1973 WL 27771 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
August 30, 1973

***1 Re: Contract for shell buildings.**

Mr. G. Aubrey Gooding
Fiscal Manager
S. C. State Development Board
Post Office Box 927
Columbia, South Carolina 29202

Dear Mr. Gooding:
Presently being considered is a contract executed between the Coastal Plains Regional Commission (CPRC), an agency established pursuant to federal statute, and the South Carolina State Development Board. Under this contract the Development Board has agreed to subcontract with industrial developers for the construction of shell buildings at designated sites within the State . The CPRC has agreed to furnish $37,500 of purely federal funds to pay to the developers of these buildings any interest costs accruing on their construction loans for a period of one year or until the building is rented or sold, up to the maximum amount of $12,500 per building. The question now presented is whether or not the South Carolina State Development Board is empowered to dispurse to a private developer monies which are a reimbursement to the developer for interest payments which that developer has incurred as a result of the aforementioned subcontract.

Under Sections 9-309 and 9-310, S. C. Code of Laws (1962), the Development Board is empowered to enter into contracts and to dispose of funds. The thrust of this inquiry, therefore, relates to the nature of the payment rather than to the act of payment. Ordinarily payment of interest under a contract of this type to a private developer would violate Article 10, Section 6 of the South Carolina Constitution. Under this section it is forbidden for anyone to pledge or loan the credit of the State 'for the benefit of any individual, company, association or corporation.' This section has been interpreted to mean that he credit and taxing powers of the State or any of its political subdivisions cannot be pledged either directly or contingently for the payment of private obligations. Clarke v. South Carolina Public Service Authority, 177 S.C. 427, 181 S.E. 481 (??). It is not sufficient to avoid this prohibition that public benefits might accrue from the expenditures due to increased taxable values, enhancement of property values generally, or increased commercial impetus. Haesloop v. City Council of Charleston, 123 S.C. 272, 115 S.E. 596 (1923).

Nevertheless, it appears that in this instance, because the monies to be used to pay the privately incurred interest costs are from purely federal sources, that the provisions of Article 10, Section 6 of the South Carolina Constitution would not be violated since no State funds are involved. C.f. Hunt v. McNair, 255 S.C . 71, 177 S.E.2d 362 (1970). Accordingly, in the opinion of this office, the Development Board may legally disperse these payments for interest to the concerned developer. It is important to note, however, that this opinion presupposes that in the subcontract between the Development Board and the developer that there is an express provision prohibiting the developer from suing the State of South Carolina for interest monies should for any reason the federal funds be withdrawn. This prohibition against suit is necessary to prevent such a suit for interest monies by the developer from creating a contingent liability upon State tax resources, which is prohibited b Article 10, Section 6 of the South Carolina Constitution, and hence this prohibiting clause is necessary to a valid contract. See Hunt v. McNair, supra.

***2** If this office can be of further assistance, please correspond. With best wishes, I am
Sincerely,

John B. Grimball

Assistant Attorney General

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