1977 S.C. Op. Atty. Gen. 32 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-26, 1977 WL 24369

Office of the Attorney General

State of South Carolina
Opinion No. 77-26
January 21, 1977

***1** R. Markley Dennis, Esquire
Post Office Box 1174
Moncks Corner, SC 29461

Dear Markley:
Your inquiry of Mr. McLeod concerning the legality of the school district's accepting a quitclaim title to real property or any title other than a fee simple absolute has been referred to me for response. This question must, of course, be resolved in light of Section 21–232, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended, which provides:
Whenever a board of school trustees deems it expedient to acquire lands for the erection thereon of any public schoolhouse or building or making any addition to or extension of any public schoolhouse or building already established or for public school playgrounds or other use for such public schools, it may purchase the lots or parcels of land necessary for such purposes of the fee simple title of such land shall be vested in such board of school trustees from the day of the sale.

Our Office has issued three previous opinions on this section and the section has been considered in the case of Beach Co. v. Charleston County School District, 263 SC 7, 207 S.E.2d 406 (1974).

The earlier opinion of our Office approach the statute differently. Attorney General Daniel's letter of November 20, 1946, concludes that there is no law authorizing a district board of trustees to own real estate except in 'fee simple.' (Attachment 1) Similarly, Attorney General Opinion No. 3186 of September 20, 1971, (Attachment 2) states that 'Section 21–232 contemplates that the fee simple title to land shall be acquired for the construction of schools.'

However, the most complete opinion from this Office, No. 2655 of March 20, 1969, (Attachment 3) treats Section 21–232 as limiting the authority of the school board when buying land to the purchase of a fee simple absolute. The Beach Company opinion suggests a similar view of the section, stating that 'the furthest possible reach of the statute is to limit the authority of school boards in the purchase of land to the acquisition of fee simple estates only. The same opinion suggests that a reasonable view of the statute is to designate school boards as the legal entities in which title to school district property shall vest, and not to require that in every case the estate acquired shall be a fee simple absolute. See 207 S.E.2d at 408.

In our view the latter opinion (No. 2655) and the Beach Company opinion constitute the better view of the statute because the thrust of the statute is directed to the authority of school boards to purchase real property. The fact that a school district may only purchase land in fee simple absolute, does not preclude a board from accepting a donation of real property with a lesser title. However, a word of caution is in order. The plans of the district with respect to the property in question ought to be carefully considered. The former State Educational Finance Commission would not approve funds for building purposes unless the school district had a fee simple title. [1] There may be other similar limitations on available financial resources. In other words, the decision as to whether or not to accept the land may depend upon the purpose for which it is to be used and the means contemplated to achieve such a purpose.

***2** In conclusion, the school district may accept the land subject to the aforementioned caveat.
Sincerely,

Kenneth L. Childs
Assistant Attorney General

Footnotes

1 The successor to the State Educational Finance Commission is the State Board of Education. The Board, however, continues the same policies.

1977 S.C. Op. Atty. Gen. 32 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-26, 1977 WL 24369