

# The State of South Carolina



## Office of the Attorney General

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October 29, 1985

W. Kenneth Eaton, Jr., Esquire  
Attorney for Florence City-County  
Airport Commission  
Post Office Box 1461  
Florence, South Carolina 29503

Dear Mr. Eaton:

By your letter of September 19, 1985, you have asked for the opinion of this Office as to authority granted to the Florence City-County Airport Commission by Act No. 482, 1973 Acts and Joint Resolutions. You particularly wish to know whether the airport commission must seek the consent of the Florence City Council and Florence County Council to rent or lease terminal facilities, rent-a-car facilities, warehousing facilities, airline facilities, and other airport facilities to persons qualified to use them. In keeping with the policy of this Office, you have provided input to this Office on the issues raised in your letter.

Section 4 of Act No. 482 provides for the powers and duties of the airport commission. In part, the commission may

- (5) Maintain and extend runways, terminals, maintenance shops, access roads, utilities systems, concessions, accommodations, and other facilities of whatever nature or kind for the comfort and accommodation of air travelers; purchase and sell or contract for the purchase and sale of supplies, goods and commodities as an incident to the operation of its airport facilities; and for all such purposes the commission may by purchase, gift, devise, lease, eminent domain proceedings, or otherwise acquire, hold, develop, use,

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lease, mortgage, sell, transfer, and dispose of any property, real or personal, or any interest therein, including easements in airport hazards, or land outside the boundaries of its airport site, necessary to permit the removal, elimination, obstruction-marking or obstruction-lighting of airport hazards, all as prescribed in Sections 2 and 3. Provided, however, the Commission shall not have the power to sell, lease or dispose of any of its real estate, except with the consent of the Florence City Council and the Florence County Council.

(6) License, lease, rent, sell, contract for 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 facilities, or portion of facility thereof.

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It thus appears that there may be a conflict as to when the consent of the city and county councils may be required; interpretation of the proviso in part 5 appears to be the key to resolving your inquiry.

Certain rules of statutory construction may be useful in interpreting these statutes. The primary objective in statutory interpretation is to ascertain and give effect to legislative intent if at all possible. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). Words should be given their plain and ordinary meanings, absent ambiguity. Worthington v. Belcher, 274 S.C. 366, 264 S.E.2d 148 (1980). All parts of a statute should be construed together if possible; but if an irreconcilable conflict exists, the statute later in time (or position, if within the same act) will prevail as the later expression of the legislative will. Feldman v. South Carolina Tax Commission, 203 S.C. 49, 26 S.E.2d 22 (1943); Jolly v. Atlantic Greyhound Corporation, 207 S.C. 1, 35 S.E.2d 42 (1945). Furthermore, where a special provision is made as to a subject otherwise contained within a general provision on the

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same subject, the special provision operates as an exception to the general provision. State v. Lewis, 141 S.C. 207, 139 S.E. 386 (1927). With these rules in mind, we will offer as much guidance as possible in interpreting these statutes.

Part 6 appears to deal with the "use of airport facilities, including the privilege of supplying goods, commodities, things, services or facilities at such airport." The airport commission is given the power to, inter alia, sell or lease with respect to the use of the facilities, though no requirement of obtaining consent is contained in part 6 as it is in part 5 with respect to real estate. It would appear that the provisions of part 6 were intended to be an exception to and a limitation on the proviso in part 5 requiring consent of both councils. Routine sales, rentals or leases for the use of airport facilities such as rent-a-car facilities, warehouse facilities, space for airlines' operations, and such would appear to be the type of activity contemplated by part 6; indeed, this type of activity involves the day-to-day operation and management of airport facilities rather than, generally speaking, absolute and complete alienation of property.

We also note that part 6 authorizes the airport commission to sell, lease, or rent privileges of providing services, goods, and so forth. These types of sales or rentals would appear to be specifically excluded from the part 5 proviso, since no real estate disposition would be involved. Thus, a contract for the sale or lease of a privilege such as providing food services at the airport could be executed without consent of the councils. Again, daily operation or management would be involved.

Part 5 would permit the airport commission to acquire in various ways real and personal property, or interests or easements therein, incidental to the operation of airport facilities. From the part's plain meaning it appears that the airport commission may sell, lease, dispose, or otherwise rid itself of personal property without consent of the councils since there is no mention of personalty, only real estate, in the proviso. Use of the term "such" in the phrase "for all such purposes" appears to refer back to operation of airport facilities. Again, daily operations appear to be involved, particularly where personalty would be involved. Such an interpretation as not requiring the consent of the councils prior to acquisition and disposition of personalty would also comport with our interpretation of part 6 and would permit the two parts to be read together consistently.

We would further note that provisos in statutes, such as

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that in part 5, are generally strictly construed. Barringer v. Dinkler Hotels Co., 61 F.2d 82 (4th Cir. 1932); 2A Sutherland Statutory Construction § 47.08. As stated in 82 C.J.S. Statutes § 381, a proviso "take[s] out of the enacting clause only those cases which are fairly within the terms of the proviso" and "does not extend to or qualify other sections or portions of the statute." Thus, the proviso would require consent of the councils only if the airport commission should "sell, lease or dispose of any of its real estate." Unlike part 6 and the portions of part 5 discussed earlier, this proviso appears to concern the disposition of real property, an event not usually thought of in terms of daily operation and management of airport facilities.

To apply the proviso to any activity other than the sale, lease, or disposition of real property would appear to involve the councils in the daily management or operation of the airport. Section 6 of Act No. 482 specifies that "[n]either the city or the county shall be liable in damages for any neglect or mismanagement in the operation and maintenance or otherwise of the airport." To involve the councils in daily operations when neither the city nor the county is to be held liable for negligent operation appears to be contrary to legislative intent. Thus, the proviso should be strictly limited to the sale, lease, or disposal of real property.

Of course, the foregoing guidance cannot contemplate every conceivable transaction relative to real and personal property in which the Florence City-County Airport Commission may be involved. We do hope that we have provided sufficient guidance for your continuing advice to the Commission. Please advise us if you need clarification or additional assistance.

Sincerely,

*Patricia D. Petway*

Patricia D. Petway  
Assistant Attorney General

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REVIEWED AND APPROVED BY:

*Robert D. Cook*

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