

1977 S.C. Op. Atty. Gen. 105 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-123, 1977 WL 24465

Office of the Attorney General

State of South Carolina

Opinion No. 77-123

April 27, 1977

\*1 Mr. Arthur St. J. Simons, II  
Post Office Box 884  
Columbia, South Carolina 29202

Dear Mr. Simons:

I understand that you are attempting to obtain financing for the proposed Ashley Center building in Charleston, South Carolina, which is the subject of a lease to the State of South Carolina. I also understand that some question has been raised about the following provision contained in the lease:

'It is further understood and agreed that while the lease term as above set out is thirty (30) years, this lease may be cancelled by Tenant if at the end of any fiscal year (June 30) after commencement date when sufficient appropriations are not made available to the Tenant for this lease, the sufficiency of funds shall be solely determined by the State Budget and Control Board.'

Under the provisions of Act 701 of the 1976 General Assembly, responsibility for the negotiation of all leases by all state agencies was given to the Division of General Services. The Division, in furtherance of its duties under the Act and in cooperation with this office, has developed certain standard provisions to be incorporated in all subsequent State leases of which the above provision is one.

The inclusion of this standard provision in leases is not intended to provide an arbitrary cancellation or an escape clause for the State; on the contrary, it is simply a recognition of the basic legal principle that no agency can bind the State for expenditures beyond the year for which an appropriation is made (1962 S. C. Code § 1-54; 1962 S. C. Code § 1-762). The above cited lease provision is simply a reflection of the existing law adopted before the turn of the century as applicable to State obligations of this nature, regardless of whether or not it is a written provision in the lease. While there exists some recognized exceptions to the rule which precludes members of governmental agencies from binding their successors in office, application of this principle is difficult of definitive determination; the State has therefore seen fit to adopt the general proviso set forth above. To my knowledge, this provision, whether expressed or implied, has never been used to terminate a lease obligation, and I would not anticipate it being used in the future in the absence of extraordinary circumstances.

If you have any questions concerning this matter, please do not hesitate to call us.

Very truly yours,

Daniel R. McLeod  
Attorney General

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