

1973 S.C. Op. Att'y. Gen. 302 (S.C.A.G.), 1973 S.C. Op. Att'y. Gen. No. 3628, 1973 WL 21080

Office of the Attorney General

State of South Carolina

Opinion No. 3628

September 25, 1973

\*1 The Honorable John C. West  
Governor  
Columbia, South Carolina

Dear Governor West:

You have inquired as to whether funds in the approximate amount of \$975,000 derived from the settlement of a lawsuit instituted by the former Tricentennial Commission against certain parties must be retained by the Department of Parks, Recreation and Tourism (or the Budget and Control Board which now has custody of the funds) or whether such funds have reverted to the general funds of the State. The additional inquiry is made as to whether the Parks, Recreation and Tourism Commission may utilize the funds for capital improvements throughout the State Parks system.

Act No. 610, approved June 30, 1971, provided that 'all—funds and all other properties of the South Carolina Tricentennial Commission are hereby transferred to the Department of Parks, Recreation and Tourism.'

The funds which are now held represent the damages which were recovered by reason of certain defects which appeared in buildings constructed by the Tricentennial Commission in Charleston and at Roper Mountain. The building at Charleston has been completed, while the building at Roper Mountain is incomplete and its construction has apparently been abandoned.

The funds for the construction of these buildings were derived from the proceeds of bonds which were issued pursuant to the provisions of the State Capital Improvement Bonds Act of 1968. The bonds were issued for the purpose of 'acquisition of land and construction of facilities relating to the official Tricentennial Celebration of the founding of South Carolina.' The bonds are not revenue bonds, but are payable from the State income tax. The validity of the State Capital Improvement Bond Act was upheld in Mims v. McNair, 252 S.C. 64, 165 S.E.2d 365, under the principle of the special fund doctrine. Section 18 of the Act of 1968 provides:

The proceeds derived from the sale of State capital improvement bonds shall be applied only to the purposes for which the bonds are issued.

It appears to be an established principle of law that when funds are raised by the issuance of bonds for a designated purpose, they cannot be diverted to some other purpose. The proceeds of a bond issue are in the nature of a trust fund and must be used for the purpose for which they are approved and issued. 63 Am.Jur.2d Public Funds § 4 at 399 (1972).

It is my opinion that the General Assembly is the only body which may authorize a diversion of the proceeds of the bonds which have been issued. The amount recovered for damages by reason of the failures which took place in the buildings is the same thing, and stands in the same legal position, as the original proceeds of bonds which were used for the construction of the facilities. The Act of 1971, which vested in the Department of Parks, Recreation and Tourism 'all funds of the South Carolina Tricentennial Commission, did not have the effect of transferring these funds to the unfettered use of that Commission. The funds were not funds of the Tricentennial Commission except in the limited sense that they were under the control of that Commission, subject to being used for the purposes for which they were received. Instead, that Commission held the monies impressed with a trust and they were so received by the Parks, Recreation and Tourism Commission under the 1971 Act.

\*2 I am aware of no vested interests existing which would preclude the diversion of the proceeds to some other use, but that diversion must be accomplished by directive of the General Assembly. Therefore, these monies must, in my opinion, be held until they can be applied to the uses for which they were intended or until the General Assembly shall otherwise declare.

Very truly yours,

Daniel R. McLeod  
Attorney General

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