

ALAN WILSON
ATTORNEY GENERAL

May 2, 2025

The Honorable Kambrell H. Garvin, Member
South Carolina House of Representatives
335-D Blatt Building
Columbia, SC 29201

Dear Representative Garvin:

You seek our opinion regarding the following situation:

[t]he Word of God CDC proposed a multimillion-dollar economic development project, I.S.E.E. Silicon South, which sought to provide workforce development and tourism opportunities along the Broad River Road Corridor by redeveloping the Dutch Square Mall property. The development was proposed to be a public-private partnership, and the CDC sought funding from governmental entities such as the City of Columbia, Richland County, and the State of South Carolina to bring the project to fruition.

In hopes of providing clarity for Word of God CDC, as an elected official, I write to formally request an Attorney General opinion explaining whether a nonprofit organization, spearheading a taxable public-private development, can be denied consideration for tax incentives based solely upon the nonprofit's tax-exempt status.

The short answer to your question is "no."

Law/Analysis

We have already answered a different question regarding this proposed project. See Op. S.C. Att'y Gen., 2024 WL 3696599 (July 31, 2024). There, we concluded that "... the Free Exercise Clause of the United States Constitution precludes ... discrimination [from participation in the project] on the basis of religion."

Likewise, the mere fact that Word of God CDC is a nonprofit corporation is not a ground for exclusion from consideration from tax incentives or tax exemptions. As we recognized in Op. S.C. Att'y Gen., 2005 WL 1609285 (June 1, 2005), nonprofit corporation status does not necessarily carry with it exemption from tax, but exemption "can be determined only by reference to the relevant tax statutes and regulations." Thus, any sweeping generalization based solely on

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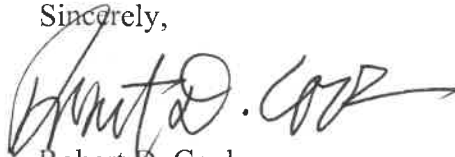
nonprofit status is unwarranted and ill-advised. Instead, careful scrutiny must be given to determine whether a nonprofit is entitled to a tax exemption or a tax incentive under existing law.

A good example of the requirement that careful scrutiny must be given pursuant to the relevant statutes and regulations is Ark. Dept. of Econ. Devel. v. Wm. J. Clinton Presidential Foundation, 216 S.W.3d 119 (2005). There, a nonprofit corporation brought a declaratory judgment action against the Arkansas Department of Economic Development and its Director to challenge denial of an application for tax incentives under the Enterprise Zone Act. The application was denied on the basis that tax incentives under the Act were “not available to non-profit entities.” 216 S.W.3d at 122.

The nonprofit brought suit and the Arkansas Supreme Court concluded that it was entitled to the tax incentives irrespective of its nonprofit status. The Court scrutinized the requirements of the Arkansas Economic Development Act and concluded that the nonprofit met those requirements.

In short, it is up to the funding authorities to carefully scrutinize the requirements of the governing laws and regulations to determine whether such requirements have been met. Such a determination is within the sound judgment and discretion of the funding authorities. This Office may only advise as to the applicable law. We cannot direct any such funding authority with respect to how to exercise its judgment or discretion.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert D. Cook", with a stylized flourish extending to the right.

Robert D. Cook
Solicitor General