

1975 S.C. Op. Atty. Gen. 120 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4044, 1975 WL 22341

Office of the Attorney General

State of South Carolina

Opinion No. 4044

July 2, 1975

\*1 Mr. Wendell S. Paulk  
Project Developer  
State Liaison Office  
S. C. Department of Parks, Recreation and Tourism  
Box 113  
Columbia, SC 29201

Dear Mr. Paulk:

As per our telephone conversation of June 26, 1975, and your letter of June 27, 1975, enclosed is an opinion answering the question as to whether or not Marion School District Number 1 is required to sell land in its possession or whether the District may donate such land. It is the opinion of this Office that Marion School District Number 1 does not have the statutory authority to donate public land and therefore pursuant to Section 21–238 may only sell or lease land.

Section 21–238, CODE OF LAWS OF SOUTH CAROLINA (1962) provides in part:

The school trustees of the several school districts may sell or lease school property, real or personal, in their school district whenever they deem it expedient to do so and apply the proceeds of any such sale or lease to the school fund of the district. The consent of the county board of education shall be first obtained by the trustees desiring to make any such sale or of lease. The board of trustees, within thirty days after making any such sale or lease shall send a report thereof to the county board of education, setting forth the terms and amount of the sale or lease. The provisions of this section shall not apply to the sale of surplus school buildings or the disposition of funds realized therefrom.

This statute only gives to the school trustees of the district the power to sell or lease school property; they do not have the power to donate such property. As there are no special provisions which apply to Marion School District Number 1, the trustees of this district are bound by the above section. As a general rule,

. . . state officers, boards, commissions and departments have such powers as may have delegated to them by express constitutional and statutory provisions, or as may properly be implied from the nature of the particular duties imposed on them. This power cannot be varied or enlarged by usage or by administrative construction. Executive and administrative officers, boards, departments, and commissions, have no powers beyond those granted by express provision or necessary implication. 81 C.J.S. States Section 58 at 977–978.

Since the trustees of the school district were given no express authority to donate land, they are bound by the provisions of Section 21–238, CODE OF LAWS OF SOUTH CAROLINA (1962).

As to your second question concerning whether or not the school must receive fair market value for the property it sells, it is the opinion of this Office that they do not have to receive fair market value. First, the trustees of the school district sell school property only when ‘they deem it expedient to do so . . .’ Prior to consummating any sell, the trustees of the school district must have the consent and approval of the county board of education. Therefore, whatever is approved by the county board of education and the school trustees is the fee at which the property must be sold.

Yours very truly,



\*2 M. Elizabeth Crum  
Assistant Attorney General

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