

1977 S.C. Op. Atty. Gen. 239 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-312, 1977 WL 24745

Office of the Attorney General

State of South Carolina

Opinion No. 77-312

October 3, 1977

*1 There are no State restrictions on the sale of surplus public library books. Surplus books originally purchased with federal funds may be sold if they are classified as ‘expendable personal property’ under federal regulations. Surplus books purchased with county or individual donations may be sold unless restricted by local ordinance or by the terms of original private gift.

TO: Attorney at Law
Camden, S.C.

AUTHORITIES:

Sections 60–1–50, 50–5–140, 60–7–70, Code of Laws of South Carolina (1976);

The Library Services and Construction Act. [20 U.S.C. § 351](#);

Public Welfare Regulations, Office of Education (HEW), [45 C.F.R. §§ 100.1](#), 100b.216.

South Carolina public libraries obtain funds to purchase books and other library equipment through four basic sources: private donations, levy of county taxes, state aid, and federal aid. The question has been raised as to whether books purchased by public libraries with funds from these various sources can subsequently be disposed of by sale to the public when the books become worn out or surplus.

It should be pointed out initially that the decision to dispose of library property must be made by the Board of Trustees of the particular library. (See, e.g. Section 42–485, Code of Laws of South Carolina, 1962 which provides that the Board of Trustees of the Kershaw County Library may ‘purchase, lease, hold, and dispose of real estate and personal property.’) Likewise, the Board of Trustees must select the method of disposal unless they are restricted in this regard by regulation or agreement with the original funding. Books purchased with private donations would only be restricted by the terms of the gift, if any. Because the terms would vary in each instance, I cannot offer an opinion as to whether such books can be sold. Furthermore, there are no restrictions in the South Carolina Code on the disposal of books purchased with county taxes (See § 60–5–140, Code of Laws of South Carolina, 1976); however, county ordinances should be consulted to determine if there are any local restrictions.

Rule 75–1 of the Rules of the South Carolina State Library provides that state aid funds may be used to purchase books. Such funds, which cannot exceed 40% of local funds, are allocated to each county, and the property acquired with such funds becomes the property of each library. There are no restrictions in the Code or the Rules of the South Carolina State Library preventing the sale of surplus books obtained in part with state aid.

Finally, the federal Library Services and Construction Act, [20 U.S.C. § 351](#), provides for the granting of federal funds to the states to assist in establishing, extending, the improving public libraries. This act is implemented by [45 C.F.R. § 130](#) which provides for the disposal of expendable personal property. Expendable personal property is defined as all tangible personal property other than property or equipment (including books) having a useful life more than one year and an acquisition cost of \$300.00 or more. [45 C.F.R. § 100.1](#). If surplus library books fall within this classification, [45 C.F.R. § 100b.216](#) provides:

*2 (a) The recipient may at its option retain or sell items of expendable personal property when no longer needed for any federally sponsored activity (including activities sponsored by other agencies).

(b) Compensation to the federal government is required if the aggregate fair market value of all of those items acquired with Federal assistance exceeds \$500 when no longer needed for any federal sponsored activity. The amount of the compensation shall be computed by applying the percentage of Federal participation in the cost of the original project to the current fair market value of items retained, and to the sale proceeds of items sold.

Therefore, surplus books acquired with federal funds may be sold if they fall within the definition of 'expendable personal property'; however, the federal government must in some instance be reimbursed. A more authoritative interpretation of the federal regulations in question should be requested from the Department of Health, Education and Welfare, General Accounting Office.

BY: Richard B. Kale, Jr.
Assistant Attorney General

1977 S.C. Op. Atty. Gen. 239 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-312, 1977 WL 24745

End of Document

© 2016 Thomson Reuters. No claim to original U.S. Government Works.