

A leasehold estate, such as you propose to grant, is an interest in real property. See Ga. Code Ch. 85-8 (Code of 1933). In the absence of a constitutional or statutory provision providing otherwise, the power to dispose of real property or any interest therein belonging to the state is vested solely in the legislature. *Western Union Telegraph Co. v. Western and Atlantic Railroad Co.*, 142 Ga. 532 (1914).

I have reviewed the statutes which created the Department of Public Health (Ga. Laws 1964, p. 499, as amended (Ga. Code Ann. Title 88)), the Department of Family and Children Services (Ga. Laws 1937, p. 355 and 1963, p. 218, as amended (Ga. Code Ann. Ch. 99-1)), and the Division for Children and Youth within the aforesaid Department of Family and Children Services (Ga. Laws 1963, p. 81, as amended (Ga. Code Ann. Ch. 99-2)), all of which are predecessors to the Department of Human Resources. None of these statutes expressly or by implication empower the Department of Human Resources to lease state real property to a private citizen for his private purposes. My research indicates no such general authority or power to lease real property was enacted by the 1974 Regular Session of the General Assembly.

It is therefore my official opinion that the Department of Human Resources has, at present, no general authority or power to lease (grant an estate for years) to a private citizen for his private purposes real property owned by the State of Georgia and within the custody and management of the department.

OPINION 74-41

To: Commissioner, Department of
Banking and Finance

March 29, 1974

Re: Article VII, Sec. V, Par. I, of the Constitution of Georgia (Ga. Code Ann. § 2-5801) prohibits a municipal corporation from becoming a member or stockholder of any company, corporation or association. Further, a credit union is not a proper depository for public funds belonging to or in the custody of a municipal corporation. Op. Att'y Gen. U71-115 withdrawn.

This is in response to a request from your office dated March 1, 1974, requesting our opinion on the following three questions:

- (1) May the City of Warner Robins legally be elected to membership in the Warner Robins Employees Credit Union, under the provisions of Ga. Laws 1925, pp. 165, 170 (Ga. Code Ann. § 25-108)?

(2) May the Warner Robins Employees Credit Union accept deposits of water and sewer meter deposit funds from the City of Warner Robins?

(3) If the City of Warner Robins may become a member of the Warner Robins Employees Credit Union, can the \$5 share required for membership by Ga. Laws 1925, pp. 165, 166 (Ga. Code Ann. § 25-101 (c)), be purchased and owned by the Water and Sewer Meter Deposit Fund?

Article VII, Sec. V, Par. I, of the Constitution of Georgia (Ga. Code Ann. § 2-5801) reads in part as follows:

"The General Assembly shall not authorize any county, municipal corporation or political subdivision of this state, through taxation, contribution or otherwise, to become a stockholder in any company, corporation or association"

The Supreme Court of Georgia has, on at least one occasion, defined the term "stockholder" to be synonymous with the term "member." See *Carlton v. Southern Mutual Ins. Co.*, 72 Ga. 371 (1883). Further, while Ga. Laws 1925, p. 165 et seq. (Ga. Code Ann. Ch. 25-1), relating to credit unions, refers to participants in a credit union as members, it is clear from the terms of the law that "members" must hold shares in the credit union and thus are actually stockholders. See Ga. Laws 1925, pp. 165, 170 (Ga. Code Ann. § 25-108). Therefore, pursuant to the section of the Georgia Constitution cited above, a municipal corporation may not become a member of a credit union.

The second question which was posed concerned the legality of the Warner Robins Employees Credit Union accepting deposits from the City of Warner Robins, particularly money held by the city as water and sewer meter deposit funds.

Georgia Laws 1933, pp. 78, 83 (Ga. Code Ann. § 89-810), concerns the deposit of public money and reads in part as follows:

"It shall be the duty of every . . . officer . . . , upon any money belonging to any public body coming into his hands, promptly to deposit the same in a bank or depository as hereinafter stated. . . ."

The proper disposition of municipal funds is regulated by Ga. Laws 1933, pp. 78, 96 (Ga. Code Ann. § 89-804), which says in part:

"The general provisions of this law (Ga. Code Ann. Ch. 89-8) shall apply to municipalities . . . and the governing body of the municipality shall have the same jurisdiction, powers, and duties under this law . . . as the county authorities have in respect of county officers, funds, depositories, and sureties on bonds"

Georgia Laws 1933, pp. 78, 83 (Ga. Code Ann. § 89-811), details how county officers are to deposit public funds belonging to counties, and thus, pursuant to the Code section cited above, delineates the proper disposition of public funds in the hands of a municipal officer. That section reads in part as follows:

“The county authorities shall designate one or more solvent banks as depositories of all county moneys”

Therefore, since county officers are required to deposit money in their possession in solvent “banks,” municipal officers holding public money will likewise be required to use “banks.”

It is evident, therefore, that a municipality is not authorized to deposit public money in credit unions inasmuch as a credit union is not a bank. I am aware that this conclusion conflicts with Op. Att’y Gen. U71-115, issued August 30, 1971, and I therefore withdraw that opinion.

The necessity for answering the third question which was posed in your request is obviated by the conclusion that a municipal corporation may not become a member of a credit union.

Therefore, it is my official opinion that the City of Warner Robins may not become a member of the Warner Robins Employees Credit Union and, further, that the Warner Robins Employees Credit Union is not a proper depository for public money held by the municipal corporation.

OPINION 74-42

To: Secretary of State

April 5, 1974

Re: It is legal for an ordinary to act as clerk of superior court in emergency situations by virtue of Ga. Code § 24-2708.

[Title 24 sections herein are based on the Ga. Code of 1933.]

This is in response to your request for an opinion concerning the legality of an ordinary acting as clerk of the superior court when a vacancy occurs in that office until a special election is held. To properly deal with this question it is necessary to look at the whole statutory scheme of filling vacancies in the office of clerk.

When a vacancy in the office occurs during a term of the superior court for the county, the judge of the superior court is directed to appoint a clerk who shall hold office during the term and for 10 days thereafter. Ga. Code § 24-2710. If at the expiration of the above period, there is still no one else to act as clerk, the appointee shall continue to do so until there is an election and qualification. Ga. Code § 24-2711.