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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

January 11, 2000

Jack M. Scoville, Jr., Esquire
Georgetown County Attorney
Post Office Drawer 1250
Georgetown, South Carolina 29442

RE: Informal Opinion

Dear Mr. Scoville:

Attorney General Condon has forwarded your opinion request to me for reply. On behalf of the Georgetown County Council, you ask whether a lease agreement between the Georgetown County Airport Commission and Georgetown Aviation, Inc., is valid if County Council did not hold a public hearing concerning the lease and did not approve the lease. Your request includes a detailed factual description of the events surrounding the lease agreement. The conclusions reached in this opinion will be based solely on these factual representations.

You state that in the late 1930's and early 1940's, Georgetown County purchased land whereon the Georgetown County airport is located. In 1943, the United States Marine Corps leased this property from the county and constructed an air base. This lease terminated in 1946. The County operated the airport directly until the early 1960's when the Legislative Delegation created the Georgetown County Airport Commission. In 1980, County Council brought the Airport Commission under their control pursuant to the Home Rule Act. The Airport Commission is composed of seven members, all of whom are appointed by County Council.

The Airport Commission entered into a lease agreement with Georgetown Aviation, Inc., on October 25, 1988. This lease was never presented to County Council for its approval nor was a public hearing ever held by County Council concerning this lease. On December 12, 1991, the Airport Commission entered into a new lease with Georgetown Aviation covering the same property as contained in the October 25, 1988 agreement. This lease was never approved by County Council nor was a public hearing ever held concerning this lease.

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In an opinion dated July 10, 1986, this Office addressed a question similar to the one raised in your opinion request. We were asked to review two county ordinances relating to the Dorchester County Aeronautics Board and render an opinion on whether the Aeronautics Board had the authority to enter into leases independent of the County Council. The first ordinance required county council approval when the aeronautics board concluded that the property was no longer needed for the purpose for which it was acquired. The second ordinance, which is virtually identical to Section 5-3 of the Georgetown County Code, did not require county council approval when the lease did not involve alienation of property no longer needed for aviation purposes.¹ After reviewing the information provided, this Office found the first ordinance did not apply to the situation presented. Thus, attention was turned to the second ordinance and it was concluded:

If the relevant facts reveal that real property is being leased, it will be necessary to follow the provisions of Section 4-9-130, Code of Laws of South Carolina (1976, as revised). In pertinent part, that section provides:

Public hearings, after reasonable public notice, must be held before final council action is taken to:

...

(6) sell, lease or contract to sell or lease real property owned by the county.

...

By Section 5 of the 1982 ordinance, it appears that lands held by the Board are actually county lands. This Code section has been interpreted in an opinion dated June 18, 1980 (enclosed); lands held by the Charleston County Community Development Department on behalf of Charleston County were not exempted from the provisions of Section 4-9-130 concerning notice and public hearing requirements

¹ Section 5-3 of the Georgetown County Code provides:

The commission may lease to the United States of America or to any agency thereof or to any person, municipal or private, any and all of the property and rights acquired by the commission under the provisions of this chapter or under the provisions of any other ordinance, statute or law. The commission may also enter into agreements with the United States of America or any agency thereof or any person, municipal or private, relative to the establishment, operation and maintenance of an airport and aeronautical field in the county. All such leases and agreements shall be valid and binding on the commission and the county.

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prior to sale of the land. Thus, if real property is to be sold or leased, or a contract to sell or lease such real property is contemplated by the Board, the requirements of Section 4-9-130 must be followed by Dorchester County Council. See also Amick v. Richland County, 273 S.C. 300, 255 S.E.2d 855 (1979); Ops. Atty. Gen. dated November 6, 1979 and January 26, 1979.

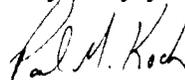
This Office has previously concluded that the public notice and hearing requirements of Section 4-9-130 are mandatory. Op. Atty. Gen. dated February 23, 1984. Provisions requiring notice and publication are designed to protect citizens and other interested parties, to enable them to acquire knowledge of ordinances affecting their interest, and to serve as a restriction upon the actions of council. Horry County v. City of Myrtle Beach, 288 S.C. 412, 343 S.E.2d 36 (Ct.App.1986). The failure to comply with mandatory notice and publication requirements in the manner prescribed by law renders an ordinance void. Id. A person who contracts with a municipality is charged with knowledge of its limitations and restrictions in making contracts. City of North Charleston v. North Charleston District, 289 S.C. 438, 346 S.E.2d 712 (1986).

A legal opinion of this Office can not invalidate a contractual agreement between parties, as only a court of law has the power to make this final determination. However, it would appear that if a court were to review this matter, it would conclude the requirements of Section 4-9-130 were not followed, thus rendering the lease agreement void. The requirements of Section 4-9-130 must be followed when a county desires to lease county property. Since these requirements are prescribed by the general law of this state, a county may not exempt one of its departments or agencies from these requirements. Further, a party which contracts with a public body is charged with the knowledge of its limitations and restrictions in making contracts.

This letter is an informal opinion only. It has been written by a designated assistant attorney general and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I remain

Very truly yours,



Paul M. Koch
Assistant Attorney General