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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY MCMASTER
ATTORNEY GENERAL

March 18, 2004

William S. Biggs, Chairman
South Carolina Veterans Trust Board
1205 Pendleton Street, Suite 226
Columbia, South Carolina 29201

Dear Mr. Biggs:

You have requested an opinion regarding the authority of the South Carolina Veterans Trust Board to disburse trust funds through direct grants to individual veterans. The Board believes it should be able to "give grants to individual veterans when the needs are approved by a quorum of the Board." You have asked for a thorough review of the Board's enabling statute, S.C. Ann. Section 25-21-10 et seq., in order to clarify whether the Board possesses the necessary legal authority to disburse trust funds directly to individual veterans.

Law / Analysis

It is well established that an agency of the State or a governmental entity "has only such powers as have been conferred by law and must act within the authority granted for that purpose." Bazzle v. Huff, 319 S.C. 443, 462 S.E.2d 273 (1993). The authority of a governmental agency created by statute is, in other words, "limited to that granted by the legislature." Nucor Steel v. S.C. Public Serv. Comm., 310 S.C. 539, 426 S.E.2d 319 (1992). Therefore, the Board's enabling statute, Section 25-21-10 et seq., of the Code, must be examined to ascertain whether the Board possesses authority to disburse Veterans' Trust resources directly to individual veterans.

A number of principles of statutory construction are thus pertinent to this inquiry. The primary objective in construing statutes is to determine and effectuate legislative intent if at all possible. Bankers Trust of South Carolina v. Bruce, 275 S.C. 35, 267 S.E.2d 424 (1980). A statute must receive a practical, reasonable, and fair interpretation consonant with the purpose, design and policy of the lawmakers. Caughman v. Cola. Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1948). Words used must be given their plain and ordinary meaning without resort to subtle or forced construction either to limit or expand the statute's operation. State v. Blackmon, 304 S.C. 270, 403 S.E.2d 660 (1990). However, our Supreme Court has cautioned against an overly literal interpretation of a statute which may not be consistent with legislative intent. In Greenville Baseball, Inc. v. Bearden, 200 S.C. 363, 20 S.E.2d 813 (1942), for example, the Court recognized that:

> [i]t is a familiar canon of construction that a thing which is within the intention of the makers of a statute is as much within the statute as if it were within the letter. It is an old land well established rule that the words ought to be subservient to the intent and not the intent to the words. Id., at 368-369.

Furthermore, it is well established that the meaning of a statute should not be sought in any single section but all parts of the statute must be construed together in relation to the end intended by the statute. DeLoach v. Scheper, 188 S.C. 21, 198 S.E. 409 (1938). All parts of a statute must be given effect, State ex rel. McLeod v. Nessler, 273 S.C. 371, 256 S.E.2d 419 (1979), and harmonized with one another to render them consistent with the general purpose of the act. Crescent Mfg. Co. v. Tax Commission, 129 S.C. 480, 124 S.E. 761 (1924). When the Legislature has expressed its intention in one part of an act, it must be presumed that such intention is applicable to all parts. State v. Sawyer, 104 S.C. 342, 88 S.E. 894 (1916).

Based on these well-established principles, it is the opinion of this Office that the Board does not possess the requisite statutory authority to directly disburse Veterans' Trust Fund resources to individual veterans. The overall purpose of the Board is stated in Section 25-21-10 of the Code:

> There is established the Veterans' Trust Fund of South Carolina, an eleemosynary corporation, the resources of which must be dedicated to serving the needs of South Carolina's veterans by supporting programs, both public and private, for veterans. The Veterans' Trust Fund may support veteran service programs by direct funding or through donation of property or services.
>
> The board of trustees for the Veterans' Trust Fund shall carry out activities necessary to administer the fund including, but not limited to, assessing service needs and gaps, soliciting proposals to address identified needs, and establishing criteria for awarding of grants. (emphasis added).

Pursuant to the referenced language, the supporting of "programs" which provide services to veterans appears to constitute the legislative purpose of the Act which the Board is required to implement. Section 25-21-30 provides a non-exhaustive list of duties delegated to the Board to administer this purpose. One specific duty is to "enter into contracts for the awarding of grants to public or private, nonprofit organizations." S.C. Code Ann. § 25-21-30(9). Subsection 25-21-30(7) further provides that the Board may "solicit proposals for programs aimed at meeting identified needs."

In our opinion, the Board's general discretion to "decide how the monies in the fund must be disbursed," S.C. Ann. Section 25-21-30(2), should be read in light of these referenced provisions. By the express language of the statute, it is clear the General Assembly contemplated and intended Trust funds to be used to support veteran services programs as well as the various organizations which administer them. Individual veterans clearly benefit from such programs. Yet, we find no authority elsewhere in the Act to empower the Board to disburse the trust funds to individuals by

direct grant. Thus, we cannot deem this phrase enabling the Board to "decide how monies in the fund are to be disbursed" as anything other than making clear that the Board possesses the discretion to determine which projects are funded. Such general language does not, in our opinion, empower the Board to grant funds individually to veterans, particularly in light of the express language in other parts of the Act making it clear that the Board is to fund "organizations" or "programs."

This conclusion is reinforced by the fact that an interpretation authorizing the Board to make direct disbursement of Veterans' Trust funds to individual veterans might be deemed to contravene the constitutional requirement that public funds must be expended for public purposes. Article X, § 5 of the South Carolina Constitution. Article X, § 11 of the State Constitution further provides that:

> [t]he credit of neither the State nor of any of its political subdivisions shall be pledged or loaned for the benefit of any individual, company, association, corporation, or any religious or private education institution except as permitted by Section 3, Article XI of this Constitution.

This provision proscribes the expenditure of public funds "for the primary benefit of private parties." State ex rel. McLeod v. Riley, 276 S.C. 323, 329, 278 S.E.2d 612 (1981). While each case must be decided on its own merits, the notion of what constitutes a public purpose has been described by our Supreme Court in Anderson v. Baehr, 265 S.C. 153, 217 S.E.2d 43 (1975) as follows:

> [a]s a general rule a public purpose has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity and contentment for all the inhabitants or residents, or at least a substantial part thereof. (emphasis added).

In Nichols v. South Carolina Research Authority, 290 S.C. 415, 351 S.E.2d 155 (1986), the Court articulated the following test to determine whether the "public purpose" requirement has been met:

> [t]he Court should first determine the ultimate goal or benefit to the public intended by the project. Second, the Court should analyze whether public or private parties will be the primary beneficiaries. Third, the speculative nature of the project must be considered. Fourth, the Court must analyze and balance the probability that the public interest will be ultimately served and to what degree.

318 S.E.2d at 163.

Specifically, in Feldman v. City Council of Chas., 23 S.C. 57 (1885), our Supreme Court concluded that public funds may not be constitutionally provided to individuals as loans for rebuilding their buildings destroyed in the Charleston Fire. The Court concluded that while the purpose might be worthy, "[t]he real object was to loan the credit of the city to private individuals to afford them aid in repairing their losses occasioned by a disastrous fire." 23 S.C. at 57. In the

Court's opinion, "[t]he incidental advantage to the public, or to the State, which results from the promotion of private interests, and the prosperity of private enterprises or business, does not justify their aid by the use of public money raised by taxation, or for which taxation may become necessary." Id.

Likewise, in Op. S.C. Atty. Gen., Op. No. 4234 (January 16, 1976), we concluded that the State of South Carolina could not, by virtue of these State Constitutional prohibitions, participate in the Individual and Family Grant Programs conducted within Section 408 of the Federal Disaster Relief Act of 1974. Citing Feldman and Jacobs v. McLain, 262 S.C. 425, 205 S.E.2d 172 (1974), we concluded that the State could not contribute 25% of the total funds allocated to an individual or family member under the federal program." See also, People v. Westchester County Nat. Bank., 231 N.Y. 465, 132 N.E. 241 (Ct. App. 1921) [bonus payments to veterans violates state constitution as a private purpose].

Here, public funds would inevitably be involved in any grant to individual veterans. Section 25-21-30(4) empowers the Board of the Trust Fund to "accept appropriations, loans or grants from any governmental or quasi governmental source." Moreover, even though the Veterans' Trust Fund of South Carolina is an eleemosynary corporation, it is, nevertheless, an agency established by the General Assembly with public functions and duties. Board members include the Director of the Office of Veterans' Affairs. The Governor, with the advice and consent of the Senate, appoints the other board members. Moreover, it is well-settled that in order to constitute public funds "it does not matter whether the money is derived by ad valorem taxes, by gift or otherwise." Elliott v. McNair, 250 S.C. 75, 156 S.E.2d 421 (1967). Thus, it is clear that the Trust Fund, although an eleemosynary corporation, is a quasi-governmental entity and that "public funds" being expended by the Board.

In interpreting a statute, a constitutional construction must be chosen over an unconstitutional one. State v. Peake, 353 S.C. 499, 579 S.E.2d 297 (2003). Accordingly, it is our opinion that § 25-21-10 et seq does not authorize the Board to grant funds to individual veterans.

While we do not believe the present Act authorizes payments to individual veterans, it should be emphasized that if the General Assembly so desires, it can enact legislation which would authorize the Board to make grants to individual veterans who meet designated criteria. Such legislation, if carefully drafted, would likely pass constitutional muster.

Courts in other jurisdictions have concluded that payments directly to individual veterans serve a valid public purpose. For example, in Lyman v. Adorno, 133 Conn. 511, 52 A.2d 702 (1947), the Court noted that the Legislature of Connecticut had specifically made a finding in the legislation under review referencing the "honorable courageous service" of our veterans in World War II. The Connecticut legislature determined that the payments to veterans demonstrated "a public will to incite patriotism, promote devotion to state and country, and encourage a readiness to sacrifice life, health and treasure for the common good." 52 A.2d at 706. The Court deferred to the legislative purpose, noting that "[w]e must accord to the General Assembly as a co-ordinate branch

of our government the utmost confidence that it has made this statement of the purpose of the act honestly and in good faith." Id. Citing numerous authorities in other jurisdictions upholding similar grants, the Lyman Court upheld the Act providing for the payment of bonuses to veterans as constitutional.

Our Supreme Court, in Hucks v. Riley, 292 S.C. 492, 357 S.E.2d 458 (1986), has noted that "the current trend is to broaden the scope of those activities which serve a public purpose, and legislation is not for a private purpose merely because private parties may be benefited." The Court has also emphasized that while findings made by the General Assembly that particular payments or use of public funds are for a public purpose are not conclusive upon the courts, they are entitled to considerable weight. See e.g., Anderson v. Baeher, 265 S.C. 153, 217 S.E.2d 43 (1975).[1] Thus, in light of the Court's more "relaxed view" of public purpose, beginning in Nichols, supra and subsequent cases, see, WDW Properties v. City of Sumter, 342 S.C. 6, 535 S.E.2d 631 (2000), as well as the fact that the Court generally gives considerable weight to legislative findings, a carefully drafted statute would likely be held by a court to be constitutional.

Conclusion

Accordingly, while it is our opinion that the present law regarding the Veterans' Trust Fund does not authorize grants or payments to individual veterans, the General Assembly could enact legislation, if it so desired, to authorize such payments. If the Legislature made specific findings of public purpose, such legislation would likely pass constitutional muster.

Very truly yours,

Robert D. Cook
Assistant Deputy Attorney General

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[1] The General Assembly has made such findings in other legislation involving veterans. See, § 8-7-90 (provisions regarding military leave are to be "construed liberally to encourage and allow full participation in all aspects of the National Guard and reserve programs of the armed forces of the United States."