



State of North Carolina
Department of Justice

ROY COOPER
ATTORNEY GENERAL

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REPLY TO: Thomas J. Ziko
Education Section
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April 4, 2003

Walter H. Dalton
Rutherford County Attorney
346 N. Main Street
P. O. Box 800
Rutherford, N.C. 28139-0800

Re: County Authority to Expend Public Funds for Repair of Charter School Building

Dear Mr. Dalton:

On behalf of Rutherford County, you have written to inform us that a few years ago Rutherford County transferred title to a surplus school building to a charter school for nominal consideration. The charter school now owns the building subject only to a reversionary interest in the event that the charter school ceases to use the building as public school. You have written to request our opinion as to whether the county may now expend public funds to pay for the removal of asbestos from the building. After reviewing the applicable statutes, an earlier opinion on this subject and consulting with the Institute of Government, it is our opinion that the county has no authority to expend public funds for the described purpose.

In 1998, we wrote an advisory opinion to Thomas Griffin in which we stated that counties have no authority to appropriate funds for capital projects for charter schools. We have attached a copy of that opinion for your use. Since 1998, there have been no changes in the charter school statutes that would warrant a change in that opinion.

Following receipt of your initial inquiry, we contacted David Lawrence of the Institute of Government to ask whether there were any statutes outside of Chapter 115C that would authorize counties to expend funds for capital improvements in property owned by charter schools. Mr. Lawrence has informed us that the only possible authority for such an expenditure would be the county's authority under N.C.G.S. § 153A-449 to contract with and appropriate funds to nonprofit, private

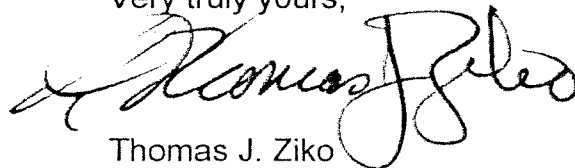
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entities. However, Mr. Lawrence has noted that N.C.G.S. § 153A-449 limits such expenditures to "purposes that the county is authorized by law to engage in." Insofar as there is no authority for the county to fund capital improvements to charter school property, N.C.G.S. § 153A-449 provides no independent authority for Rutherford County to expend public funds for the described purpose.

In summary, it is our opinion that neither the Chapter 115C nor the statutes governing counties provide any authority for Rutherford County to expend public funds to remove asbestos from a building owned by a charter school.

This is an advisory letter. It has not been reviewed and approved in accordance with the procedures for issuing an Attorney General's opinion.

Very truly yours,

A handwritten signature in black ink, appearing to read "Thomas J. Ziko", written in a cursive style.

Thomas J. Ziko
Special Deputy Attorney General

TJZ/

Enclosure

cc: David Lawrence
Otho Tucker