

1984 WL 249812 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

**January 24, 1984**

\*1 Honorable Laurens I. James  
Greenville County Council  
Courthouse Annex  
Greenville, South Carolina 29603

Dear Mr. James:

You have requested an opinion as to whether the Greenville County Historic Preservation Commission may lawfully transfer title to all its property to the Greenville County Historic Preservation Foundation. The Commission's property was obtained by gift and donation rather than through public funding. The Foundation is a private entity; it would take title subject to a duty to preserve, restore, mark and operate the properties, and generally perform the same duties as the Commission presently has.

The Commission is a body politic and corporate whose powers and duties are set forth in Section 4 of Act No. 833 of 1970. That section grants to the Commission the power, among others, to acquire, own and operate buildings of historic significance. There is no express grant of power to convey or dispose of personal property. However, any public corporation such as the Commission possesses the power to dispose of any property which it has the power to acquire. See [Kirkland v. Johnson](#), 209 Ga. 824, 76 S.E.2d 396 (1953); [Southport v. Stanley](#), 125 N.C. 464, 34 S.E. 641 (1899); McQuillin, [Municipal Corporations](#), § 28.37. In addition, Section 4(3) of the Commission's enabling legislation authorizes the Commission '[t]o contract with others in furtherance of its purposes . . . .'

Since it appears that the Foundation will not pay the cash value of the properties, the question which arises is whether some other form of reasonable consideration would be permissible. The Commission was not granted the power to make gifts, and in any event a gift by a public entity to a private foundation, without receiving in return some consideration of reasonably equivalent value, 'would amount to a palpable breach of the trust upon which [the property] is held.' [Haesloop v. Charleston](#), 123 S.C. 272, 283, 115 S.E. 596 (1923).

The purpose of the proposed transaction is to encourage additional donations which might be forthcoming if the properties were to be held by a private entity rather than a governmental unit. As matters presently stand, the Commission receives no public funding and little if any funding from private gifts or grants. The Foundation will otherwise operate in the same manner, and subject to the same powers and duties as the Commission; in addition, the Foundation will initially be governed by the same trustees as govern the Commission.

These circumstances present an appealing case for the transfer. However, the public benefit to be derived from the transaction is uncertain and indefinite. Without a more firm showing of public benefit (perhaps in the form of pledges to the Foundation), the proposed transaction is subject to question. In the opinion of this office, the above authorities make the transaction, without an additional showing of public benefit, an extremely dubious one.

\*2 Your letter raises several additional questions which relate to circumstances in the event the transaction remains effective. Since the transaction is likely invalid and subject to rescission, it may not be necessary to answer those questions.

Sincerely yours,

Kenneth P. Woodington

Senior Assistant Attorney General

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