

1975 S.C. Op. Atty. Gen. 152 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4076, 1975 WL 22373

Office of the Attorney General

State of South Carolina

Opinion No. 4076

August 11, 1975

*1 The State is not secondarily liable for the maintenance of restored historic property, when the private owner of such property can not or will not continue the maintenance as agreed to in a grant covenant.

TO: State Historic Preservation Officer
South Carolina Department of Archives and History

QUESTION:

Is the State secondarily liable for the maintenance of restored historic property in private ownership when, subsequent to federal grant acceptance, State administration of the federal funds, and restoration, the private owner refuses or financially cannot keep up the obligation to maintain the property in good repair as agreed to in the grant covenant?

STATUTES:

The National Historic Preservation Act of 1966, Historic Preservation Grants-In-Aid Policies and Procedures, Section II, Part XVIII, B.

DISCUSSION:

Under The National Historic Preservation Act of 1966, Historic Preservation Grants-In-Aid Policies and Procedures, Section II, Part XVIII, B., it appears that once a maintenance and administration covenant, drawn according to the regulations of said Act, is agreed to by the transferee or private owner of the restored historic property, the State's or grantee's only responsibility to the Federal government is to see that the covenant is carried out. As Part XVIII, B. indicates,

'Grantees are responsible for insuring transferee compliance with maintenance and administration covenants. Any legal document necessary to maintenance and administration of assisted properties shall be drafted in such a manner that it will be enforceable in a court of law within the state.'

As there are no other provisions requiring the State to maintain the property in the event covenant is not followed by the transferee, it is apparent that the State's obligations go no further than taking action to enforce the covenant. It should be noted that the State is not prohibited from providing funds for maintenance on its own; it is not required to do so under the Historic Preservation Grants-In-Aid Policies and Procedures.

M. Elizabeth Crum
Assistant Attorney General

1975 S.C. Op. Atty. Gen. 152 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4076, 1975 WL 22373