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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

December 11, 2002

Bob Drake, Finance Director
Emerald Center
P.O. Box 3004
Greenwood, South Carolina 29648

Re: Investment Policy of Emerald Center Multi-County Disabilities & Special Needs Board

Dear Mr. Drake:

You have requested an opinion from this Office concerning the investment policy of the Emerald Center Multi-County Disabilities & Special Needs Board [hereinafter "Emerald Center"]. With your request, and by way of background, you attached certain documents which you indicate "identify [the Board] as a 'quasi-governmental' entity, contracted with the Department of Disabilities and Special Needs [hereinafter DDSN] to provide services in a five county area (Greenwood, Abbeville, McCormick, Saluda, & Edgefield) to individuals with mental retardation, autism, and head & spinal injury. Emerald Center because of the nature of the contracts with DDSN has been identified as a 'political subdivision', but not a municipal, county or state entity." The attachments to your request include a January 8, 1979 opinion from this Office that Emerald Center (formerly Piedmont Multi-County Mental Retardation Board) is a political subdivision, an August 8, 1978 letter from the SC Tax Commission (now SCDOR), a November 21, 1995 letter from the IRS, the Emerald Center investment policy, an opinion letter from Emerald Center's legal representatives dated December 5, 2001, and two pages from the 2002 fiscal year audit of Emerald Center by Elliot Davis, LLC. You have also indicated in your request that there have been conversations with the South Carolina State Treasurer's Office and General Counsel and other officials with DDSN concerning Emerald Center's investment policy.

With reference to Emerald Center's investment policy, you indicate that "Emerald Center is classified as a 'political subdivision' but we are contracted by the State Department of Disabilities & Special Needs, with contracts for each program to provide services to individuals with mental retardation, autism, and head & spinal injuries, in the five counties of Abbeville, Greenwood, McCormick, Saluda, and Edgefield. Because we are contracted and reconciliations are made at each year end by DDSN for State Funds and Medicaid Funds, remaining funds not required in a reimbursement back to the state agency have been reserved by the Board. This reserve is invested

Rembert C. Dennis

with Greenwood Capital Associates" You also indicate that Emerald Center's investment policy as approved by its Board, is allowing investment "allocation" in bonds, cash equivalents, convertible bonds, convertible preferred stock, and common stock. Your concern is that the Emerald Center's investment policy is in violation of S.C. Code Ann. §6-5-10.

Section 6-5-10 provides in part as follows:

a) The governing body of any municipality, county, school district, or other local government unit or political subdivision and county treasurers may invest money subject to their control and jurisdiction in:

(1) Obligations of the United States and agencies thereof;

(2) General obligations of the State of South Carolina or any of its political units;

(3) Savings and Loan Associations to the extent that the same are insured by an agency of the federal government;

(4) Certificates of deposit where the certificates are collaterally secured by securities of the type described in (1) and (2) above held by a third party as escrow agent or custodian, of a market value not less than the amount of the certificates of deposit so secured, including interest; provided, however, such collateral shall not be required to the extent the same are insured by an agency of the federal government.

(5) Repurchase agreements when collateralized by securities as set forth in this section.

(6) No load open-end or closed-end management type investment companies or investment trusts registered under the Investment Company Act of 1940, as amended, where the investment is made by a bank or trust company or savings and loan association or other financial institution when acting as trustee or agent for a bond or other debt issue of that local government unit, political subdivision, or county treasurer if the particular portfolio of the investment company or investment trust in which the investment is made (i) is limited to obligations described in items (1), (2), and (5) of this subsection, and (ii) has among its objectives the attempt to maintain a constant net asset value of one dollar a share and to that end, value its assets by the amortized cost method.

As you note, Emerald Center is not a municipal, county or state entity. However, as you also note, it has been previously opined by this Office, as well as the SCDOR, that Emerald Center is a political subdivision. Emerald Center's designation as a political subdivision is based primarily on the nature of its creation, the manner in which its governing body is selected and the powers and duties possessed by that governing body. In our January 8, 1979 opinion, we recognized that the Emerald Center's Board "... was created pursuant to Act No. 1127 of 1974. Its members are appointed by the Governor and its function is to provide, coordinate and improve community services for mentally retarded persons ... [and] [t]he Board has been vested with the powers to enter into contracts, make binding agreements, and generally take such actions in its name as are necessary to accomplish the purposes described in Section 1 of the aforesaid Act." The fact that the Emerald Center Board is

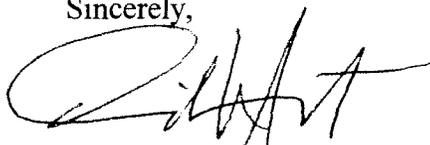
Mr. Drake
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created pursuant to legislative act, its members are appointed by the Governor and it performs public functions, including the expending of public money to accomplish its duties dictates that Emerald Center be considered a political subdivision. Emerald Center's incorporation as a nonprofit corporation does not alter this Office's opinion in this regard. The corporation's Board is the Board appointed pursuant to Act No. 1127 of 1974 and its functions are those authorized by the Act.¹

Given the determinations by this Office and SCDOR, local counsel for Emerald Center advised that it was also their opinion Emerald Center is a political subdivision and that as such it is subject to the requirements of S.C. Code Ann. §6-5-10. This Office is in agreement with this opinion. Political subdivisions have only those powers granted to them by the Constitution or statutes, or those powers necessarily implied therefrom. Political subdivisions may not vary from the provisions of general law unless such variance is specifically authorized. See Op. Atty. Gen. Dated February 27, 1990. The legislature has authorized the governing body of political subdivisions to invest money subject to their control and jurisdiction according to the terms of Section 6-5-10. It is the opinion of this Office that Emerald Center does not have the authority to invest funds in its control and jurisdiction in a manner not provided for in Section 6-5-10. Additionally, Art. X, §11 of the South Carolina Constitution provides in part that "[n]either the State nor any of its political subdivisions shall become a joint owner of or stockholder in any company, association, or corporation." This constitutional provision should also be taken into account when determining Emerald Center's investment policy.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General and not officially published in the manner of a formal opinion.

Sincerely,



David K. Avant
Assistant Attorney General

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¹ In a telephone conversation, it was confirmed that the issues raised in this request for an opinion relate to the Emerald Center and not the separately incorporated Emerald Center Foundation.