

May 14, 2007

Mark W. Binkley, Esquire
General Counsel
South Carolina Department of Mental Health
P. O. Box 485
Columbia, South Carolina 29202

Dear Mr. Binkley:

You have sought an opinion regarding the necessity of court approval prior to any sale by the Department of Mental Health of a certain piece of property, consisting of “approximately five (5) acres of land across the street from the Bull Street property, on the east side of Colonial Drive.” By way of background, you provide the following information:

[t]he subject 5 acres, while itself not within the Bull Street property, sits within what was labeled parcel # 3 during the Bull Street property litigation. Parcel # 3 was one of the fourteen (14) parcels identified as making up, in whole or in part, the Bull Street property.

You describe “Parcel No. Three” as that fifty acre tract which is set forth in a deed, dated October 9, 1880 from Nathaniel B. Barnwell (Master) to the Regents of the Lunatic Asylum of South Carolina. You also reference a letter, dated March 21, 2007, from Deborah A. Francis, President and chief operating officer of the Lexington/Richland Alcohol and Drug Abuse Commission (LRADAC). Therein, Ms. Francis states LRADAC’s desire to proceed with a purchase of the subject property at the previously agreed upon appraised price of \$1.2 million.

You further note in your letter that

[t]he South Carolina Mental Health Commission, following numerous discussions between the staffs of the two agencies, voted at its May 2, 2006 meeting to approve the sale of the property to LRADAC for 1.2 million upon condition that LRADAC construct a substance abuse treatment facility on the site

In her letter, Ms. Francis also states that the sale of the subject 5 acres was approved by the Budget and Control Board at the Board’s meeting on May 16, 2006.

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As she further indicates, LRADAC did not subsequently proceed to complete the purchase because the Bull Street litigation was then pending.

You indicate that “[i]n light of the South Carolina Supreme Court’s decision in South Carolina Department of Mental Health v. Henry Dargan McMaster, Attorney General of South Carolina, and the State Budget and Control Board ... it would appear that the subject five (5) acres, like the Bull Street property is impressed with a charitable trust.” Thus, in your view, “the Department cannot proceed with the sale to LRADAC without the approval of a Circuit Court.” You thus seek our opinion regarding this question as well as “any additional guidance” regarding “the process which the Department should follow in bringing the issue to court.”

Law / Analysis

In *Dept. of Mental Health v. McMaster, et al.*, 372 U.S.C. 175, 642 S.E.2d 552 (2007), our Supreme Court concluded that the so-called Bull Street property, which has, for many years, served as the location of the South Carolina State Hospital, as well as providing other facilities used in the treatment of the mentally ill, is impressed with a charitable trust. The Court went on to conclude that by way of equitable deviation, the Bull Street property may be sold so long as all proceeds go to DMH for treatment of the mentally ill.

In the *McMaster* decision, the Court reviewed, among many other Exhibits, a number of deeds (14) of various tracts of property which had been conveyed to the Regents of the Lunatic Asylum of South Carolina during the history of the Lunatic Asylum and the South Carolina State Hospital. In deciding that the Bull Street property is impressed with a charitable trust, the Court’s analysis noted that “[n]o formality in the use of the language is necessary in order to create a public charitable trust.” 372 S.C. at ___, 642 S.E.2d at 555. In addition, the Court referenced case law to the effect that the founding and maintenance of hospitals and asylums “constitute charitable uses or trusts.” *Id.* Moreover, the Court viewed as important in concluding that the Bull Street properties constitute a charitable trust that “properties conveyed to a public charity are also impressed with a charitable trust.” *Id.* Finally, our Supreme Court relied upon *Goddard v. Coerver*, 100 Ariz. 135, 412 P.2d 259 (1966), a case the Court considered “directly on point.” Particular reliance was placed upon *Goddard* because

[a]s in *Goddard*, the property here was conveyed for the charitable purposes of the State Hospital for the Insane. It was conveyed to the Board of Regents of the Hospital, and the General Assembly enacted enabling legislation specifically for the benevolent purpose of establishing a hospital for the insane. The General Assembly also deemed fit that title to the property vest in the Board of Regents, and has routinely authorized the appropriation of funds for its charitable purposes. We find that the deeds and the legislative acts giving rise to the State Hospital clearly evidence the creation of a charitable trust. Accordingly, we find the property is held in trust for the DMH.

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372 S.C. at ____, 642 S.E.2d at 556.

As indicated, your letter notes that the property in question is part of "Parcel No. Three," reviewed by the Court in the *McMaster* case. Moreover, the conveyance's grantee for that particular parcel was "the Regents of the Lunatic Asylum of South Carolina." Further, the use of the property, as expressed in the deed, was "for their [Regents'] only proper use, benefit, and behoof forever." Finally, this tract was subsequently conveyed to the Regents to further carry out the charitable purpose of treating the mentally ill. All of these indicia, the Court deemed to be highly significant as evidence of a charitable trust. Thus, while the property in question may not, technically speaking, have been part of the Bull Street property specifically addressed in the *McMaster* case, we agree with you that the property which LRADAC desires to purchase is part of one of the tracts reviewed by the Court and, for the same reasons as set forth in that case is impressed with the charitable trust declared.

As the property is impressed with a charitable trust, we believe that a court of equity must approve any sale. Court approval is necessary to insure that the trust purpose is being served and that the trust is fully protected. *See, Colin McK Grant Home v. Medlock*, 292 S.C. 466, 349 S.E.2d 655 (Ct. App. 1984).

With respect to your question as to how the action for court approval should be brought, obviously, the Attorney General, as the protector of charitable trusts should be named as a party. *See*, S.C. Code Ann. Section 1-7-130 [Attorney General is required to enforce the "due application of funds given or appropriated to public charities within the State."]; *Epworth Children's Home v. Beasley*, 365 S.C. 157, 616 S.E.2d 710 (2005). [Attorney General is, by statute and pursuant to common law the protector of charitable trusts]. In addition, if you have any other questions regarding such action, you may wish to contact Assistant Attorney General C. H. Jones, Jr. I am advised he will be more than happy to answer your questions.

If we can be of further assistance, please advise.

Very truly yours,

Henry McMaster
Attorney General

By: Robert D. Cook
Assistant Deputy Attorney General

RDC/an