

History 6117/6701



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

May 24, 1999

The Honorable Herbert Kirsh
Member, House of Representatives
532-A Blatt Building
By Delivery

Dear Representative Kirsh:

You have asked whether Winthrop University may make an "in-kind" donation to the Rock Hill Chamber of Commerce. According to your letter, the donation will be in the form of \$4,000 per year of "in-kind" waivers of rental fees for university facilities for each of five years. The information also states that the use of the facilities will be subject to availability.

As you have noted, previous opinions of this Office have stated that furnishing public funds to chambers of commerce may violate constitutional restrictions on use of public funds for private purposes. See *Ops. Atty. Gen. (July 27, 1977; May 6, 1975)*. Donating waivers of rental fees also could be an impermissible use of public funds or property unless a public interest is sufficiently served by the donation. *Nichols v. South Carolina Research Authority, 290 S.C. 415, 351 S.E. 2d 155 (1986); Ops. Atty. Gen. (January 15, 1999)*. The following four prong test in *Nichols* may be of some assistance:

... 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.

Accordingly, to be permissible, the donation would need to demonstrate a sufficient public purpose under such a test. My reading of this Office's prior opinions would make this donation of doubtful constitutionality; however, only a court can make such factual determinations.

The Honorable Herbert Kirsh

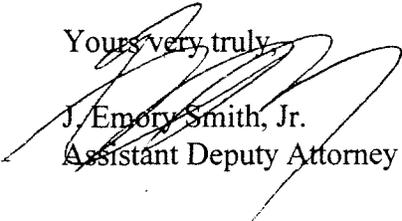
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This letter is an informal opinion. It has been written by the designated Assistant Deputy Attorney General and represents the opinion of the undersigned attorney as to the specific questions asked. It has not, however, been personally reviewed by the Attorney General nor officially published in the manner of a formal opinion.

If you have further questions, please let me know.

Yours very truly,



J. Emory Smith, Jr.

Assistant Deputy Attorney General