

1978 WL 34676 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 30, 1978

*1 Honorable Fred C. Craft
Director
Disaster Preparedness Agency
1429 Senate Street
Columbia, South Carolina 29201

Dear General Craft:

This office has received your request of December 30, 1977, with enclosures requesting our advice as to the disposal of certain aircraft presently carried on the records of the Disaster Preparedness Agency. This response has been delayed pending the receipt of additional documentation required as referred to herein.

As I understand the facts, there are two aircraft involved, both carried on the records of the Disaster Preparedness Agency-a Cessna 310 fixed wing aircraft initially obtained by your agency from the federal government through the excess property program and a Bell 47 Helicopter, now or recently operated by the South Carolina Aeronautics Commission, also acquired by your agency through the excess property program. Inasmuch as the status of these aircraft differ, their disposition will be separately discussed.

It is my further understanding that the Aeronautics Commission is desirous of returning to your agency the Bell 47 Helicopter herein referred to believing that its continued operation by that agency would be 'an inefficient utilization of resources'. You have recommended that the aircraft be re-assigned to the Charleston County Civil Defense Agency, which has expressed interest therein but without firm commitment. Inasmuch as that aircraft remains property of the federal government simply on loan to the State of South Carolina, its continued use must be consistent with the terms of the loan agreement previously entered into which authorized use as prescribed in DCPA Regulations (32 CFR 1801.4). You have advised that re-assignment of that aircraft can only be made to another agency with a civil defense function or mission or returned to the federal government. It would thus appear that the proposed transfer to the Charleston County Civil Defense Agency would be appropriate if acceptable to that agency.

As to the Cessna 310 fixed wing aircraft, I understand that you recommend that the same be transferred to Trident Tec of Charleston, that agency having agreed to repair the same, place it in flyable condition and make it available to Civil Defense and other state agencies should the same be needed. As discussed above, this aircraft was initially acquired on loan from the federal government and subsequently designated as surplus property. I have received and reviewed a letter dated January 19, 1978, to you from the Director, Region 3, Defense Civil Preparedness Agency (DCPA) which provides in part:

'Pursuant to the provisions of Public Law 95-519, title to the loaned equipment listed on the enclosure with this letter (which is the list you furnished us certifying that the property was being used for the purpose for which it was justified and furnished) is transferred to respective grantee effective October 17, 1977, and the loan terminated. Federal restrictions on this property terminated November 17, 1977'.

*2 Included on that list was an aircraft identified as SCOO4EX(73) which, I am advised by your agency, is the Cessna 310 in question. It now appearing that that aircraft having been given outright to the State of South Carolina, without further federal restriction or interest therein, the same may be disposed of in accordance with state law and procedure.

Section 1-11-40, Code of Laws of South Carolina (1976) provides that the State Budget and Control Board shall act for and on behalf of the State of South Carolina and its various departments, agencies and institutions, etc. in dealing with the United States of America or agencies thereof in reference to the acquisition of 'any equipment, machinery, supplies, materials or property, real or personal or both, by purchase, lease, loan, gift or otherwise . . .'. Further, [Sections 3-9-10 et seq., Code of Laws of South Carolina \(1976\)](#) provide for the acquisition and distribution of federal surplus property and give to the Division of General Services of the State Budget and Control Board certain authorities and duties with respect thereto.

That Board and Division thereof is authorized to acquire from the United States of America such property, under the control of any department or agency thereof, as may be useable and necessary for purposes of education, public health or civil defense; to warehouse such property; and to distribute such property within the State to tax supported and certain other non-profit 'medical institutions, hospitals, clinics, health centers, school systems, schools, colleges and universities within the State or to civil defense organizations of the State, or political subdivisions and instrumentalities thereof which are established pursuant to State law. Pursuant to authority therein granted, the Division of General Services of the State Budget and Control Board has promulgated rules and regulations relating thereto. See R-19-80 through 19-89.1 Vol. 23, Code of Laws of South Carolina (1976), Cumulative Supplement. It should be further noted that Section 1-11-120, Code of Laws of South Carolina (1976) authorizes the Budget and Control Board to sell any surplus personal property of the State under such terms and conditions as may be most advantageous to the State.

From the foregoing, it is obvious that the ultimate decision as to the disposal and the terms thereof rests with the State Budget and Control Board and that Board may transfer the Cessna 310 to Trident Tec of Charleston as recommended, make distribution to such other agency, institution, or political subdivision of the State as it deems appropriate, or offer the sale of the same under such terms and conditions as it may deem most advantageous to the State.

I trust this provides the guidance and advice sought, but if further assistance is needed, please do not hesitate to call upon me.

With warm personal regards,
Yours very truly,

John P. Wilson
Senior Assistant Attorney General

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