1978 S.C. Op. Atty. Gen. 55 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-5, 1978 WL 22517

Office of the Attorney General

State of South Carolina
Opinion No. 78-5
February 21, 1978

***1** TO: R. W. Burnette
Deputy Superintendent
Department of Education;
C. A. Isgett, Jr., Superintendent of Education
Calhoun County

QUESTION:

May State School Building funds or local school district funds be used for repairs and improvements on property that is leased by a school district?

CASES, STATUTES, ETC.

S.C. Constitution, Article X, § 11;

S.C. Code Ann. §§ 59–19–90, 59–21–400, 59–21–360, 59–69–220 (1976);

Trustees of the Columbia Academy v. Richland County School District No. 1, S.C. 217 S.E.2d 587, 590 (1975);

Gould v. Barton, 256 S.C. 175, 181 S.E.2d 662 (1971);

Thomas v. Hollis, 232 S.C. 330, 102 S.E.2d 110 (1958);

Carter v. Lake City Baseball Club, 218 S.C. 255, 262, 62 S.E.2d 470 (1950);

Paslay v. Brooks, 198 S.C. 345, 17 S.E.2d 865 (1941);

78 C.J.S., Schools & School Districts, § 256(3) (1952).

DISCUSSION:

With regard to this question, the school district of Calhoun County has entered into an agreement, dated July 1, 1977, with the St. Matthews Telephone Company wherein the Telephone Company agreed 'to let' certain offices to the district in consideration of two hundred ($200.00) dollars per month for utilization by the district as administrative offices. In pertinent part, the agreement states:
St. Matthews Telephone Company agrees to continue the above-stated consideration in perpetuity, provided that Calhoun County public schools agrees (sic) to renovate the interior of the building for full utilization, beautification, and permanence of the structure.

The agreement concludes that the Telephone Company would be responsible for the maintenance and upkeep of the exterior of the building, roof, plumbing fixtures, and the heating and air conditioning systems, provided that the district pays all monthly utility payments.

The agreement was signed by the superintendent of the Calhoun County public schools, and for the purposes of this opinion, it is presumed that this individual had properly been delegated authority by the School District Board of Trustees to execute such an agreement.

The power to lease buildings for school purposes is not expressly stated under the general powers and duties of school trustees. See S.C. Code Ann. § 59–19–90 (1976). Nonetheless, the Board of trustees of the school district is charged by the General Assembly to 'provide suitable school houses in its district . . . paying due regard . . . to . . . circumstances proper to be considered so as best to promote the educational interests of the districts'. See S.C. Code Ann. § 59–19–90 (1976). As a general matter of law, it appears that school boards or officers may lease a suitable building or room for school purposes when special circumstances dictate and 'the best interests of the school would be subserved thereby'. See 78 C.J.S., Schools and School Districts, § 256(3) (1952). At least in one South Carolina case, our Supreme Court was asked to construe a transaction whereby a private eleemosynary corporation leased certain real estate to a public school district 'in perpetuity'. Although the Court was considering the question of whether a deed, as opposed to a lease, was intended, rather than the question of whether the school district had the authority to enter into such a lease, the Court generally stated:

***2** We think that a lease was clearly intended, and we are not aware of any settled principle of law that will be transgressed by so holding.

Trustees of the Columbia Academy vs. Richland County School District No. 1, S.C. 217 S.E.2d 587, 590 (1975).

Although the General Assembly has established a plan whereby a district board of trustees may acquire land for the erection of any school house or building through purchase or condemnation, it appears that the general authority of a school district to 'provide suitable school houses' includes the implied power to lease buildings for school purposes when special circumstances dictate that this be done. This conforms with the generally recognized doctrine that 'a school district is a body politic and corporate under the laws of the state, with limited powers confined generally to those expressly enumerated and those necessarily implied'. See Carter v. Lake City Baseball Club, 218 S.C. 255, 262, 62 S.E.2d 470 (1950).

There are no specific statutes, or rules and regulations issued by the Department of Education, which prohibit using State or district funds to finance the cost of renovating and repairing school facilities not owned by the district. Nonetheless, S.C. Code Ann. § 59–21–360 (1976) provides the State Board of Education wide discretionary powers in passing upon any applications made by the school districts for the use of grants provided by the General Assembly for financing capital improvements. The State Board of Education is charged with the responsibility of ensuring that the building fund 'will not be used improvidently or unwisely and that the efficiency of the public school system will be increased by the expenditure of the funds'. See S.C. Code Ann. § 59–21–400 (1976). The State Board of Education should be guided by the County Operating Plan required under § 59–21–360, supra, and may, in its discretion, deny any application for the use of the Public School Building fund if the application does not conform to the plan of the County Board of Education. The State Educational Finance Commission, the precursor of the State Board of Education as administrator of the School Building fund, utilized a general policy not to approve the disbursement of funds for improvement of a building unless the district had fee-simple title. This policy received tacit approval of the South Carolina Supreme Court in Thomas v. Hollis, 232 S.C. 330, 102 S.E.2d 110, 112 (1958). Therefore, the State Board of Education may, in the proper exercise of its discretion, deny any application for the use of funds of the Public School Building fund for renovating or repairing school buildings or other school facilities not owned by the district.

Similarly, with regard to district funds, the County Superintendent of Education exercises some discretion under S.C. Code Ann. § 59–69–220 (1976) in passing upon any warrants drawn against any public school fund. In acknowledging the authority of the County Superintendent of Education to refuse to approve a warrant drawn by the trustees of a certain school district for payment of certain legal services, the South Carolina Supreme in Paslay v. Brooks, 198 S.C. 345, 17 S.E.2d 865 (1941) stated:

***3** Furthermore, under the law, in our opinion, a County Superintendent of Education has more than a ministerial duty to perform when he approves a school warrant.

. . ..

Undoubtedly, the power to approve a claim such as the one before us carries with it the discretion to disapprove.

Under this general authority, if the County Superintendent of Education finds that there are no district funds available in sufficient amounts to pay claims made for improvement or repair of buildings not owned by the district, or that the warrant issued by the district was ultra vires and unauthorized by law, the County Superintendent may withhold approval for such school warrants.

In the final analysis no public monies can be expended if the disbursement of such funds will violate Article X, § 11 of the South Carolina Constitution which states, in part;

The credit of neither the State nor any of its political subdivisions shall be pledged or loaned for the benefit of any individual, company, association, corporation. . ..

In Gould v. Barton, 256 S.C. 175, 181 S.E.2d 662, 667 (1971), the South Carolina Supreme Court held that under certain factual circumstances public monies could be expended to improve leased property without violating this constitutional provision. The Court's decision apparently turned on several factors including (1) that the public monies were to be expended solely and exclusively for a public purpose; (2) that the improvements placed on the leased property would not constitute a benefit to the lessor; (3) that the lessor was leasing the land practically rent free for a period of 99 years, and had no conceivable financial interests in the transaction; and (4) that the leasing of the property fell within the discretionary powers granted to the public agency. Based upon the general framework of the Gould decision, the expenditure of School Building funds for repairs and improvements of property leased by the school district would not violate the South Carolina Constitution if it is shown that the improvements, over the period of the lease, will not constitute a benefit to the lessor. The Court in Gould noted that the lease arrangement thereunder constituted a substantial financial advantage to the public agency over a long period of time because the public agency did not have to invest monies in the purchase price of land. The Court also noted that much of the improvements made to the lease property would be removable at the end of the lease period. See Gould v. Barton, 181 S.E.2d at 667. The same considerations could be utilized by either the State Department of Education or the County Superintendent in exercising their discretion to determine if approval for disbursement of School Building funds under these circumstances should be given.

CONCLUSION:

The State Board of Education, the County Superintendent of Education, and the District Board of Trustees, must exercise discretion in passing upon application for use of State and district funds for repairs and improvements on property that is leased by a school district insuring that such funds are not used improvidently or unwisely or in violation of Article X, § 11 of the South Carolina Constitution.

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