceeds were used to purchase real property upon which a coliseum was to be built. Now, however, the District Commission wants to give the real property to Greenville County.

The authorities agree that:

[W]hen funds are raised by the issuance of bonds for a designated purpose, they cannot be diverted to some other purpose. The proceeds of a bond issue are in the nature of a trust fund, and must be used for the purpose for which they were approved and issued, . . . 63 AM.JUR.2d Public Funds § 4 at 399.

See also, 64 AM.JUR.2d Public Securities and Obligations § 90. The proceeds of the \$1,500,000 issue were used to purchase real property, which purchase constitutes a legitimate expenditure of the proceeds. If, however, the real property is not to be used as a coliseum site, then it must be disposed of in a way that does not amount to a division of the proceeds. If the real property is not sold at fair market value or traded for other like consideration, the proceeds of the bonds will, in my opinion, be unlawfully diverted because there will no longer exist any asserts belonging to the District as a result of its expenditure of those proceeds.

For these reasons, the District Commission is not authorized to donate the real property which it purchased with bond proceeds to Greenville County; it may be free, however, to sell (or otherwise receive consideration for) that property if it no longer intends to use the property as a coliseum site. Whether or not it can sell the property is a question which is not free from doubt and I am enclosing a copy of a 1927 opinion of this Office which intimates that express statutory authority must exist in order to dispose of property purchased with bond proceeds for a specific purpose.

With kind regards,

Karen Lecraft Henderson  
Senior Assistant Attorney General

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