

1976 WL 30902 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 16, 1976

\*1 Bond funds authorized by Part III, § 2, Item 22 of the 1973-74 Appropriation Act can only be expended by PRT to provide the State's share of the Corps of Engineer's Murrells Inlet Channel Improvement Project. PRT cannot release these funds to Georgetown County to fulfill its commitment as local sponsor to the Corps of Engineers.

PRT may transfer 4.2 acres of land located in Garden City to Georgetown County, provided the deed of conveyance contains a clause stating that if the conveyed property ceased to be used as a recreation or park facility, the property reverts to PRT. The land may not be transferred in fee simple.

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QUESTIONS PRESENTED:

1. May PRT release bond funds appropriated to it by Part III, § 2, Item 22 of the 1973-74 to Georgetown County to be used by the County as its share of the Murrells Inlet Channel Improvement Project?
2. May PRT transfer, in fee simple, 4.2 acres of land located in Garden City Beach to Georgetown County?

AUTHORITIES INVOLVED:

Appropriation Act (1974);

§§ 51-71, et seq., CODE OF LAWS OF SOUTH CAROLINA, 1962, Cum. Supp.

DISCUSSION:

Part III, § 2, Item 22 of the 1973-74 Appropriations Act authorized \$1,500,000 for the Murrells Inlet Channel Improvement Project. The Act reads as follows:

Department of Parks, Recreation and Tourism

Murrells Inlet Channel Improvement \$1,500,000

Provided, that the amount appropriated above shall be expended to provide the State share of U. S. Corps of Army Engineers' project designed to provide the channel into Murrells Inlet and to provide beach nourishment and to construct a multi-use erosion control-fishing jetty at Huntington Beach State Park with recreational support facilities.

The project involves the construction of two jetties—one to be anchored on the tip of Garden City Beach and the other on the northeastern tip of Huntington Beach State Park. In addition, the project involves deepening of the navigation channel, purchase and/or lease of lands on which to anchor the jetties, purchase of a sediment disposal area, purchase

of temporary or permanent easements at three points across Garden City Beach and construction of recreation facilities at Huntington Beach State Park.

Georgetown County has agreed to act as the local sponsor for the project. They are willing to sign a formal agreement with the U. S. Army Corps of Engineers in which they will be required to furnish lands and monies to the Corps for this project.

The South Carolina Department of Parks, Recreation and Tourism wishes to transfer, in fee simple, 4.2 acres of land in Garden City Beach to Georgetown County for the purpose of anchoring the north jetty to the mainland. In addition the Department wishes to release to Georgetown County up to \$1,250,000 of the 1973-74 Bond Appropriation upon request by the Corps of Engineers to enable the County to fulfill its commitment as local sponsor to the Corps of Engineers.

\*2 First, Item 22, supra, specifically provides that the bond funds are appropriated for PRT's use in the Murrells Inlet Channel Improvement Project. The funds are to be used to provide the 'State share' of the Project. The County is a political subdivision of the State. Releasing funds to the County for payment of the County's commitment to the Corps is not the same as PRT's releasing the funds to the Corps to pay the State's portion. It is a well accepted legal tenant that a State agency can expend funds only as authorized by law. The bond funds, therefore, can only be released directly to the Corps as the State's portion of the Project.

The second question is whether or not PRT can deed certain lands in fee simple, at Garden City Beach to Georgetown County. The land will be used to anchor the north jetty to the mainland. Pursuant to § 51-76(f), the PRT Commission has the authority to

Lease or convey portions of lands under its jurisdiction to municipalities and other political subdivisions charged with the responsibility of providing parks and recreation facilities; provided, . . . in the event of a conveyance the deed shall contain a clause providing that if such property ceases to be used as a recreation or park facility the title to such property shall revert to the Commission. All plans for the development of such lands shall be subject to the approval of the Commission and it shall retain the right to inspect such lands at such times as it deems necessary to determine if such lands are being used for parks and recreation.

This provision contains no restriction that the land so conveyed be used exclusively for recreation. The jetties are multipurposed and one of those purposes, to provide fishing areas, is obviously recreational. Furthermore, pursuant to § 14-3703(5), CODE OF LAWS OF SOUTH CAROLINA, 1962, Cum. Supp., the County is authorized to appropriate monies for recreation. Therefore, it is charged with the responsibility of providing recreation. PRT can, then, convey the land in question to Georgetown County as long as the deed of conveyance contains the restrictions set forth in § 51-76(f).

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