

1975 WL 29324 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 11, 1975

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

Dear Dr. Busbee:

As per conversations during meetings between members of this Office and Mr. Burnette and Mr. Parrish of your Department, this letter delineates the steps to be followed, in light of § 20(b) of the 1975-76 Appropriation Act, by the various school districts within the State in applying for payment of funds derived from the sale of State School Bonds pursuant to § 21-995, et seq., CODE OF LAWS OF SOUTH CAROLINA (1962) (as amended).

In his letter of December 1, 1975, Mr. McLeod states that the State Board of Education could authorize payment of funds derived from the sale of State School Bonds for those projects or purposes which were under contract, being constructed or were completed as of June 6, 1975. This simply means that any contract, be it for land purchase, architectural services, site preparation, etc., which is necessary for the construction and completion of a permanent improvement project for which State School Bonds funds can be expended which was executed and binding as of June 6, 1975, can be paid for with funds derived from State School Bonds to the extent that the State Budget and Control Board determines such payment is necessary. Such a contract can be either oral or written. In the case of written contracts, the school district should forward certified copies thereof to your Office for presentation to the State Budget and Control Board. Where the school district claims there was an oral contract in existence as of June 6, 1975, they should submit proof thereof to your Department for presentation to the Budget and Control Board. This proof can take the form of the minutes of the particular school board when it determined to accept the offer of any particular contractor, the proof can be by affidavits of the parties swearing that they had a valid, oral contract as of June 6, 1975. Other forms of proof, such as commencement of work prior to June 6, 1975, may be acceptable in certain instances.

Since Mr. McLeod's letter of December 1, 1975, the State Supreme Court has decided the case of Hughes v. Edwards. In adopting a lower Court's Order as its own, the Supreme Court stated:

Section 20B is an absolute prohibition so far as the issuance of General Obligation Bonds are concerned, other than highway and institution bonds, where the debt service of all such bonds exceeds 5% of the general fund revenue for the last completed fiscal year. The General Assembly, however, realized that there were projects already underway where binding contracts had been entered into and which perhaps could be financed in no other way than through the issuance of General Obligation Bonds. Therefore, the General Assembly gave the Budget and Control Board discretion in such circumstances to waive the 5% limitation so far as it might be necessary to finance such projects or purposes under contract as of the time of the adoption of the Act in question. The only discretion granted to the Budget and Control Board by the General Assembly was where in the opinion of the Budget and Control Board the issuance of General Obligation Bonds might be necessary to finance projects or purposes then under contract.

\*2 Thus, as stated above and has been stated in previous letters, funds derived from State School Bonds can only be used for those 'projects or purposes' which were under contract as of June 6, 1975.

If there are any specific questions which the various school districts have as to whether or not a specific project or purpose was under contract as of the effective date of Section 20(b), this Office will be glad to render what assistance it can.

Yours very truly,

M. Elizabeth Crum  
Assistant Attorney General

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