

1980 WL 120883 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 18, 1980

*1 George L. Schroeder
Director
Legislative Audit Council
620 Bankers Trust Tower
Columbia, South Carolina 29201

Dear Mr. Schroeder:

You have asked the opinion of this Office on the following questions:

1. Who owns the televisions and television equipment purchased in whole or in part with Educational Television Commission [hereinafter Commission] funds and provided to public schools under a written agreement between the schools, the Commission and the Division of Instructional Television ¹ [hereinafter Division]?
2. Can the Commission and/or the Division enforce the agreement which is attached hereto?
3. Is the Commission required to inventory this equipment pursuant to [Section 10-1-140 of the Code of Laws of South Carolina, 1976](#)?

Before considering these specific questions, it is necessary to review the nature of the program whereby the Commission and the Division provide televisions and television equipment to public schools. The Commission and the Division cooperate with the public schools in determining which schools are in need of this type of equipment. The Commission then provides its appropriated funds on a matching basis with the schools for the purchase of the necessary equipment. For example, the Commission would provide funds for the purchase of one television set and the school involved would provide the funds for the purchase of another, or the Commission and the school would each pay one-half of the purchase price of a television set. A requirement of this program is that the school enter into the written agreement with the Commission and the Division which is attached hereto.

With regard to the ownership of equipment purchased with Commission funds, the statutes setting forth the authority of the Commission should be determinative. Section 59-7-40 in part provides:

The Commission may purchase, lease or otherwise acquire and operate such educational television, radio, and related equipment and facilities as are required to develop, promote and extend educational programs to meet the needs of the State and its citizens.

Section 59-7-50 in part provides:

The Commission may lease or sell the use of its facilities, equipment, . . . on such terms as the Commission deems advantageous . . .

As defined and limited by this authority, the program involves the purchase, or acquisition, of television equipment, or interests therein, by the Commission as an agency of the State of South Carolina. The Commission then leases use of the equipment, or its interests therein, to the public schools. The Commission could sell such equipment to the schools, but the agreement which is attached hereto appears to create a lease of the equipment to the schools rather than a sale. Furthermore, there appears to be

no reason why the specific terms of agreement concerning the use and custody of the equipment could not be enforced by the Commission or the Division through appropriate legal measures.

*2 Your final question concerns whether the Commission or the schools are responsible for the required annual inventory of the television equipment. [Section 10-1-140](#) requires each agency and institution to furnish an inventory of the personal property under its 'supervision.' 'Supervision' means oversight or direction. Webster's Third New International Dictionary, p. 2296. Although both the Commission and the schools exercise some form of oversight over the television equipment, the Commission, based on the agreement, retains ultimate control over the equipment which it owns in whole or in part. Thus, recognizing the evident purpose of Section 1-10-140, the Commission should be responsible for submitting the inventory required thereby.

Based on the foregoing, it is the opinion of this Office that the Educational Television Commission as an agency of the State of South Carolina owns the television equipment, or any interests therein, purchased with its appropriated funds; that the Commission and/or the Division may enforce the terms of the attached agreement through appropriate legal measures; and that the Commission should be responsible for the annual inventory of this equipment required by [Section 10-1-140](#).

With personal regards,

James M. Holly
Assistant Attorney General

ATTACHMENT

THIS FORM TO BE USED AS THE CONTRACTUAL AGREEMENT WHEN A SCHOOL RECEIVES ETV . . . 'MATCHING' EQUIPMENT PLACED BY S. C. ETV OR THE OFFICE OF ITV, STATE DEPARTMENT OF EDUCATION.

I understand that TV sets, stands, radios and videotape machines furnished by S.C. ETV Network-FTS to schools and districts may remain in the schools in which placed as long as this equipment is used in any given year. If unused during a school year, the district or area superintendent may elect to move this 'matching' equipment furnished by ETV to another school. If the equipment is not used during a second year, S. C. ETV or the Office of ITV, through its local Regional ITV Consultant, may pick up the equipment and reassign it to a different school district determined to be in need of such equipment.

I agree to the principle that ETV retains control of the ETV purchased TV sets and other TV equipment shown on the reverse side and that the school or district receiving such TV equipment assumes custodial responsibility. Custodial responsibility implies regard for maintenance and repair and educational usage.

Superintendent

Date

County

District _____

Principal

Date

School

Serial Number(s)—to be provided by S. C. ETV

Footnotes

1 The Division is in the Department of Education

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