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The State of South Carolina



Opinion No 88-57
P152

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June 27, 1988

The Honorable Harriet Keyserling
Member, House of Representatives
Post Office Box 1108
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Dear Representative Keyserling:

By your letter of June 23, 1988, you have inquired as to the legality of a county contributing funds to "not-for-profit" organizations which exist for the public good. In particular, you are inquiring on behalf of the Child Abuse Prevention Association of Beaufort County, an organization dedicated to helping abused children.

Background

The Child Abuse Prevention Association of Beaufort County ("CAPA") is an eleemosynary corporation chartered by the Secretary of State, by charter dated May 14, 1980, for the purposes of child abuse prevention. Beaufort County and CAPA have entered into an agreement whereby Beaufort County deeded certain real property to CAPA, without consideration, for the purposes of construction of a home for the use of CAPA for abused children. By an order dated February 26, 1986, the Honorable Clyde K. Laney, Jr., Chief Judge of the Family Court of the Fourteenth Judicial Circuit, has designated the Open Arms Shelter, operated by CAPA, to be used for temporary shelter "for any need that may arise by any appropriate agency in Beaufort County," acting pursuant to Section 20-7-610, Code of Laws of South Carolina (1976, as revised).

This Office has been advised by the Executive Director of CAPA that the organization operates an emergency shelter for abused and neglected children, primarily from Beaufort County. If space is available, children from other counties in the Fourteenth Judicial Circuit are also placed there. We are further advised that all county funding received in the past has been

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used for operation of the shelter. Other sources of revenue have included private sources such as civic groups and churches.

Constitutional Considerations

In part, Article X, Section 5 of the State Constitution is relevant to your inquiry:

Any tax which shall be levied shall distinctly state the public purpose to which the proceeds of the tax shall be applied.

In adopting its budget and determining the taxes to be levied in the county, a county council must determine that all taxes being levied (and thus expended) must be for a public purpose.

Additionally, Article X, Section 11 of the State Constitution provides in relevant part:

The credit of neither the State nor any of its political subdivisions shall be pledged or loaned for the benefit of any individual, company, association, corporation

This section has been construed by the courts to prohibit the expenditure of public funds "for the primary benefit of private parties." State ex rel. McLeod v. Riley, 276 S.C. 323, 329-30, 278 S.E.2d 612 (1981); Feldman & Co. v. City Council of Charleston, 23 S.C. 57 (1886). Courts in other states with similar constitutional provisions have permitted appropriations to private entities which use those public funds to perform a proper "function for the State." State ex rel. Dickman v. Defenbacher, 128 N.E.2d 59 (Ohio 1955); Bedford County Hospital v. Browning, 225 S.W.2d 41 (Tenn. 1949); People ex rel. Greening v. Green, 47 N.E.2d 465 (Ill. 1943); Hager v. Kentucky Childrens Home Society, 83 S.W. 605 (Ky. 1904). Appropriation of public funds to private entities is, in effect, an exchange of value which results in the performance by those entities of a public function for the state. Op. Atty. Gen. November 16, 1983 (enclosed). See also Gilbert v. Bath, 267 S.C. 171, 227 S.E.2d 177 (1976) and Bolt v. Cobb, 225 S.C. 408, 82 S.E.2d 789 (1954).

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Public Purpose

Whether a particular expenditure of public funds will be for a public purpose may be determined according to the test found in Anderson v. Baehr, 265 S.C. 153, 217 S.E.2d 43 (1975):

As 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 does not have to benefit all of the people in order to serve a public purpose. ...

Id., 265 S.C. at 162.

In recent opinions of this Office, we were of the opinion that various projects, for which the expenditure of public funds was under consideration, could meet the public purpose test: Greenville Center for the Performing Arts (Op. Atty. Gen. dated March 16, 1988); Koger Arts Center (Op. No. 85-5); contributions to certain private entities for special promotions and contributions under the Parks, Recreation, and Tourism budget (Op. Atty. Gen. dated November 16, 1983); compensation of a private entity to promote civic, cultural, recreation, and tourism-related activities for a county (Op. Atty. Gen. dated October 31, 1985); allocation of funds to civic organizations for recreation purposes, whose facilities are open to the public (Ops. Atty. Gen. dated April 2, 1987 and August 23, 1977).

This Office has also opined that contributions or allocations of public funds may not be made to civic organizations, which expenditures of public funds would result in benefits to only the members of those civic organizations. See Ops. Atty. Gen. dated April 13, 1971 (Salvation Army); March 31, 1981 and May 28, 1981 (Boys' Club). See also Op. Atty. Gen. dated May 7, 1987 (Town of Irmo could not expend public moneys to assist part of town's inhabitants in their efforts to consolidate that portion of the Town in Richland County with the portion of the Town in Lexington County, thus placing the entire Town in one county).

It should be noted that the State of South Carolina, through the Department of Social Services, provides programs or services for abused and neglected children as well as battered

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spouses. Act No. 170 of 1987, the appropriations act for fiscal year 1987-88 contains appropriations for foster care and battered spouse programs; children in foster care are often there due to an abuse or neglect situation. Thus, the State of South Carolina, as one of its functions, provides assistance to abused children and adults. The legislature has evidently found that such expenditures of public funds serve a public purpose and further that caring for abused individuals is a proper state function.

CONCLUSION

In conclusion, it is our opinion that, should Beaufort County Council decide to allocate public funds to the Child Abuse Prevention Association, albeit a private nonprofit corporation, such expenditures would constitute a valid public purpose. Society has, of course, a "transcendent interest in protecting the welfare of children" Ginsberg v. New York, 390 U.S. 629, 640, 20 L.Ed.2d 204 (1968). Today, the entire community is vitally concerned in insuring that children are "safeguarded from abuses and given opportunities for growth into free and independent ... citizens." Prince v. Commonwealth of Massachusetts, 321 U.S. 158, 165, 88 L.Ed.2d 645, 652 (1944). Therefore, expenditures for the purpose of the protection of abused children such as we understand are proposed here, would not fail for lack of a public purpose.

With kindest regards, I am

Sincerely,



T. Travis Medlock
Attorney General

TTM/an

Enclosure