

1978 WL 34657 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 16, 1978

\*1 Mr. Maceo Nance  
Financial Resources Representative  
State Development Board  
Post Office Box 927  
Columbia, South Carolina 29202

Dear Mr. Nance:

You have requested an opinion whether the State Development Board may enter into an interest-guarantee contract, a copy of which is attached, with a private developer of shell industrial buildings when any payments by the Board to the private developer would be made from funds granted to the state by a federal agency. It is the opinion of this office that the State Development Board may not enter into such a contract.

A grant of money to the state from the federal government becomes, upon receipt, a part of the general fund of the state. [Harris v. Fulp](#), 178 S.C. 332, 183 S.E. 158 (1935). No expenditure may be made from the general fund except pursuant to state law. [Art. X, § 8, S. C. CONST.](#)

It is a general proposition of law that administrative departments of the state government have no powers beyond those granted from the legislature by express provision or by necessary implication. 81 A C.J.S. [States](#) § 120. A careful study of the powers granted to the State Development Board (hereinafter referred to as the Board) does not reveal a power under which this contract may be executed by the Board. [§ 13-3-50](#), 100(4), S. C. CODE, 1976. Therefore, in our opinion, the Board may not legally execute the attached contract with a private developer.

If the Board wishes to implement this program legally, however, there are two possible approaches it may take. First, the Board may seek an amendment to its grant of powers from the legislature to permit it to implement this program. There is a potential constitutional problem, however, with such an additional grant of power because it may permit the use of public funds for an impermissible private purpose. [Art. X, § 11, S. C. CONST.](#) This problem might be avoided by proper drafting of the amendment. If the Board wishes to pursue that alternative, we could assist in drafting proposed statutory language.

Second, the Board may add a clause to the contract form which it would be empowered to execute. The existing grant of powers to the Board permits it '[t]o endorse or otherwise guarantee the obligations of any corporation all of the voting stock of which the Board may own or acquire.' [§ 13-3-100\(4\)\(q\), S. C. CODE](#), 1976 (emphasis added). Pursuant to this grant of power, the Board may wish to change its form of contract to provide for a provisional transfer of all the voting stock of the corporate private developer during the time that the Board guarantees the interest obligation of that private developer. There is a difficulty with this statutory provision however because it appears to violate the constitutional prohibition against the state's becoming a joint owner or stockholder of any company or corporation. [Art. X, § 11, S. C. CONST.](#) Because of this constitutional problem, this second alternative does not seem advisable.

\*2 The opinion of this office is that, in the absence of either of the two alternatives set out above, the Board lacks the power to execute the interest guarantee contract with a private developer. Because of the practical difficulties and potential constitutional problems with the second alternative, it is the recommendation of this office that the Board seek the additional grant of power from the legislature enabling it to engage in this interest guarantee program.

Sincerely,

David C. Eckstrom  
Staff Attorney

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