

The State of South Carolina



Office of the Attorney General

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December 3, 1990

Mr. Michael L. Harlan
Director of Parks & Recreation
Richland County Recreation Commission
5819 Shakespeare Road
Columbia, South Carolina 29223

Dear Mr. Harlan:

By your letter of November 20, 1990, on behalf of the Commissioners of the Richland County Recreation Commission, you have requested the opinion of this Office as to whether the Commission, as a special purpose district created by the General Assembly, has the legal authority to sell property which has been purchased by or donated to the Commission.

The Richland County Recreation Commission was first established as the Rural Recreation District in Richland County by Act No. 873, 1960 Acts and Joint Resolutions, as subsequently amended. The Commission was created to be a political subdivision, according to section 3 of the 1960 act. Among the powers granted to the Commission in Section 5 of that act were the following:

(5) To acquire, by gift, purchase, or through the exercise of eminent domain, lands or interest thereon whereupon to establish physical education and recreation facilities, including tennis courts, baseball diamonds, football fields, basketball courts, swimming pools, other facilities of like nature and general recreational facilities.

.
(10) To make contracts and to execute instruments that are necessary or convenient for the discharge of the functions of the commission. . . .

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The power to sell property or otherwise divest the Commission's interest in property is not specifically enumerated among the powers and duties, however.

Considering that the Commission is a political subdivision of limited jurisdiction, the following is applicable:

Even a governmental body of admittedly limited powers is not in a strait jacket in the administration of the laws under which it operates. Those laws delimit the field which the regulations may cover. They may imply or express restricting limitations of public policy. And of course they may contain express prohibitions. But in the absence of such limiting factors it is not to be doubted that such a body possesses not merely the powers which in terms are conferred upon it, but also such powers as must be inferred or implied in order to enable the agency to effectively exercise the express powers admittedly possessed by it.

Carolina Water Service, Inc. v. S. C. Public Service Comm'n, 272 S.C. 81, 87, 248 S.E.2d 924 (1978), quoting from Beard-Laney, Inc. v. Darby, 213 S.C. 380, 49 S.E.2d 564 (1948).

The general law as to disposition of property is summarized in 10 McQuillin, Municipal Corporations, §28.37: "[W]here there is no statute or charter provision, the general proposition has often been asserted that a municipal corporation possesses the power to dispose of any property which it has a right to acquire." See also Green v. City of Rock Hill, 149 S.C. 234, 147 S.E. 346 (1929) for elaboration on the general principle. McQuillin further states that the "power to sell land ordinarily includes power to exchange it" or to "grant an option to purchase."

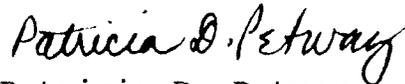
The power to dispose of property would not be unlimited, however. The deed or other relevant document conveying a particular parcel should be examined to determine any restrictions on use of the property, reversionary clauses, and the like. See Op. Atty. Gen. dated February 24, 1983, enclosed (property no longer used as a park by the state would revert to the grantor).

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Applying the foregoing to the Richland County Recreation Commission, we are of opinion that the expressly-granted power to acquire lands or interest thereon necessarily encompasses the power to dispose of such lands or interest. Such disposal would be subject to whatever restrictions may be applicable to a particular parcel of property or interest. In so concluding, we have not examined any proposed disposal of property or deed and offer no comment as to the propriety of the disposal of any particular parcel of property.

With kindest regards, I am

Sincerely,



Patricia D. Petway
Assistant Attorney General

klw
Enclosure

Reviewed and Approved By:



Robert D. Cook
Executive Assistant for Opinions