1976 WL 30699 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
March 5, 1976

***1** Honorable James M. Morris
County Attorney
200 South Brooks Street
Manning, South Carolina 29102

Dear Senator Morris:
You have requested an opinion from this office with respect to the acceptance of grants by the Clarendon Memorial Hospital District for purposes of renovating a nursing home into office space for physicians who will pay rent to the hospital. The nursing home was constructed on the property of the hospital about twenty years ago, and for the past several years has been used as an office building for two Clarendon County agencies. The contemplated grants would come from the Duke Endowment and from other private sources; no funds are to be granted by the county, state or federal governments. If the renovation were to take place, the two county agencies currently using the nursing building for offices would have to vacate it; the county would then have to build or rent other office space for these agencies.

As you indicate in your letter, this situation is somewhat similar to that in Jacobs v. McClain, 262 S.C. 425, 205 S.E.2d ½ (1974), where the Court disapproved the use of county general obligation bonds for a physicians' building. However, it is the opinion of this office that the present situation would come within the rationale of Jacobs v. McClain only if the renovation of the nursing building would entail, either directly or indirectly, the expenditure of funds by the county above and beyond the grants.

An example of an indirect need for such an expenditure would be any need for funds to make up any difference between operating costs and the rents paid by the physicians. Another example would occur if the proposed renovation were to cause the county to spend more than it previously had spent for the housing of the two agencies currently using the nursing home. Before a firm plan is decided upon, such possibilities as these should be considered.

On the other hand, the county's use of the private grants for the renovation does not, in itself, violate any constitutional provision if the private grantors impress the funds with a trust that they only be used for that purpose. Under such circumstances, the funds do not become ‘public funds.’ See, Elliott v. McNair, 250 S.C. 75, 156 S.E.2d 421 (1967).

If I can be of further help to you on this matter, particularly with reference to specific problems of applying the Jacobs case to the details of the renovation plan, please let me know.
Sincerely yours,

Kenneth P. Woodington
Assistant Attorney General

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