1980 WL 120766 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
July 11, 1980

***1 RE: Attorney General's Opinion**

Honorable Charlie G. Williams
State Superintendent of Education
Rutledge Building
Columbia, South Carolina

Dear Dr. Williams:
You have requested an opinion from this office concerning § 59-19-190, Code of Laws of South Carolina, 1976. Specifically, you have asked whether 'written approval of the State Board of Education' is necessary prior to reassignment or disposal of lands purchased by school trustees with any state funds under certain conditions. The conditions noted in your letter cover lands purchased with local funds to which buildings, additions, repairs or renovations, or improvements such as paving and athletic fields have been made with any state funds.

Section 59-19-190 appears to control the question herein and restricts school district boards of trustees from alienating property purchased with state funds, stating, 'The reassignment or disposal of such parcels of land purchased after 1952 with any state funds shall be subject to the prior written approval of the State Board of Education.' In the case of Abell v. Bell 229 S.C. 1, 91 S.E.2d 548 (1956), the South Carolina Supreme Court discussed several methods by which a statute affecting transfers of school property may be construed. (The particular statutes construed in Abell v. Bell have no bearing on this opinion) There, the Court stated, 'A statute must be construed in the light of its intended purpose; and if such purpose can be reasonably discovered in its language, the purpose will prevail over the literal import of the statute, for the dominant factor in the rule of construction is the intent, not the language, of the legislature.' Here, the apparent intention of the General Assembly was that reassignment or disposal of such parcels attached to 'lands' purchased by a board of trustees for school purposes, using state funds.

Thus, the question becomes what the legislature intended by the terms 'lands' and 'parcels of land'. The term 'lands' has been defined in numerous jurisdictions, and no one uniform definition can be found encompassing all situations. On the one hand, the term has been restricted to soil and earth, while other definitions broaden to include permanent structures and foliage. Finally, the term 'land' has been variously used to define the legal interests of one in a parcel of land. The best discussion I have found in South Carolina is contained in the case of Ex Parte Joseph Leland, 1 Nott & McCord 460 (1819). The Court held that the term 'lands' is 'nomen generalissimum' and adopted the following definition for the term:
In other words, land is the physical thing out of which all terrene estates are formed, from a freehold of inheritance down to a tenancy at will; but it is not in itself descriptive of any given estate or estates. Turn to a professional dictionary and you find land defined, first, by its physical properties, comprehending what nature has annexed to it, above and below, as water, the natural growth, and the like, and whatever structures man places upon it for permanent use.

***2** I have found no deviation from this definition in later South Carolina law.

Abell v. Bell, supra, further states, 'If the intent of the legislature be clearly apparent from its language, the Court may not embark upon a search for it dehors the statute.' Section 59-19-190 specifies clearly that the requirement for State Board of Education approval of reassignment or disposal of lands covers only those lands bought for public school purposes with state funds. Based upon the above definitions, I cannot state that improvements, construction of buildings, or renovations to buildings

come within the definition of 'lands' in the statute if such improvements, construction, or renovations were not a part of the original purchase. Abell v. Bell further teaches that matter outside a statute may be considered when a literal reading, '. . . gives rise to doubt or uncertainty as to the legislative intent . . ..' Here, the General Assembly, in the original act, did not include any preamble to the statute in question, specifying the legislature's intention or stating a peculiar situation which required the enactment of law. Therefore, nothing outside the statute is of any particular help here.

Finally, Abell v. Bell, supra, states that cognate legislation may be considered in determining legislative intent. The only cognate legislation here is § 59-19-250, which specifically authorizes school district boards of trustees to sell or lease school property when deemed expedient. Thus, § 59-19-190 is a limitation upon school district boards of trustees' authority pursuant to § 59-19-250; however, this relationship adds nothing to the meaning of § 59-19-190 outside the specific terms of that statute.

Therefore, the opinion of this office is that local school district boards of trustees do not need approval of the State Board of Education to sell 'land' originally purchased with local funds but upon which lands improvements, construction of buildings, or renovations of buildings have been effected with state funds. The State Board is not, however, powerless in this area. Enclosed herewith you will find a copy of Opinion No. 2649, Op.'s Att'y. Gen., March 13, 1969, advising that the State Board possessed authority to require its approval before a school district could sell, lease, or convey lands acquired with funds from the state public school building fund. A diligent search reveals that the State Board has not promulgated any regulations to require such approval. In that funds from the state public school building fund may be used, in addition to purchase of lands, to construct, improve, and renovate buildings and other school facilities, the reasoning in the enclosed opinion can be extended to structures built on school lands purchased with local funds. This regulatory authority would not extend beyond projects effected with monies from the state public school building fund. See § 59-21-310, et seq.

Next, you have asked whether the terms 'reassignment or disposal' in § 59-19-190 include the lease or mortgage of such property. The term 'reassignment' is, of course, the act of reassigning; however, the term 'assign' is defined as, 'to transfer to another in writing.' Webster's Third New International Dictionary, G & C Merriam Company (Springfield, Mass., U.S.A. 1976). The same publication defines 'disposal' as follows:

***3** 1. The act or process of disposing, as (a) orderly or systematic placement, distribution, or arrangement; (b) the regulation of the fact or condition of something; (c) the transference of something into new hands or a new place; (d) a discarding or throwing away

2. The power or authority to dispose of or use at one's convenience.

A lease would appear to come within the terms in question, as a reassignment of lands. A lease has been defined as, 'contract for exclusive possession of lands or tenements for a determined period'. Black's Law Dictionary, Revised Fourth Edition, West Publishing Company (St. Paul, Minn., 1968).

The term 'mortgage' presents a more difficult question. While authority exists to the contrary in general a mortgage does not constitute a conveyance of lands. See 55 Am Jur2d Mortgages, § 1. Moreover, § 29-3-10, Code of Laws of South Carolina, 1976, specifically states that the mortgagor continues to be deemed the owner of land mortgaged. See Prudential Insurance Company of America v. Lemmons, 159 S.C. 121, 155 S.E. 591 (1930). In that a school district, after mortgaging lands, remains in possession of the lands and maintains legal ownership, a mortgage would not be a reassignment or disposal of lands.

Please call upon me if you have any further questions concerning this matter.

With kindest regards,
Sincerely,

Paul S. League

Assistant Attorney General

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