

1975 WL 29303 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 1, 1975

*1 Dr. Cyril B. Busbee
State Superintendent of Education
Department of Education
Rutledge Building
1429 Senate Street
Columbia, SC 29201

Dear Dr. Busbee:

With regard to payment of funds for school projects which were under contract or for which construction had been begun or completed as of June 6, 1975, the following is a further explanation of my letter to you of October 28, 1975, a copy of which is attached hereto. In this letter of October 28, I pointed out that the general obligation bond debt service limitation contained in Part II, Section 20 of the 1975-76 General Appropriation Act is applicable to State School Bonds. In light of this Section, I concluded:

The advices given to you by the State Budget and Control Board under date of May 27, 1975, with respect to the issuance of 14.1 million dollars State school bonds, has been superseded by the mandate of the General Assembly, and, accordingly, the issuance of State school bonds is prohibited by that language, except to the extent that there were projects or purposes then 'under contract.' The quoted phrase is ambiguous and is now the subject of a lawsuit in the courts. It will be necessary to await the outcome of that decision before a precise determination can be made. (Emphasis added).

There is no question but that the State Board of Education can authorize payment to those school districts for projects which were being constructed or were complete or which were under contract as of June 6, 1975. It seems perfectly clear that for those school projects which were under sing contract (i.e., one general contractor) construction or those projects for which construction was complete prior to June 6, 1975, the State Board of Education can authorize payment and request issuance of bonds therefor from the Governor and State Treasurer. However, for any contracts entered into on or after June 6, 1975, the State Board of Education should not authorize payment of any funds.

The area of ambiguity, as Elizabeth Crum, Assistant Attorney General, explained to Mr. Ray Burnette in a telephone conversation Monday, November 24 is, in some instances, in determining whether or not there was a contract, either written or oral, in existence as of June 6, 1975, the effective date of the Appropriation Act. This Office will be more than willing to assist the State Board of Education or any school district in determining whether or not each specific project was under contract as of June 6, 1975.

There is another unclear area concerning whether or not the Budget and Control Board can waive the debt service limitation for the remainder of a multi-project contract where a part of the project is under contract. However, this question does not effect those projects where single contract construction was begun prior to June 6, 1975. The case which will provide and we are currently awaiting a decision.

Yours very truly,

Daniel R. McLeod
*2 Attorney General

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