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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY MCMASTER
ATTORNEY GENERAL

October 13, 2005

Revé M. Richardson, Recording Secretary
Aeronautics Commission
Department of Commerce
Post Office Box 280068
Columbia, South Carolina 29228-0068

Dear Ms. Richardson:

On behalf of the South Carolina Aeronautics Commission, you have requested our opinion regarding a private entity leasing airport property for more or less than 25 years. Specifically, you ask whether there have been "any changes and/or amendments to Title 55 addressing this issue?"

Law / Analysis

S.C. Code Ann. §55-9-190 provides as follows:

[t]he division, counties, municipalities and other political subdivisions of this State which have established airports or landing fields or which acquire, lease or set apart real property for any such purpose may:

(1) Construct, equip, improve, maintain and operate such airports or landing fields or vest authority for the construction, equipment, improvement, maintenance and operation thereof in an officer, board or body of such political subdivision, the expense of such construction, equipment, improvement, maintenance and operation to be a responsibility of such political subdivision;

(2) Adopt regulations and establish charges, fees and tolls for the use of such airports and landing fields, fix penalties for the violation of such regulations and establish liens to enforce payments of such charges, fees and tolls; and

(3) *Lease for a term not exceeding twenty-five years such airports or landing fields to private parties for operation or lease or assign for a term not exceeding twenty-five years to private parties for operation, space, area, improvements and equipment on such airports or landing fields, provided in each case that in so doing the public is not deprived of its rightful, equal and uniform use thereof.*

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(emphasis added). To our knowledge, there has been no modification or amendment of this particular statute for many years. Section 55-9-190 is virtually identical to former 1962 Code § 2-116. This provision allowing for a lease not exceeding twenty-five years was originally set forth in Act No. 299 of 1937.

However, other statutory provisions regarding leasing of particular airport facilities have also been enacted. Pursuant to S.C. Code Ann. § 55-11-10, the board of trustees of Clemson University are authorized to develop and operate a public airport. Subsection (8) of such provision states that the board may

(e)nter into long-term contracts, leases, and other agreements relative to the development, operation and management of the airport....

S.C. Code Ann. § 55-11-110 provides for the creation of the Greenville-Spartanburg Airport District. Pursuant to S.C. Code Ann. § 55-11-140, the Commission is given the responsibility of developing and operating an airport. By subsection (9) of such provision, the Commission is authorized to

(l)icense, lease, rent, sell or otherwise provide for the use of any of its airport facilities, including the privilege of supplying goods, commodities, things, services or facilities at such airport by any persons qualified to use them, as its discretion may dictate; provided, that in no case shall the public be deprived of its rightful, equal and uniform use of the airport, air navigation facility, or portion or facility thereof.

The Richland-Lexington Airport District is established pursuant to S.C. Code Ann. §§ 55-11-310 et seq. Section 55-11-340 (6) authorizes the Richland-Lexington Airport Commission

[t]o license, lease, rent, sell or otherwise provide for the use of any of its airport facilities, and facilities auxiliary thereto, including the privilege of supplying goods, commodities, things, services or facilities at such airport by itself or by any persons or corporations qualified therefor, on such terms and conditions as its discretion may dictate; provided, that in no case shall the public be deprived of its rightful, equal, and uniform use of its airports and air navigation facilities.

The Pee Dee Regional Airport Authority is created by S.C. Code Ann. §§ 55-11-620 et seq. By Section 55-11-630 (6) the Authority may

license, lease, sublease, rent, sell, or otherwise provide for the use of any real or personal property of its airport facilities or of facilities auxiliary to it, including the privilege of supplying goods, commodities, things, services, or facilities at the airport by itself or by any qualified persons or corporations, on terms and conditions as its

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discretion may dictate. The public may not be deprived of its rightful, equal, and uniform use of its airports and air navigation facilities;

Additionally, certain local law provisions dealing with county airport commissions provide for the leasing of airport property but do not limit such leases to any particular time, such as the twenty-five year term set forth in Section 55-9-120 (3). For instance, Act No. 286 of 1973 which provides for the creation of the Dorchester County Aeronautics Commission includes a provision which states that

[t]he commission may lease to the United States of America or to any agency thereof or to any person, firm or corporation, municipal or private, any and all of the property and rights acquired by the commission under the provisions of this act or under the provisions of any other act, statute or law....

Pursuant to Act No. 112 of 1963, the Anderson County Airport Commission is authorized “[t]o rent, lease, mortgage or sell any real or personal property in its care....”

As stated in a prior opinion of this office dated November 3, 1987, it is generally provided that “...with respect to a conflict arising between a statute dealing generally with a subject, and another dealing specifically with a certain phase of it, the specific legislation controls in a proper case.” As similarly stated in another opinion of this office dated September 26, 1984, “...where a specific statute and a general statute concerning the same subject matter are inconsistent with one another, the specific act will usually control.” In the situation addressed above, the various provisions dealing with leasing of airport facilities or property by particular county or regional airport commissions should be considered specific legislation while Section 55-9-190 is a general law provision. In my opinion, consistent with the prior opinions, the specific legislation, those provisions dealing with particular county or regional airport commissions, would control.

Further support for such conclusion is found in the general rule of construction as stated in an opinion of this office dated September 26, 1986 that “...where there is a conflict between statutes, the last legislative expression typically governs.” The provisions cited above dealing with particular county or regional airport commissions were all enacted subsequent to Act No. 299 of 1937 which established the twenty-five year lease provision. Moreover, in enacting the special provisions providing for the leases by regarding particular airport commissions, the General Assembly is “...deemed to be aware of prior legislation and not to have done a futile thing.” Op. Atty. Gen. dated June 28, 1996. See also: Ingram v. Bearden, 212 S.C. 399, 47 S.E.2d 833 (1948).

Consistent with the above, while Section 55-9-190 provides for the leasing of airports and landing facilities for a term not exceeding twenty-five years, other statutory provisions exist as to particular airport facilities which do not limit such leases of those facilities to a particular time frame. Therefore, as to questions regarding the leasing of particular airport facilities, an examination would be necessary as to whether that facility is covered by Section 55-9-190 or by another provision which

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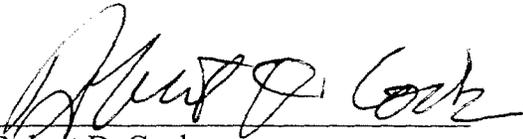
also authorizes leasing of airport facilities and which may not include such a time limitation. Of course, if the General Assembly chooses, it could clarify the law as to specifically provide for a twenty-five year limitation for leases of all airport facilities in this State.

Very truly yours,



Charles H. Richardson
Senior Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Assistant Deputy Attorney General
