

The State of South Carolina



Office of the Attorney General

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April 24, 1987

Library 2733

Dorman No. 27-38
P. 102

Charles W. Branch, President
Trident Technical College
Post Office Box 10367
Charleston, South Carolina 29411

Dear Mr. Branch:

By your letter of April 16, 1987, you have advised that Trident Technical College has received approval from the United States Department of Economic Development for a \$564,000.00 grant. In exchange for the EDA grant, EDA requires that a 25 year security interest (first mortgage) be placed on the property to be renovated and a lien on the film training equipment which is to be purchased from proceeds of the grant. Default would occur if the property were conveyed to a party which is ineligible to receive EDA grants. In this context, the following questions have arisen:

1. Does Trident Technical College have the authority to grant a \$127,500 mortgage on the Palmer Campus property to EDA?
2. If not, do Trident Technical College and the State Board for Technical and Comprehensive Education jointly have such authority if the State Board is made a coapplicant under Section 59-53-90 of the South Carolina Code?
3. Does Trident Technical College have the authority to provide to EDA a lien on the equipment to be purchased by EDA funds, as EDA requires?
4. If not, what, if any, governmental entity would have authority to provide such a lien on this type of personal property (filming equipment)?

You have advised this Office of two important practical considerations which, you feel, would make default virtually impossible. First, Trident Technical College has already

Charles W. Branch

Page 2

April 24, 1987

invested approximately two million dollars (\$2,000,000.00) and plans to invest an additional three million dollars (\$3,000,000.00) in the Palmer Campus property and has no expectation of disposing of this property. Further, there is a clause in the deed of the property which would cause reversion of the real property to the City of Charleston if the property were no longer used for school purposes.

To respond to your inquiry, examination of the statutes relevant to the Area Commission of Trident Technical College and the State Board for Technical and Comprehensive Education must be made. The Area Commission governing Trident Technical College was created pursuant to Section 59-53-410 et seq., Code of Laws of South Carolina (1976). The powers of the Area Commission are found in Code Sections 59-53-420 (specifically) and 59-53-52 (generally); in Section 59-53-50 are found the general powers and duties of the State Board. It should be noted that such state administrative agencies can exercise only those powers which have been conferred upon them by the General Assembly. Triska v. Department of Health and Environmental Control, S.C. S.Ct. Op. No. 22692 (filed April 6, 1987). Acts done by an agency in excess of its jurisdiction are void. South Carolina Tax Commission v. South Carolina Tax Board of Review, 278 S.C. 556, 299 S.E.2d 489 (1983).

The relevant portions of Section 59-53-420, pertaining specifically to Trident Technical College include the following powers:

(3) To acquire an appropriate site and to construct and equip thereon appropriate facilities, in accordance with standards and specifications contemplated by the former provisions which created the Advisory Committee for Technical Training.

(4) To acquire by gift, or purchase, or otherwise, all kinds and descriptions of real and personal property.

(5) To accept gifts, grants, donations, devises and bequests.

* * *

(12) To apply for, receive, and expend moneys from all governmental agencies, both State and Federal.

* * *

In addition, the commission of Trident Technical College is empowered by Section 59-53-52 to:

(3) Acquire sites and construct and equip thereon appropriate facilities ...; all real property is in the possession of the area commission regardless of the source of funds for its purchase or construction, except for those campuses currently owned by the State. All personal property purchased with local funds is in the possession of the area commission;

(4) Acquire by gift, purchase or otherwise all kinds and descriptions of real and personal property;

(5) Accept gifts, grants, donations, devises and bequests;

* * *

(14) Apply for, receive and expend moneys from all state, local and federal governmental agencies;

* * *

Further, area commissions are empowered by Section 59-53-53 to borrow funds for capital improvements; no funds other than revenue from a specially-imposed fee may be pledged for the repayment of such loan, however.

Powers of the State Board are generally specified in Section 59-53-50, including the power to

(4) Accept and administer donations of funds, grants, real property, or equipment from individuals, corporations, foundations, and governmental bodies;

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Charles W. Branch
Page 4
April 24, 1987

That appears to be the most relevant portion of Section 59-53-50. In addition, Section 59-53-90 provides:

Applications for Federal funds for technical training or for financing construction of technical training centers shall be made by the State Board for Technical and Comprehensive Education and by the Governor on behalf of the State as a coapplicant along with the Board when such applications are required by the funding agency.

Having reviewed these provisions, we are unable to locate any specific authority for the commission of Trident Technical College to grant a lien or mortgage on personal or real property to secure a grant from a federal agency; the authority appears to be similarly lacking in the State Board.

By way of contrast, we note that the Richland-Lexington Counties Commission For Technical Education has, by Section 59-53-1620(4), been empowered by the General Assembly to

acquire by purchase, gift, devise, lease, or otherwise any real or personal property and to hold, use, lease or mortgage such property, or any interest therein; provided, that before any mortgage is executed, approval by the governing bodies of Lexington and Richland Counties shall first be obtained.

Section 59-53-1620 was amended by Act No. 498 of 1976 to permit the execution of a mortgage to secure a loan from the United States Department of Health, Education and Welfare specifically and to generally mortgage property. This commission appears to be the only commission which has statutory authority to enter into a mortgage.

It may be argued that the General Assembly had not previously authorized the Richland-Lexington commission (or any commission, for that matter) to enter into a mortgage and thus felt that enabling legislation was necessary. Gaffney v. Mallory, 186 S.C. 337, 195 S.E. 840 (1938) (presumed that General Assembly did not intend to do a futile thing). Because only the Richland-Lexington commission has been so specifically authorized, the remaining commissions impliedly have not been so au-

Charles W. Branch
Page 5
April 24, 1987

thorized. Home Building & Loan Assn. v. City of Spartanburg, 185 S.C. 313, 194 S.E. 139 (1938) (express mention of one implies exclusion of others not mentioned).

Having reviewed the law, your specific questions will now be addressed, as follows:

1. This Office cannot locate any specific grant of authority which would permit Trident Technical College to grant a \$127,000 mortgage on the Palmer Campus property to EDA.

2. This Office cannot locate any specific grant of authority, even if the State Board were made a coapplicant under Section 59-53-90 of the Code, which would permit the Trident Technical College and the State Board, acting together, to enter into a mortgage.

3. There appears to be no authority for Trident Technical College to provide to EDA a lien on the film training equipment to be purchased by EDA funds.

4. We are unaware of any governmental entity which would have the authority to provide a lien upon the film training equipment as suggested by your fourth question.

You have advised that the Palmer College campus is subject to a deed restriction providing that if the property is ever used for other than educational purposes, the property will revert to the City of Charleston. Since we have not examined the deed, we do not know whether such reversion would be due to the grant of a fee simple determinable or a fee simple on condition subsequent, or by some other means, See Moynihan, Introduction to the Law of Real Property, pp. 97-98 (1962), or what action, if any, the City of Charleston might be required to take to cause the property to revert to the City. Because it would be extremely difficult, if not impossible, to convey the Palmer College property to a non-educational entity due to deed restrictions, perhaps the EDA would take cognizance of that fact and treat it as a hindrance to alienation of the property, which would apparently serve the same purpose as a mortgage.

The foregoing is intended to address only the particular grant being contemplated by Trident Technical College and does not comment upon any grant accepted or actions taken as condi-

Charles W. Branch
Page 6
April 24, 1987

tions for receipt of any grant by any other area technical education commission.

With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/rhm

REVIEWED AND APPROVED BY:

Robert D. Cook

Robert D. Cook
Executive Assistant for Opinions