

1980 WL 121135 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 1, 1980

**\*1 RE: Gasohol Development Loan Program**

Mr. William Prince  
Special Assistant to the Governor  
State House  
Post Office Box 11450  
Columbia, South Carolina 29211

Mr. Kenneth A. Kinard  
House  
Agriculture Committee  
Post Office Box 11867  
Columbia, South Carolina 29211

Gentlemen:

In response to your request, this letter is to provide an informal opinion as to the constitutionality of the Gasohol Development Loan Program provided in Section 1 of Act No. 194 of 1979, relating to the issuance of State Capital Improvement Bonds. The Act simply provides that \$5,000,000 in bond revenue may be made available for the Gasohol Program under policies and guidelines to be adopted by the State Budget and Control Board and reviewed by the Bond Review Committee established by the General Assembly.

As you are aware, no action has been taken to implement this provision because of questions as to its constitutionality, and the preliminary opinion of this Office is that the Program in the form proposed by the Act cannot be constitutionally implemented.

As indicated to you in our conversation, implementation would require at a minimum an elaborate statutory or regulatory method by which the funds would be disbursed and loans made; an example being the statutory scheme which provides low-cost housing loans through the State Housing Authority. However, even if such a statutory or regulatory mechanism is adopted, there is serious doubt that it could withstand constitutional attack on the ground that it is not for a 'public purpose' within the meaning of the provisions of Article X of the South Carolina Constitution as amended, particularly [Article X, Section 6](#). It is unlikely that the courts would judicially broaden the established definition of 'public purpose' to include a purpose, such as gasohol production, which was not in contemplation when the constitutional provisions were adopted. See, [Hunt v. McNair, 255 S.C. 71, 177 S.E.2d 362 \(1970\)](#).

Even if encouragement of gasohol production was held to be a proper purpose, loans or grants under the Program would probably have to be restricted to public entities or to research and development in the gasohol field, which would be of benefit to the general public. An example might be a loan or grant to a State college or university. [Article X, Section 11, of the Constitution](#) would prohibit direct loans to private individuals or organizations.

We also considered the possibility of the State 'investing' a portion of the fund in the shares of stock of a Small Business Investment Company, which would be a corporation organized to finance production of gasohol; but [Article X, Section 11](#), specifically prohibits the State becoming a stockholder in a private corporation.

We will continue to research this question but do not believe that a final formal opinion will differ greatly from the informal comments made in this letter.

Sincerely,

\*2 Frank K. Sloan  
Deputy Attorney General

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