

1974 WL 27718 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 16, 1974

**\*1 Re: No. 234—Department of Parks, etc.**

Honorable Fred P. Brinkman  
Executive Director  
Department of Parks, Recreation and Tourism  
Post Office Box 1358  
Columbia, South Carolina 29202

Dear Mr. Brinkman:

You have requested that we advise you concerning the manner in which certain funds of the Parks, Recreation and Tourism Commission (PRT) may be used.

The current Appropriation Act contains the following item [see 58 STAT. Act No. 354, Part II § 1, Item 18 at 619 (1973)]:

Parks, Recreation and Tourism

...

Operation and Equipment of Piedmont Expo Park ..... 100,000

...

Inasmuch as the property which constituted the Piedmont Expo Park was recently transferred to the Greenville County School District, PRT no longer has a facility known as 'Piedmont Expo Park.' Of the sum appropriated for that facility, approximately \$83,000.00 remains in PRT's budget. You desire to know whether those funds may be used either to improve other existing state parks in Greenville County or to assist in the construction of a group camp for handicapped children to be built at Clemson University.

The State Constitution expressly provides in Article 10, Section 9 that no money shall be drawn from the treasury except pursuant to an appropriation made by law; hence public funds cannot be applied to any purpose not authorized by law. [Butler v. Ellerbe, 44 S.C. 256, 22 S.E. 425](#); see also 63 AM.JUR.2d Public Funds § 45 at 435. Where a surplus remains after the accomplishment of the purpose for which an appropriation was made, it should be turned back into the general fund unless appropriated for another purpose. 63 AM.JUR.2d Public Funds § 51 at 445. Because a diversion of an unexpended balance of any appropriation to a purpose other than that for which it was originally made would, in effect, constitute a reappropriation, a statute authorizing a diversion of the surplus would be required before it could be so used.

There is no statute which we can discover, and none has been called to our attention, that authorizes the diversion to another purpose of any surplus that might remain of the sum appropriated PRT by the General Assembly for the operation and procurement of equipment for the Piedmont Expo Park. The unexpended balance of that appropriation, therefore, should be turned back into the general fund.

We are not unmindful of the following statute in the Appropriation Act:

That transfers of appropriations herein provided may be made within departments, upon unanimous approval of the State Budget and Control Board, . . . 58 STAT. Act No. 354, Part I § 97 at 614 (1973).

As we interpret that statute, however, only the appropriations prescribed in Part I of the Appropriations Act may be transferred within a department. By the use of the term 'herein provided' the General Assembly restricted the authority to transfer appropriations within a department only to those mentioned in Part I. Those prescribed elsewhere in the Appropriations Act may not be so transferred.

\*2 Before PRT disposed of the Piedmont Expo Park site, it negotiated a contract with a contractor to remove a facility referred to by you as the 'cube.' That structure had been built with funds derived from proceeds of bonds which were issued pursuant to the provisions of the State Capital Improvement Bonds Act of 1968. See, 55 STAT. Act No. 1377 § 3 at 3179 (1968). The contractor, Sloan Construction Company of Greenville, has paid PRT \$87,000.00 for the materials used to construct the cube. You seek our advice as to whether or not those funds may be spent by PRT on other projects. We do not believe that they can be.

Several months ago, PRT inquired as to whether funds totalling almost \$975,000.00 which were derived from the settlement of a lawsuit instituted by the former Tricentennial Commission could be retained by PRT and used by it for capital improvements throughout the State Parks system or whether those funds reverted to the general fund of the State. The attorney General advised:

It is my opinion that the General Assembly is the only body which may authorize a diversion of the proceeds of the bonds which have been issued.

The amount recovered for damages by reason of the failures which took place in the buildings is the same thing, and stands in the same legal position, as the original proceeds of bonds which were used for the construction of the facilities. . . .

I am aware of no vested interests existing which would preclude the diversion of the proceeds to some other use, but that diversion must be accomplished by directive of the General Assembly. . . . See, Letter Daniel R. McLeod to John C. West (September 25, 1973).

Recently, the General Assembly enacted a statute which created the Recreational Land Trust Fund; and in it, the General Assembly also authorized PRT to use approximately \$482,000.00 as it wishes for the construction of capital improvements. The Recreational Land Trust Fund is funded by a portion of the money which PRT, as successor to the Tricentennial Commission, obtained as a result of the aforementioned settlement.

In our opinion, there is no real difference between the funds which PRT received in settlement of the lawsuit instituted by its predecessor and the funds paid to it by Sloan Construction Company for the materials which went into the construction of the cube. Both funds stand in the same legal position as the original bond proceeds used for the construction of the Piedmont Expo Park. PRT could not use the \$87,000.00 paid it by Sloan for capital improvements in what now constitutes the State Park System unless so authorized by the General Assembly. You should, therefore, attempt to obtain appropriate legislation expressly allowing PRT to divert those funds to other purposes.

Finally, you want our advice as to whether or not the \$482,007.50 referred to in Section 3 of the statute creating the Recreation Land Trust Fund may be used by PRT for the construction at Clemson University of a group camp for handicapped children. Any such camp, we were told, would be constructed upon Clemson property and would be owned and controlled by the University.

\*3 Section 2 of the Recreation Land Trust Act provides in part:  
The monies in the trust fund shall be . . . used only for the purposes provided for in this act.

Section 1 provides in part:

The trust fund shall be under the control of and administered by the State Parks, Recreation and Tourism Commission for the purposes of acquiring recreational lands, the development of utilities and roads on lands owned or controlled by the Commission, and for such related professional and technical services, legal fees, court costs or such other costs as may be involved in the acquisition and development of such lands.

Section 3 provides:

The State Treasurer shall transfer to the State Parks, Recreation and Tourism Commission that portion of the former Tricentennial Fund consisting of nine hundred eighty-two thousand, seven dollars and fifty cents recovered in litigation as a result of defects in certain buildings owned by the former Tricentennial Commission. Five hundred thousand dollars of such monies shall be deposited in the trust fund and the balance shall be used by the Commission for capital improvements as it sees fit.

As we read the new statute, only the sum of \$500,000.00 is included in the Recreation Land Trust Fund. It alone is subject to the broader limitations found in Sections 1 and 2 of the statute. The uses to which the remainder of the Tricentennial Commission settlement, *i.e.*, the sum of \$482,007.50, may be put are more restrictive. It may be used by PRT as it sees fit simply for 'capital improvements.'

The question arises, then, as to whether or not PRT possesses the authority to construct upon the property of another State agency or a political subdivision of this State a capital improvement that, upon its completion, would be owned and controlled by that agency or political subdivision.

Generally speaking, state . . . commissions, and departments have such powers as may have been delegated to them by express—constitutional and statutory provisions, or as may properly be implied from the nature of the particular duties imposed on them. . . . Executive and administrative . . . boards, departments, and commissions have no powers beyond those granted by express provision or necessary implication. 81 C.J.S. States § 5, at 977-978; see also Opinion No. 2213, 1967 Op.Atty.Gen. 7.

PRT's powers and duties are prescribed by Section 51-76 of the Code of Laws of South Carolina (Cumulative Supplement). The powers and duties prescribed therein are in addition to those assigned PRT from time to time either by legislative action or by the State Budget and Control Board. Nowhere among its powers and duties do we find authority for PRT to use its funds for the construction of capital improvements for the benefit of other State agencies or political subdivisions. Had the General Assembly intended to devolve that power upon PRT, we feel that it would have expressly done so. Since it did not, PRT may not use any portion of the \$482,007.50 for the construction at Clemson University of a group camp for handicapped children that would be owned and controlled by Clemson. PRT may use the latter sum only for capital improvements which it alone deems should be undertaken within the State system. Cf., CODE OF LAWS OF SOUTH CAROLINA § 51-76 (1962) (Cumulative Supplement).

Kindest personal regards,

\*4 C. Tolbert Goolsby, Jr.

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