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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

September 1, 2000

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

RE: Informal Opinion

Dear Representative Kirsh:

By your letter of August 21, 2000, you have requested an opinion of the Attorney General's Office on the propriety of the Pee Dee Regional Transportation Authority reserving a table at an appreciation dinner for a State Representative.

You have provided our Office with a copy of the program for the dinner given by The South Carolina Transportation Policy and Research Council recognizing Senator John Drummond as "Transportation Advocate of the Year." The program contains a section labeled "Our Appreciation" and states that the Council "would like to thank the following for reserving Tables." Among the ten organizations listed is the Pee Dee Transportation Authority. It is this acknowledgment that forms the basis of your question.

As a preliminary matter, the program alone provides very little factual information about the nature of the Pee Dee Transportation Authority's reservation of the table. For example, the reservation could have been made in the name of the Authority with individual members contributing personally to the dinner. Alternatively, the reservation of a table may not necessarily mean the Authority contributed an actual monetary donation to the dinner. However, for the purposes of the opinion only we will assume that the Authority made a monetary contribution of Authority funds to the dinner.

It is well settled that the expenditure of state funds must be for a public, not a private purpose. While each case must be decided on its own merits, the notion of what constitutes a public purpose has been described in Anderson v. Baehr, 256 S.C. 153, 217 S.E.2d 43 (1975): "[a]s a general rule a public purpose has for its objective the promotion of the public health, safety, morals,

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general welfare, security, prosperity, and contentment of all the inhabitants or residents, or at least a substantial part thereof." The following four prong test has also provided guidelines for determining a public purpose:

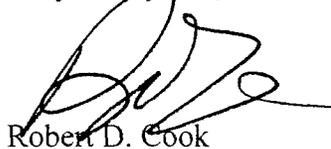
... first determine the ultimate goal or benefit to the public intended by the project. Second, ... analyze whether public or private parties will be the primary beneficiaries. Third, the speculative nature of the project must be considered. Fourth ... analyze and balance the probability that the public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

Nichols v. South Carolina Research Authority, 290 S.C. 415, 351 S.E.2d 155 (1986). Accordingly, to be permissible, the donation made for the reservation of the table would need to demonstrate a sufficient public purpose under such a test. The dinner appears to be for the recognition of an advocate for transportation. The promotion of service to transportation arguably benefits the community at large. However, this Office is without sufficient information to definitively draw any conclusion. Indeed, the determination of whether the donation is for a public purpose involves numerous questions of fact which are beyond the scope of an opinion of this Office to resolve. Only a court could make such a determination.

This letter is an informal opinion only. It has been written by a designated Senior 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 not officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General