

1975 WL 28896 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 6, 1975

*1 The Honorable Cecil T. Sandifer
Member
House of Representatives
Oconee County
Box 97
Westminster, South Carolina 29693

Dear Mr. Sandifer:

You have requested the opinion of this Office on the following questions:

1. Does the Oconee County Aeronautics Commission have authority to lease the airport without the concurrence of the County governing body?

The organic act creating the Oconee Aeronautics Commission grants to it the authority to ‘—lease to any person, firm or corporation—any and all of the property and rights acquired by the Commission under the provisions of this act or under the provisions of any other act, statute or law.’ No concurrence by the governing body of Oconee County is required.

2. For what period of time does the County have authority to lease County property?

No public body has the authority to bind its successors in office, but an exception to this general rule exists in the case of contracts which, by their nature, are subject to terms of longer duration or of definite duration and, in my opinion, the execution of a lease of the Aeronautics Commission property is such an exception. There is therefore no fixed period for the duration of leases entered into by public bodies, such as the Oconee County Aeronautics Commission, unless otherwise fixed by law, but the duration thereof is vested in the public body.

3. Is the attached lease properly executed by the Chairman and Secretary signing, and not a majority of the Oconee County Aeronautics Commission and without an authorizing resolution?

It is not necessary that the entire Commission, or a majority thereof, execute the lease, but it cannot be executed in the absence of authorization by the Commission, or a majority thereof. Whether or not such authority has been given depends upon the proof in each particular case. The minutes of the meeting of the Aeronautics Commission of November 25, 1974, do not reflect that any action was taken on the lease requested by Mr. Garrison. I presume that this is the lease which you have submitted. The minutes merely reflect that, upon this application for the renewal of the lease, ‘no action was taken.’

Unless there is proof of authorization for the Chairman or other officers of the Commission to execute the lease, they would have no authority to do so. The organic statute of 1968 requires that:

‘All deeds, leases, agreements and all other papers executed by the Commission shall be executed in the name of Oconee County, by the Commission, and at least two members of the Commission shall subscribe their names in the execution thereof.’

The fact that the lease was not executed in the name of Oconee County would probably not invalidate the lease, but it appears to be executed by two members of the Commission, in compliance with the provisions of Section 7 of the organic act. I assume that the subscribing Chairman and Secretary were members of the Commission.

*2 Unless this lease was authorized by the Commission, as set forth above, I do not feel that it is a validly executed lease, but if authorization has been obtained, it is my opinion that the lease would be valid.

With best wishes,
Very truly yours,

Daniel R. McLeod
Attorney General

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