

1975 WL 29525 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 21, 1975

*1 Expenditure by the Disaster Preparedness Agency of monies appropriated or legally transferred for 'equipment' on needed repair and renovation of a federally owned airplane on loan to the Agency would be proper and for a valid public purpose if the acquisition, repair and maintenance of such airplane is reasonably necessary to the accomplishment of its purpose of civil defense.

Executive Assistant

South Carolina Disaster Preparedness Agency

You have inquired whether or not the Disaster Preparedness Agency may legally expend State budgetary funds for the repair or renovation of property owned by the United States Government but which is being used by that agency. Specifically you refer to a Cessna 310 airplane acquired in 1974 under gratis loan from the Government through the Office of Civil Defense, Office of the Secretary of the Army, Department of Defense.

A copy of the Loan Agreement has been provided which indicates that the period of the loan is five years and that ownership of the property shall remain in the Government. No rental charges or leasing fee is incurred. The Agreement further provides:

The loan may be early terminated upon written notice by either party; in which case the property shall be returned to the Government within sixty (60) days of such notice . . . In case of a Civil Defense Emergency proclaimed nationally, the sixty-day period following notice shall not apply, and the property shall be delivered up forthwith.

You have further advised that total expenditures of between \$16,000 and \$21,000 will be required to meet FAA licensing eligibility and that no special appropriation has been made for that purpose.

Section 44-316, Code of Laws of South Carolina (1962), as amended, 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.' A review of Section 76 of the 1974 General Appropriations Act relating to the Disaster Preparedness Agency reveals appropriations of \$17,075 for equipment in Item II (Resources and Support Systems) and \$23,300 for equipment in Item III (Plans and Operations).

The expenditure of public funds is regulated by both constitutional and statutory provisions within this State. Article IV, § 21 of the South Carolina Constitution provides in part: '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.' Article X, § 9 requires that money be drawn from the Treasury only in pursuance of appropriations made by law. Section 1-701 of the Code states:

It shall be unlawful for any moneys to be expended for any purpose or activity except that for which it is specifically appropriated, and no transfer from one appropriation account to another shall be made unless such transfer be provided for in the annual appropriation act.

*2 It is axiomatic that every appropriation and expenditure of public funds must be for a public purpose. See 63 Am.Jur.2d Public Funds, §§ 58 et seq., [Caldwell v. McMillan](#), 224 S.C. 150, 77 S.E.2d 798 (1953).

It is clear that the General Assembly has specifically appropriated funds for 'equipment' in the areas of Resources and Support Systems and Plans and Operations. If the acquisition of the airplane referred to is reasonably necessary to accomplish the purposes of civil defense through one or both of the areas indicated, expenditure of such appropriation for the acquisition, repair or maintenance of such equipment would be proper and for a valid public purpose. Leasing, rental or loan arrangements are common business practices and may well be to the State's economic advantage to undertake such in lieu of outright purchase.

In the event that the amounts appropriated to 'equipment' have been exhausted or are insufficient, authorization to transfer monies from other appropriated accounts must first be obtained from the State Budget and Control Board. See § 1-701, Code of Laws of South Carolina (1962), supra; § 101, 1974 General Appropriations Act, Act No. 1136, 1974 Acts and Joint Resolutions of the General Assembly of the State of South Carolina.

May I also direct your attention to Section 1-354 which in pertinent part provides:

The State Budget and Control Board 'shall act for and on behalf of . . . [t]he State of South Carolina and any of its departments, agencies . . . in dealing with the United States of America or any agency, department [thereof] in reference to the acquisition of any equipment, machinery, supplies, materials or property . . . by purchase, lease, loan, gift or otherwise and may execute and deliver, for and on behalf of the respective [agencies], such contracts, leases or other instruments as may be necessary to consummate any transaction . . .'

Similarly, Section 1-1041 authorizes the Division of General Services of the State Budget and Control Board to acquire from the United States Government 'such property . . . under the control of any department or agency of the United States of America as may be usable and necessary for purposes of . . . civil defense . . . and [t]o distribute such property . . . to civil defense organizations of the State . . .'. It is questionable whether the Disaster Preparedness Agency has the legal right and authority by law to act for itself in such matters and thus Section 1-356 would be inapplicable.

In summary, it is the opinion of this Office that the Disaster Preparedness Agency may expend monies appropriated or lawfully transferred for 'equipment' on necessary repairs to and renovation of the Cessna 310 airplane owned by the United States Government and under loan to that Agency so long as the acquisition and maintenance of that airplane is reasonably necessary to accomplish its purposes of civil defense.

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