

1975 WL 29438 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 28, 1975

***1 SUBJECT: Whether or not the Disaster Preparedness Agency may legally expend State budgetary funds (not a special appropriation) for the repair or renovation of property owned by the U. S. government but which is being used by the Disaster Preparedness Agency.**

Jack Wilson

The State Civil Defense and Disaster Control Law [§ 44-311 et seq. South Carolina Code of Laws, as amended (1973)] changes the title of the Civil Defense Agency to that of Disaster Preparedness Agency and provides in part that the State government shall be responsible for:

Establishing policies and developing a plan and procedures to insure maximum utilization of all State resources to minimize loss of life and injury to the populace . . . during emergencies . . . [and] Providing State forces and resources to support local government disaster operations, and coordinating support with local governments from other sources, including the Federal government . . .

Pursuant to the Federal government's Excess Program [Title 506 App. U.S.C.A. § 2281], the Disaster Preparedness Agency acquired a Cessna 310 in 1974 and has spent approximately six thousand dollars for repair and renovation of the plane. The agency estimates that another ten to fifteen thousand dollars will be required to make it eligible for licensing by the Federal Aeronautics Commission. The loan agreement between the Department of Defense and the Disaster Preparedness Agency is for a period of five years subject to early termination by either party upon sixty days written notice.

It is without question that the Disaster Preparedness Agency may contract with the Federal Government 'or any agency, department, authority, corporation, or commission of the United States of America in reference to the acquisition of any equipment, machinery, supplies, materials, or property, real or personal, or both, by purchases, lease, loan, gift, or otherwise . . . ' §§ 1-354, 1-356 South Carolina Code of Laws (1962). Section 1-354 and 1-356 provide that the Agency may 'execute and deliver . . . such contracts, leases, or other instruments as may be necessary . . . ' It is my opinion, therefore, that the acquisition of the Cessna 310 pursuant to the loan agreement was statutorily permissible.

Section 44-316, South Carolina Code of Laws (1962), provides that the director of the Disaster Preparedness Agency may 'make such expenditures within the appropriations or other funds made available to him for purposes of civil defense.' However, Article X, § 9 of the Constitution states that money shall be drawn from the Treasury only in pursuance of appropriation made by law. Likewise, Article IV, § 21 provides that 'Bills appropriating money out of the Treasury shall specify the objects and purposes for which the same are made, and appropriate to them respectively their several amounts in distinct items and sections.' The specific question posed concerns the legality of the expenditure of the additional fifteen thousand dollars from State budgetary funds not specially appropriated. Attached is a copy of Section 76 of the 1974 Appropriation Act. Under Item II (Resources and Support Systems), there is an appropriation of \$17,075.00 for equipment. Also in Item III (Plans and Operations), there is an appropriation for equipment of \$23,300.00. It would seem that these appropriations could cover the fifteen thousand dollars and be entirely consistent with § 44-316, Article X, § 9, and Article IV, § 21. [It is not clear whether Mr. Temple, when referring to 'special appropriation' means an itemized appropriations such as the ones outlined above which are consistent with the Constitution or those which

are spelled out such as Item VI (Disaster Expenses—Hilton Hear)—which was necessary because of the provisions of § 44-318 for Emergency Loans].

*2 No opinions or cases deal squarely with the issue of whether state funds can be used for repair or maintenance of chattel used by the state for public purposes but not owned by the State. [Gould v. Barton](#), 256 SC 175, 191 S.E.2d 662 (1971), considered the legality of placing public improvements (the Riverbank Zoo) on private property which was leased to the Riverbanks Parks Commission rent free for a period of 99 years (see excerpt of opinion attached). The Court held that since the lessor had not conceivable financial interest in the establishment of the part and the funds were to be expended solely and exclusively for a public purpose, there was no violation of the Constitution. However, this opinion may be based in part upon the fact that the lease was for a long period of time and the facts that the court felt that ‘much of the improvements would be removable at the end of the lease period.’ A 1953 Opinion of the Attorney General held that the Aeronautics Commission was not authorized to place a building on the lands of a private person without some agreement by him in the form of a lease or deed from him to the land or an arrangement whereby the building would remain the property of the Commission. 1953-54 Op. Atty. Gen. 147. It is conceivable that some of the improvements made to the Cessna 310 could be removed upon the return of the plane to the Federal Government.

Furthermore, § 1-77, South Carolina Code of Laws, as amended (1973) provides in part that:

The State, the agencies of the State . . . are authorized to adopt resolutions or ordinances of assurances required by the Secretary of the Army or the Chief of Engineers for the fulfillment of the required items of local cooperation as expressed in the appropriate acts of Congress or congressional documents upon a determination by the State, State agencies . . . that a project will accrue to the general or specific benefit of the governing authority may contract or otherwise commit itself to the United States to provide the necessary interest in lands, to make contributions of money or property . . . and to provide or satisfy any other items or conditions of local cooperation as required by the Secretary of the Army or in congressional documents covering the particular project.

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