



HENRY McMASTER
ATTORNEY GENERAL

November 1, 2010

The Honorable James M. Kirby
Commissioner, SC Commission for the Blind
P. O. Box 2467
Columbia, South Carolina 29202

Dear Commissioner Kirby:

In a letter to this office you indicated that the South Carolina Commission for the Blind (hereinafter "the SCCB") has for many years operated a radio reading program for the blind. However, due to budgetary problems, the radio program closed as of September 30, 2010. You have questioned whether it is within State law for the SCCB through some formal arrangement or agreement to work with a not-for-profit 501(c)(3) organization to operate the radio program using State-owned property located in a State-owned facility. You also questioned whether if a private campaign to raise enough money to operate the radio reading program in advance for a year or longer was initiated and designated contributions fell short of the amount needed to operate the program, would all received designated donations to the SCCB need to be returned to the contributor?

Based upon my review of S.C. Code Ann. §§ 43-25-10 et seq. which authorize the SCCB, there does not appear to be any direct statutory authority itself for such a proposed arrangement. However, Section 43-25-30 does state that the SCCB shall

...(2) [a]pply for, receive and expend monies from all governmental agencies, both State and Federal; and accept gifts, grants, donations, devises, and bequests made for providing aid to the visually handicapped, including expenses of administration....

It is clear, therefore, that the SCCB is granted wide authority to carry out its mission in providing "aid to the visually handicapped."

An opinion of this office dated October 22, 2004 concluded that a state agency possesses certain implied power to contract. However, as recognized in *Elliott v. McNair*, 250 S.C. 75, 156 S.E.2d 421 (1967), a state agency, such as the SCCB, must act with a public purpose in mind. An opinion of this office dated January 16, 1997 indicated that our Supreme Court has stated that a public purpose

...has for its objective the promotion of the public health, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents within a given political division, so that whatever is necessary for the preservation of the public health and safety is a public purpose, and if an object is beneficial to the inhabitants and directly connected a public purpose, it will be considered a public purpose...

Caldwell v. McMillan, 224 S.C. 150, 77 S.E.2d 798, 801 (1953). Moreover, as set forth in Bauer v. S.C. State Housing Authority, 271 S.C. 219, 229, 246 S.E.2d 869, 874 (1978), the “mere fact that benefits will accrue to private individuals or entities does not destroy public purpose.”

In Nichols v. South Carolina Research Authority, 290 S.C. 415, 351 S.E.2d 155 (1986), the Court set the following standard for the “public purpose” requirement to be met:

[t]he Court should first determine the ultimate goal or benefit to the public intended by the project. Second, the Court should analyze whether public or private parties will be the primary beneficiaries. Third, the speculative nature of the project must be considered. Fourth, the Court must analyze and balance the probability that the public interest will be ultimately served and to what degree.

351 S.E.2d at 163. It is well settled that benefitting the blind serves an overall public purpose. State of Florida et al. v. Inter-American Center Authority, 143 So.2d 1(Fla. 1962).

Furthermore, our courts, in addition to opinions of this office, have consistently recognized that the State or its subdivisions may contract with private entities in the carrying out of a public purpose. Our Supreme Court stated in Bolt v. Cobb, 225 S.C. 408, 415, 82 S.E.2d 789 (1954) that a county may validly contract with a private entity for the “performance of a public, corporate function” [providing a hospital]. Moreover, we have concluded that the Beaufort County Council could “allocate public funds to the Child Abuse Prevention Association, albeit a private nonprofit corporation” because such expenditure “would constitute a valid public purpose.” Op. Atty. Gen., Op. No. 88-52 (June 27, 1988). In Op. Atty. Gen., Op. No. 93-44 (June 23, 1993), we noted that “... the courts of this State have looked favorably at the use of public funds with respect to nonprofit (eleemosynary) corporations serving public purposes” Citing Bolt v. Cobb, supra and Gilbert v. Bath, 267 S.C. 171, 227 S.E.2d 177 (1976). See also, Ops. Atty. Gen., January 16, 1978; April 20, 1982, July 12, 1984; March 1, 1991. In an opinion of this office dated August 8, 1985 we concluded that State law did not absolutely prohibit the State Department of Corrections from contracting with a private corporation to assist in the management of a State corrections facility. It was determined that so long as the State did not unlawfully delegate its statutory and legal authority, such a contract would be valid inasmuch as it was clear “...that the administration of the prison system constitutes an unmistakable public purpose.”

The Honorable James M. Kirby
Page 3
November 1, 2010

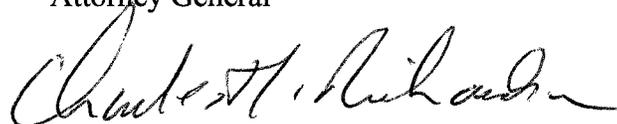
Consistent with the above, in the opinion of this office, the SCCB may through some formal arrangement or agreement work with a not-for-profit 501(c)(3) organization to operate a radio program benefitting the blind using State-owned property located in a State-owned facility inasmuch as such a program would benefit the blind.

You additionally questioned whether if a private campaign to raise money to operate the radio reading program for a year or longer was initiated and designated donations fell short of the amount needed to operate the program, would all received designated donations to the SCCB need to be returned to the contributor? In the absence of any State law, of which I am unaware, which would authorize such monies to be kept, in the opinion of this office, such donations would have to be returned. I know of no provisions that would allow the SCCB to retain these monies.

With kind regards, I am,

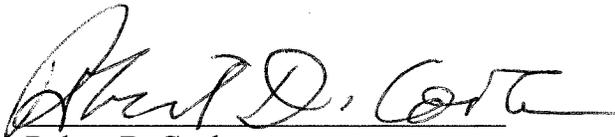
Very truly yours,

Henry McMaster
Attorney General



By: Charles H. Richardson
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REVIEWED AND APPROVED BY:



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