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# The State of South Carolina



Opinion No 86-24  
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## Office of the Attorney General

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February 18, 1986

John L. Breeden, Jr., Esquire  
Horry County Attorney  
Post Office Box 1665  
Conway, South Carolina 29526

Dear Mr. Breeden:

You have asked for the opinion of this Office as to whether Horry County Council may loan funds to the Horry Produce and Marketing Association, Inc., an eleemosynary corporation comprised of produce farmers of Horry County. You have advised that Horry County built and equipped a farmers market to provide a place for farmers to sell their produce; the Association operates the facility.

Due to various problems such as mismanagement, cited in your letter, the Association lost several hundred thousand dollars last year, its first year of operation. The Association has asked Horry County Council for a loan, which would be repaid with interest. If such a loan is granted, Council will form an oversight board of some type, to oversee and advise the Association in its operation of the market; auditing requirements have also been imposed. Your question is whether Horry County Council may loan public funds to this eleemosynary corporation.

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

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

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or any religious or other private education institution except as permitted by Section 3, Article XI of this Constitution. ...

This provision generally prohibits the State or its political subdivisions from using public credit for the benefit of any individual, company, association, or corporation. While this provision has been construed to prohibit expenditure of public funds for benefits which accrue primarily to private parties, prior opinions of this Office have concluded that where funds are appropriated to a non-profit corporation for a valid public purpose, Article X, Section 11 is not infringed. See Op. Atty. Gen. dated July 12, 1984, enclosed. As noted above, Horry Produce and Marketing Association, Inc., is an eleemosynary, or non-profit, corporation; if it can be shown that a loan to this corporation fulfills a valid public purpose, then the loan would be acceptable.

Several decisions from South Carolina and other jurisdictions would find a public purpose in giving aid to the farming or agriculture business. In Medlock v. S. C. State Family Farm Development Authority, 279 S.C. 316, 306 S.E.2d 605 (1983), the Supreme Court stated that the Court has "recognized that legislation which aids and promotes agriculture serves a valid public purpose." 279 S.C. at 321, citing S. C. Farm Bureau Marketing Association v. S. C. State Ports Authority, 278 S.C. 198, 293 S.E.2d 854 (1982). In the Farm Bureau case, it was argued that an act of the General Assembly was unconstitutional since the credit of the State would be pledged for the benefit of the Association, a private corporation. The Association operated a grain elevator owned by the State and located at the North Charleston terminal of the State Ports Authority, similar to the situation in Horry County relative to ownership and operation of the farmers market. The Court stated that "the operation of the grain elevator is primarily for the benefit of the State and the farmers" and thus rejected the constitutional challenge to the act in question. 278 S.C. at 203. The Court also commented therein as to the benefit of the State's overall economy, as well as higher prices being paid to soybean farmers, as a result of operation of the grain elevator.

In other jurisdictions, expenditures relative to agriculture have been found to meet the public purpose test. The Supreme Court of Georgia has held that the Department of Agriculture in

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that state was performing functions of the state by providing for the creation and operation of state farmers markets. Newton v. City of Atlanta, 189 Ga. 441, 6 S.E.2d 61 (1939), citing Roberts v. Barwick, 187 Ga. 691, 1 S.E.2d 713 (1939). In Brown v. Winton, 197 So. 543 (Fla. 1940), the Florida Supreme Court held that a county's contribution toward the erecting and construction of a cold storage and pre-cooling plant for use by county farmers was in furtherance of a "county purpose."

An examination of this State's statutes reveals several which could reflect a public purpose in expenditures relative to farming or agricultural activities. For example, by Section 46-19-110, Code of Laws of South Carolina (1985 Cum.Supp.), a county or municipality or combination thereof is empowered to establish "a farm marketing center and [may] acquire, own, operate, lease for operation or lease to others for operation such farm marketing center or any part of such center as may appear desirable." This provision gives the particular political subdivision wide discretion in deciding how to operate its farmers market and, further, implies that the operation of a farmers market serves a public purpose. Similarly, Section 46-15-10 states that the general duties of the Department of Agriculture are

[f]or the purpose of aiding, establishing and providing proper facilities for the efficient handling of farm and other food products in the interest of the farmer, consumer and general public and to assist in the disposal and sale of such products ... .

It thus seems clear that the General Assembly considers "aiding" efficient handling of farm products to be a proper public purpose.

We would also point out that the Department of Agriculture, by Section 46-15-20(10), is specifically given the power to "make such loans to local marketing authorities as [it] shall deem to be economically sound." A "local marketing authority" is defined in Section 46-19-10 and is classified as being "cooperative and non-profit-making." It does not appear, from information included with your letter, that the Horry Produce and Marketing Association, Inc., fulfills the requirements to be a marketing authority. Nevertheless, we point out these statutes to show a legislative belief that loans made to such

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non-profit organizations whose purpose is "to engage in the marketing of agricultural products and all activities in connections therewith," by Section 46-19-10, would have a valid public purpose.

It could be argued that the public purpose test might not be met since only Horry County farmers who are members of the Association would ostensibly benefit. However, the abundant authority construing the public purpose test would not prohibit the expenditure or loan of public funds for this purpose, based upon this argument. The courts have stated that

[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 does not have to benefit all of the people in order to serve a public purpose. At the same time legislation is not for a private purpose as contrasted with a public purpose merely because some individual makes a profit as a result of the enactment.

Anderson v. Baehr, 265 S.C. 153, 162, 217 S.E.2d 43 (1975). Restated, "public purpose is not destroyed merely because benefits will accrue to private individuals, nor is it necessary for the legislation to serve all the people." Medlock v. S. C. State Family Farm Development Authority, supra, 279 S.C. at 321.

Clearly, the farmers and the Association in Horry County will benefit. Arguably, however, the citizens of Horry County will also be served by continued operation of the farmers market, which will be the result if the loan is granted. In an analogous situation in the Farm Bureau case, supra, improvement in the State's overall economy was noted as a benefit; there, ostensibly the Farm Bureau Association and the State's soybean farmers were the only recipients of benefits from the State's ownership of a grain elevator. Thus, it cannot be said that only a few individuals would ultimately benefit if the loan should be granted.

We would therefore advise that if Horry County Council should exercise its discretion to loan funds to the Horry Produce and Marketing Association, Inc., an eleemosynary

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corporation, the requirement that such be made for a valid public purpose would be met.

Sincerely,

*Patricia D. Petway*  
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Assistant Attorney General

PDP/an

Enclosure

REVIEWED AND APPROVED BY:

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