

1976 WL 30684 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 25, 1976

*1 Senator James P. Harrelson
State House
Columbia, South Carolina

Dear Senator Harrelson:

You have requested an opinion from this Office as to whether or not the General Assembly can enact legislation providing for a state fund from which municipalities and counties would be able to borrow in order to build and furnish local medical clinics. I understand further from your letter that the state funds would be repaid by the local entities from rentals charged to physicians practicing in such clinics.

Based upon the decision in [Battle v. Wilcox](#), 128 S.C. 500, 122 S.E. 516 (1924), my opinion is that such legislation would be constitutional with certain reservations. [Battle v. Wilcox](#) upheld a 1923 Act which authorized a county governing body to issue general obligation bonds for the establishment of a hospital, saying that a hospital is an institution or utility that subserves a public use within the meaning of the governmental power to tax for a public purpose. In my opinion, a medical clinic would further the same public purpose of 'the care and treatment of patients afflicted with diseases and infirmities, both physical and mental.' *Id.*, at 506.

In [Jacobs v. McClain](#), 262 S.C. 425, 205 S.E.2d 172 (1974), however, the Supreme Court held that an office building, to be constructed by a hospital district for the purpose of leasing office space to physicians and dentists who were staff members of the facilities owned by the district, was not a 'public building' within the meaning of Article X, Section 6 of the South Carolina Constitution.

In order to fall outside of the purview of the [Jacobs](#) decision, then, the proposed legislation should not authorize the loan of state funds for the construction of physicians' offices, at least, if these offices would be used for those physicians' private practices. Moreover, since some doubt may exist as to whether the local governmental body, after building the clinic, could then sell it, for example, to a private group of physicians and, at the same time, retain the responsibility of repaying the loan of state funds, the proposed legislation should require that the municipality or county retain the ownership of the clinic.

The question to be resolved in all determinations of whether a governmental endeavor subserves a public purpose is whether the public is the principal beneficiary and any resulting private benefit is merely incidental. *Cf.*, [Jacobs v. McClain](#) at 429. The construction of a medical clinic would seem to me, at least, to benefit the public primarily and the physicians practicing therein secondarily.

The opinion as hereinabove set forth is not free from doubt in all instances, however, since the specific provisions of any such legislation would need to be examined in order to give an opinion comprehensive thereof.

With kind regards,

C. Tolbert Goolsby, Jr.

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