

1011 Liberty



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

October 11, 2000

The Honorable Alex Harvin, III
The Majority Leader Emeritus
House of Representatives
Post Office Box 266
Summerton, South Carolina 29148

RE: Informal Opinion

Dear Representative Harvin:

By your letter of October 3, 2000, you have requested an opinion of this Office on whether a special purpose district must follow the state procurement code when leasing and disposing of property. You also ask whether a special purpose district's failure to follow the state procurement code, if so bound, could result of the termination of a lease.

The South Carolina Consolidated Procurement Code, codified at S.C. Code § 11-35-10 et seq., applies to "every expenditure of funds by this State under contract acting through a governmental body as herein defined." S.C. CODE ANN. § 11-35-40(2). The definition of "Governmental Body," for purposes of the procurement code, expressly excludes "all local political subdivisions such as counties, municipalities, school districts, or public service or special purpose districts..." S.C. CODE ANN. § 11-35-310(18). Thus, in response to your first question, a special purpose is not required to follow the S.C. Consolidated Procurement Code.

In fact, under S.C. Code § 11-35-50, special purpose districts are required to develop their own procedures for procurement, which should have been implemented by July 1, 1983. However, Section 11-35-50 also provides that a political subdivision's failure to adopt proper procedures for procurement is not subject to the remedies provided in the procurement code. Your second question appears to be moot because it is contingent on the special purpose district being bound by the state procurement code. I assume, however, that the special purpose district has not adopted its own procurement procedures. If that is indeed the case, procurement code remedies are unavailable to the special purpose district or other aggrieved party concerning the termination of the lease.

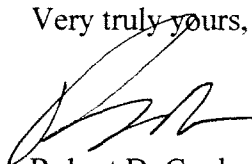
Re Answer

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

With kind regards, I remain

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General