

The State of South Carolina



Office of the Attorney General

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November 10, 1988

Wesley L. Brown, Esquire
Attorney for Cherokee County
Saint-Amand, Thompson and Brown
210 South Limestone Street
First Piedmont Federal Building
Gaffney, South Carolina 29340

Dear Mr. Brown:

As Cherokee County Attorney, you have requested the advice of this Office as to whether that county can loan or donate money to a private, post-secondary educational institution. Your letter includes your research on this issue. Your conclusions were that the county could not legally make investment loans to the college, but that the validity of a grant and the probable outcome of judicial review would depend upon how the grant would meet the standards of public use set forth in Byrd v. County of Florence, 281 SC 402, 315 S.E.2d 804 (1984) and confirmed in Nichols v. South Carolina Research Authority, 290 S.C. 415, 351 S.E.2d 155 (1986).

In addition to the authority noted in your letter, a factor here would be whether Art. XI, §4 of the South Carolina Constitution would be applicable. That provision provides that "[n]o money shall be paid from public funds nor shall the credit of the State or any of its political subdivisions be used for the direct benefit of any religious or other private educational institution." (Emphasis added). This constitutional provision has apparently not been construed as to any issue by the Supreme Court since it was modified in 1973 by deleting the prohibition on indirect benefits (see Hartness v. Patterson, 255 S.C. 503, 179 S.E.2d 907 (1971)). Whether a particular grant would constitute a "direct benefit" to invoke this provision would be a question of fact, but no information has been provided as to the details of this grant and addressing questions of fact does not fall within the scope of opinions of this Office. Ops. Atty. Gen., December 12, 1983). Therefore, the Cherokee County Council will need to determine whether the donation or loan would constitute a "direct benefit" under Art. XI, §4.

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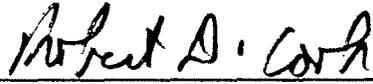
Your letter appears to find a need for judicial review here in your reference to your opinion that the validity of the grant and the outcome of such review would depend upon how the Byrd, supra, standards are met. Such review would also need to address the question of whether the grant would be of such direct benefit to the college as to be prohibited under Art. XI, §4. In addition, the question of whether the aid would be permissible under the Establishment Clause of the First Amendment of the United States Constitution would need to be addressed if the institution is church supported. See Hunt v. McNair, 258 S.C. 97, 187 S.E.2d 695 (1972); aff'd. 413 U.S. 734, 93 S.Ct. 2868 37 L.Ed.2d 923 (1973). Such issues, as noted, are factual matters that cannot be addressed within the scope of opinions of this Office. Therefore, you may wish to consider a declaratory judgment action here if the application of these constitutional provisions to this matter remains in question.

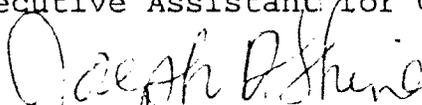
If you have any questions, please let me know.

Yours very truly,


J. Emory Smith, Jr.
Assistant Attorney General

JESjr/jps


ROBERT D. COOK, ESQUIRE
Executive Assistant for Opinions


JOSEPH D. SHINE
Chief Deputy Attorney General