

6582 February



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

January 15, 1999

Jack M. Scoville, Jr., Esquire
Georgetown County Attorney
P.O. Drawer 1250
Georgetown, SC 29442

Re: Informal Opinion

Dear Mr. Scoville:

You have asked whether it is legal for Georgetown County to make interest free loans to county employees for the purchase of personal computers to be used by the employees in their homes. You state that the county believes that such a program would enhance the computer literacy of its employees, thereby improving the expertise and training level of the county employees.

Although I have been unable to locate any prior opinions of this Office or case law squarely addressing the issue raised in your letter, it is clear that such an expenditure by a county must be for a public purpose. See, Article X, Section 14(4) of the South Carolina Constitution of 1895, as amended. It is well-settled that the expenditure of state funds must be for a public, not a private purpose. Elliot v. McNair, 250 S.C. 75, 156 S.E.2d 421 (1967); Haesloop v. Charleston, 123 S.C. 272, 115 S.E. 596 (1923). This limitation applies not only to the state but to its political subdivisions as well. Elliot v. McNair, *supra*. 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, 265 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, general welfare, security, prosperity, and contentment of all the inhabitants or residents, or at least a substantial part thereof." Legislation [*i.e.*, relative to expenditure of funds] does not have to benefit all of the people to serve a public purpose. However, as stated in Bauer v. S.C. Housing Authority, 271 S.C. 219, 246 S.E.2d 869 (1978), "[i]t is not sufficient that an undertaking bring about a remote or indirect public benefit to categorize it as a project within the sphere of public purpose."

The constitutional prohibition was intended to prevent governmental bodies from depleting the public treasury by giving advantages to special interests or by engaging in non-public enterprises. Of course, this objective may be violated by a transaction even though it possesses the surface indicia of a public purpose. Some courts have even held that while the public benefit obtained from the private entity as consideration may constitute "valuable consideration" the public purpose

Respectfully,
Charles M. Condon

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requirement may still be violated if the value to be received by the public is far exceeded by the consideration being paid by the public. Wistuber v. Paradise Valley Unified School District, 141 Ariz. 346, 687 P.2d 354 (1984).

As this Office has frequently reiterated, "public purpose" is not easily defined; each case must be decided with reference to the object sought to be accomplished and to the degree and manner in which that object affects the public welfare. Op. Atty. Gen., March 16, 1988. Indeed, such a determination involves questions of fact which are beyond the scope of an opinion of this Office to resolve. Op. Atty. Gen., December 9, 1983. In reviewing such questions, the courts should not be overly technical, and appropriate deference must be given to the findings of the governmental body that a valid public purpose would ensue from the expenditure of public funds. Accordingly, before reaching a final decision regarding the making of these interest free loans, Georgetown County ought to consider this proposal in light of the four-prong test cited by the court with approval in Nichols v. South Carolina Research Authority, 290 S.C. 415, 351 S.E.2d 155 (1986). First, the County should determine the ultimate goal or benefit to the public intended by the project. Second, the County should analyze whether public or private parties will be the primary beneficiaries. Third, the speculative nature of the project must be considered. Finally, the County must analyze and balance the probability that the public interest will be ultimately served and to what degree. While of course only a court could determine with finality whether a public purpose would be served by the interest free loan program, if county council concludes pursuant to the Nichols test that a valid public purpose exists, a court will not lightly disregard their decision.

This letter is an informal opinion only. It has been written by a designated Deputy 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 nor officially published in the manner of a formal opinion.

With kind regards, I am

Sincerely yours,



Zeb C. Williams, III
Deputy Attorney General

ZCW/an