

1975 WL 29110 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 29, 1975

*1 The Lancaster Park and Playground Commission does not have the authority to acquire title to real property.

TO: City Attorney

QUESTION PRESENTED:

Does the Lancaster Park and Playground Commission have the authority to take title to and hold real property?

AUTHORITIES INVOLVED:

Sections 51-361 to 51-363, 1962 Code of Laws (1943 Acts 152).

Section 51-121, 1962 Code of Laws (1953 Acts 316, as amended by 1955 Acts 568).

[Piedmont and Northern Railway Co. v. Scott](#), 202 SC 207, 24 SE2d 353.

[Beard-Laney, Inc. v. Darby](#), 213 SC 380, 49 SE2d 564.

[Henry v. Parrish](#), 307 Ky. 559, 211 SW2d 418.

1 Am.Jur.2d Administrative Law § 72.

73 C.J.S. Public Administrative Bodies and Procedure §§ 49, 50, 59.

DISCUSSION:

The Lancaster Park and Playground Commission was established by 1943 Acts 152, now codified as Section 51-361 to 51-363, 1962 Code of Laws. The Act provides that the Commission will be a body corporate with continuous membership. The duties and powers of the Commission are enumerated:

‘The Commission shall be charged with the care, management, control, supervision and development of the property heretofore acquired by School District No. 14 of Lancaster County for park and playground purposes and other property of the City of Lancaster designated by the City Council to be used for park and playground purposes.’

The Act contemplates that the Commission will manage and supervise the property already acquired at that time by the school district and whatever city property as would be provided by the city council for parks or playgrounds. There is no authority granted the Commission to obtain other properties for these purposes.

The Commission must find its power to acquire and take title to real property in one of these three manners: (1) an express grant of the power, (2) a power granted by reasonable necessary implication, or (3) a power which is merely incidental to the powers so expressly granted. [Piedmont and Northern Railway Co. v. Scott](#), 202 SC 207, 24 SE2d 353;

1 Am.Jur.2d Administrative Law § 72; 73 C.J.S. Public Administrative Bodies and Procedure § 50; cf. Beard-Laney, Inc. v. Darby, 213 SC 380, 49 SE2d 564. Any reasonable doubt as to the existence of any particular power should be resolved against it, particularly where, as here, the board was created to perform one specific function. Scott, supra; 73 C.J.S. § 49, supra; Henry v. Parrish, 307 Ky. 559, 211 SW2d 418.

The Act establishes the purpose of the Commission to be the management and supervision of those lands already acquired from other sources. It could be strongly argued that the acquisition of new lands besides those mentioned in the Act would be an act beyond the scope and authority of the Commission. Cf. 73 C.J.S. § 59, supra.

In any event, the power to acquire property for the purposes of parks and playgrounds was conferred upon the city council of Lancaster by 1953 Acts 316, as amended by 1955 Acts 568, codified at Section 51-121, 1962 Code of Laws. The section reads:

*2 ‘Any municipal corporation in this State having a population of between three thousand and seven thousand two hundred based upon United States census of 1950 may purchase, lease or otherwise acquire, and use, any land that may be acquired for a park or parks, or playground or playgrounds, whether the land may be within or without its corporate limits, and may create, establish and maintain thereon one or more parks or playgrounds within or adjacent to the corporate limits of the municipality.’

The Department of Archives has informed this Office that the population of Lancaster according to the 1950 census was 7,159. This would not necessarily pre-empt the power of the Commission in its entirety, but does offer an approach to the intent of the legislature and a viable solution to the problem of acquiring land for parks and playgrounds.

CONCLUSION:

The Lancaster Park and Playground Commission does not have the authority to acquire title to real property.

Cameron B. Littlejohn, Jr.
Staff Attorney

1975 WL 29110 (S.C.A.G.)