

1977 S.C. Op. Atty. Gen. 23 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 77-14, 1977 WL 24357

Office of the Attorney General

State of South Carolina

Opinion No. 77-14

January 11, 1977

*1 Mr. Thomas W. Edwards, Jr.
City Manager
Post Office Drawer 538
Newberry, SC 29108

Dear Mr. Edwards:

You have requested an opinion as to the power of the city to lease land to a motorcycle club and as to the city's potential tort liability as the lessor of such property.

There is no question that the city has the power to lease property it owns. Section 47-33 of the South Carolina Code of Laws (Cum.Supp. 1975) expressly grants this power:

All municipalities of this State may own and possess property within and without their corporate limits, real, personal, or mixed without limitation, and may, by resolution of the council adopted at a public meeting upon such terms and conditions as such council may deem advisable, sell, alien, convey, lease or otherwise dispose of any such property at will. (emphasis added.)

The liability of the city for injury to those lawfully on the property is a more difficult question. Generally, once the tenant enters into possession and control of the premises,

it is the tenant who is liable for the negligent use of the premises and for defective conditions arising subsequently to the letting of the premises, while they are in his control and possession. 49 AM.JUR.2d, Section 908, 'Landlord and Tenant.' See also, Marks v. Industrial Life and Health Insurance Company, 212 SC 502, 48 S.E.2d 445 (1948).

Thus, in the absence of a covenant by the landlord to repair the premises and the absence of control or supervision of the landlord of the premises, the liability of the landlord is suspended as soon as he turns over the premises in good and reasonable condition. See, 49 AM.JUR.2d, Section 908, 'Landlord and Tenant'; Corley v. American Baptist Home Mission Society, 97 SC 460, 81 S.E. 146 (1914).

The problem that arises is that the landlord, here the city, would be liable for defects existing at the time of the lease which result in injuries. Thus, if the property were not turned over in good and reasonable condition, i.e., with defects existing, the city or landlord could be potentially liable. This potential liability for existing defects in leased property without a duty to repair can be avoided by two means.

First, the potential liability of the city will not be actionable as this liability comes within the umbrella of sovereign immunity. It is well settled that a municipality is a subdivision of the state and enjoys the immunity of the state from tort unless expressly waived by statute. Hollifield v. Keller, 238 SC 584, 121 S.E.2d 213 (1961); Furr v. City of Rock Hill, 235 SC 44, 109 S.E.2d 697 (1959). A caveat must be raised that an argument could be raised that Section 47-36 of the South Carolina Code of Laws (Cum.Supp. 1975) would also be a waiver of immunity from tort arising from leased property outside the corporate limits but the property you describe does not seem to be a 'street, causeway, bridge or public way . . . or a defect or mismanagement of anything under control of the corporation within the limits of any city or town . . .' covered by Section 47-36.

*2 The best method of avoiding such liability would be the inclusion of a stipulation in the lease relieving the landlord municipality from all liability, including negligence. Such stipulations are generally given effect in most jurisdictions, 49 AM.JUR.2d, Section 869, 'Landlord and Tenant,' and would seem to be authorized under the power given the city under Section 47-33 to impose such terms and conditions as the city deems advisable. Such a stipulation should specifically include negligence to be free of all question. This solution would seem to be the best as it would avoid the question of existing defects if so drafted, avoid the quagmire of sovereign immunity and completely absolve the city of liability arising from the leased premises.

Please let us know if we can be of any further help.

Sincerely yours,

Kenneth P. Woodington
Assistant Attorney General

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