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The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON  
ATTORNEY GENERAL

May 1, 2000

The Honorable Herb Kirsh  
Member, House of Representatives  
Box 31  
Clover, South Carolina 29710

**RE: Informal Opinion**

Dear Representative Kirsh:

You have asked whether a proviso contained in the House Appropriation Bill is permissible under state law. The proviso reads as follows: "[A]ppropriate office and administrative space for the South Carolina Museum Foundation Chief Executive Officer and staff may be provided by the Museum Commission without rent reimbursement." You advise that you "remember a few years ago all foundations that used colleges and universities had to pay rent and the college could not subsidize them. I believe this was the opinion of another Attorney General, and I think that was a good policy."

This Office has previously concluded that a university may not transfer or loan public funds to a private non-profit foundation. Ops. Atty. Gen. dated May 21, 1993 and August 10, 1973. This conclusion was reached because no statutory authority existed which permitted a university to enter into such an arrangement. In the Museum Foundation's case, however, if the General Assembly passes the proviso, there will be statutory authority for the arrangement, thus alleviating the problem found in the university opinions. The only remaining question is whether providing rent-free office and administrative space to the Museum Foundation violates the constitutional prohibition against pledging or loaning public funds to a private entity.

This Office has consistently stated that the state constitution is not violated when public funds are donated or contributed to a private, non-profit corporation, if the funds are used in the promotion of a valid public purpose. Op. Atty. Gen. dated May 13, 1996. The purpose of the Museum Foundation, as stated in its by-laws, is as follows:

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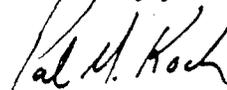
The Foundation is organized and at all times shall operate exclusively for the benefit of, to perform the functions of, or to carry out the purposes of the South Carolina State Museum (hereinafter referred to as the "supported organization") by (i) assisting in the creation and continued operation of a State Museum, (ii) promoting the program and welfare of such State Museum, (iii) furthering education and research, mobilizing expert professional advice, and utilizing all available resources in order to accomplish the purpose for which the supported organization has been established, to with: "including but not restricted to the history, fine arts, and natural history and the scientific and industrial resources of the State ...."

Since the State Museum operates for a valid public purpose, it would seem that a private, non-profit corporation established solely to benefit the State Museum would also operate for a valid public purpose. A contribution or donation of public funds to a private, non-profit corporation which serves a public purpose is constitutionally valid. Therefore, it would not appear that the constitution or state law would be violated if the Museum Foundation is provided rent-free office space.

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 questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With best personal regards, I am

Sincerely yours,



Paul M. Koch

Assistant Attorney General