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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

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ATTORNEY GENERAL

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B.J. Willoughby, General Counsel
South Carolina Department of Parks, Recreation & Tourism
1205 Pendleton Street
Columbia, South Carolina 29201

Dear Ms. Willoughby:

You seek an opinion as to whether the South Carolina Department of Parks, Recreation and Tourism (SCPRT) may "make a grant to the South Carolina Natural Heritage Corridor for the purpose of securing one of the Camden Tower Sheds in Charleston for the Discovery Center for Region IV of the Corridor." By way of background, you set forth extensive factual information. The following facts are quoted directly from your letter:

1. **SCPRT:** The South Carolina Department of Parks, Recreation and Tourism (SCPRT) is a State Agency.

2. **SCNHC:** The South Carolina National Heritage Corridor ("SCNHC") is a South Carolina non-profit corporation established pursuant to an Executive Order of Governor David Beasley in 1997. The corporation was charged with managing and developing a fourteen county area extending from the Atlantic Ocean to the South Carolina Mountains ("the Corridor"). This area was official designated as a National Heritage Area by an Act of the United States Congress in 1996. The SCNHC has subsequently obtained Section 501(c)(3) status from the United States Internal Revenue Service. The SCNHC is governed by a Board of Directors, the initial members of which were named by the Governor, but which thereafter became self-appointing.

3. **SCPRT and SCNHC:** In a Cooperative Agreement dated May 11, 1998, the United States acting through the National Park Service, and the State of South Carolina, acting through the South Carolina National Heritage Corridor, Inc. and the South Carolina Department of Parks, Recreation & Tourism, SCPRT as fiscal agent, the transfer of federal funds for the Corridor was authorized.

4. SCPRT has funds set aside for the development of the infrastructure of the Corridor. Those funds have come from four categories of appropriations, as

follows: (1) Capital Reserve, (2) Admissions Tax, (3) Bond, and (4) State Appropriations. Of these funds $936,124.06 are unexpected and uncommitted as of this date. The agency wishes to use $180,000.00 of these funds to facilitate the securing of the property for the SCNHC's Region IV Discovery Center as discussed below.

5. **Corridor Strategy:** The strategy for the development of the South Carolina National Heritage Corridor has been to divide the Corridor into four regions, each of which was to have a "Discovery Center" or museum with visitor services designed to encourage tourism throughout the region. Discovery Centers are already being developed in Regions I, II, and III, inasmuch as the sites have been identified and committed, funding secured and construction underway.

In the case of the Region I Center in Clemson, the Center has been open now for more than a year. The Region II Center in Edgefield is anticipated to open in early 2004. The Region III Center in Blackville is slated to open in late 2004. Although the site for the Region IV Discovery Center has been identified for some years, no firm agreement for the securing of the property has been executed, and no funding has been committed. Yet, it is recognized by all parties that the Region IV Discovery Center is perhaps the most important because the large tourism traffic in Charleston is anticipated to provide source for expanding the tourism traffic throughout the Corridor.

6. **Camden Towers Shed:** The site which has been identified for the Region IV Discovery Center in the Charleston is the Camden Towers Shed immediately behind the Charleston Visitors Center on Meeting Street. The City of Charleston has acquired title to the entire Camden Towers Sheds complex which includes a number of buildings. The City has given a master lease to the Camden Towers Cultural Center, Inc., a non-profit corporation created to develop and manage this entire property. The building immediately to the west of the shed designated for the Discovery Center will be subleased to the Children's Museum and that project is poised to get underway in the immediate future. The plan is for this non-profit corporation to sublease to the SCNHC the shed between the Children's Museum and the Visitors Center for a period 40 years with a 10 year option at a rent of $1.00 per year. The Visitors Center currently has approximately one million visitors per year passing through and therefore the SCNHC views this Camden Towers Shed next door as uniquely desirable for the Discovery Center.

Under the proposed arrangement between the Camden Towers Cultural Center, Inc. and the SCNHC, the SCNHC will be responsible for the up fit costs for the building which are estimated to be $731,000. As the City of Charleston is very anxious for the redevelopment of these buildings to get underway, it has now given

SCNHC a deadline of September 2, 2003 to finalize the financial arrangements for the project. Since it is not possible for the SCNHC to arrange for state funding for this project prior to this deadline, it has arranged for a loan from a consortium of banks for $750,000 to fund its obligations under its sublease. The banks are requiring as collateral an assignment of its leasehold interest in the building and a three year interest reserve in the amount of $180,000.00. The source of repayment for the loan is anticipated to be from a state appropriation for the Discovery Center during the next three years.

7. **No Benefit to Private For-Profit Parties:** Since all of the parties involved in this proposed transaction are either State Agencies or State Subdivisions (SCPRT and the City of Charleston) or charitable non-profit corporations (SCNHC and the Camden Towers Cultural Center, Inc.), there are no issues as to any private, or for-profit, entities deriving inappropriate benefit from the transaction.

8, **The Question:** SCPRT would like to make a grant to the SCNHC for $180,000.00 to provide the funds for the required interest reserve for the Loan out of funds which SCPRT has set aside for the development of the infrastructure of the Corridor. It believes that there is no question as to the grant having a valid public purpose, for, without making such a grant, the SCNHC and the Corridor will lose its opportunity to acquire for its Region IV Discovery Center a uniquely valuable property. Moreover, SCPRT does not believe that there are any legislative restrictions on these funds which would prohibit their use for this purpose. We would appreciate your providing us with your opinion on the legality of SCPRT making this grant at the earliest possible time, as many details and much documentation will need to be completed prior to the September 2nd deadline.

Law / Analysis

It is well-settled that the expenditure of state funds must be for a public, not a private purpose. Elliott v. McNair, 250 S.C. 75, 156 S.E.2d 421 (1967); Haesloop v. Charleston, 123 S.C. 272, 115 S.E. 596 (1923). As the Court suggested in Elliott, the Due Process Clause of the Constitution (federal and state) requires that public funds must be expended for a public purpose. Moreover, Article X, Section 5 of the South Carolina Constitution requires that taxes (public funds) be spent for public purposes. 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. Legislation [i.e.,

> relative to the expenditure of funds] does not have to benefit all of the people in order to serve a public purpose.

217 S.E.2d at 47. See also, WDW Properties v. City of Sumter, 342 S.C. 6, 535 S.E.2d 631 (2000); Nichols v. South Carolina Research Authority, 290 S.C. 415, 351 S.E.2d 155 (1986); Carll v. South Carolina Jobs-Economic Development Authority, 284 S.C. 438, 327 S.E.2d 331 (1985); Bauer v. S.C. State Housing Authority, 271 S.C. 219, 246 S.E.2d 869 (1978); Caldwell v. McMillan, 224 S.C. 150, 77 S.E.2d 798 (1953). As emphasized in Bauer, the "mere fact that benefits will accrue to private individuals or entities does not destroy public purpose." 271 S.C. at 29. In Nichols, the Court established 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.

351 S.E.2d at 163. This test was applied by the Court in WDW Properties, supra. In this case, the Court upheld the legislatively created program in which the Jobs-Economic Development Authority (JEDA) could issue revenue boards whose proceeds would be loaned to private developers for the renovation of property in blighted areas. The Court held that application of the Nichols test led to the conclusion that the JEDA program served a public purpose – the "creation of jobs, the reinvigoration of the downtown area, and benefits, both tangible and intangible, that should result from that reinvigoration" 535 S.E.2d at 636.

Your letter notes that SCPRT would like to make a grant of $180,000 to the South Carolina National Heritage Corridor to provide the funds for the required interest reserve for the Loan of $731,000 to the SCNHC. This loan will insure that the Region IV Discovery Center project may proceed. Without the grant to the SCNHC, you note, "the SCNHC and the Corridor will lose its opportunity to acquire for its Region IV Discovery Center a uniquely valuable property." You indicate that SCPRT "does not believe that there are legislative restrictions on these funds which would prohibit their use for this purpose."

Further, it is stated in your letter that the purpose of SCPRT's establishment of the Discovery Centers is to encourage tourism. The particular site involved for the establishment of the Region IV Discovery Center is especially important to SCPRT and SCNHC because "[t]he Visitors Center currently has approximately one million visitors per year passing through and therefore the SCNHC views this Camden Towers Shed next door as uniquely desirable to the Discovery Center." You also point out that all of the parties involved in the proposed transaction are either state or local governmental entities or non-profit corporations.

Based upon the information provided by you, it is our opinion that the proposed grant would meet the public purpose test, set forth above. The ultimate goal or benefit to the public intended by the project is the promotion of tourism in South Carolina. The establishment of a Discovery Center for the low country – which provides a major portion of South Carolina's tourist base – will directly benefit the State's tourism industry, in our view. Moreover, it is evident, that the primary beneficiary of the establishment of the Region IV Discovery Center will be the public, rather than being private interests. Third, rather than speculative, the proposal is a fully developed plan designed to benefit and bolster South Carolina tourism.

It is well settled "that the expenditure of public funds for historical and recreational purposes are for recognized public purposes." Op. S.C. Atty. Gen., Op. No. 88-58 (August 2, 1988), citing, Timmons v. South Carolina Tricentennial Commission, 254 S.C. 378, 175 S.E.2d 805 (1970); Mims v. McNair, 252 S.C. 64, 165 S.E.2d 355 (1969). We have consistently concluded, moreover, that the promotion of tourism by the State or its localities serves a valid public purpose. Op. S.C. Atty. Gen., January 16, 1997; Op. S.C. Atty. Gen., October 31, 1985. In the October 31, 1985 opinion, we noted that "the promotion of tourism-related activities has been found by the General Assembly to be a public purpose by its passage of the Accommodations Tax Act ... particularly in the legislative findings of section 1." And in Op. S.C. Atty. Gen., February 1, 1996, we concluded that the Enterprise Zone Act satisfied the public purpose test. In that Act, the General Assembly found that the location of certain tourism facilities within the State promoted the "public purpose of creating new jobs within the State."

Furthermore, for purposes of determining whether or not a public purpose, rather than a private purpose exists, we have drawn a clear distinction between non-profit entities and for profit corporations. For example, we have concluded that the Beaufort County Council could "allocate public funds to the Child Abuse Prevention Association, albeit a private nonprofit corporation ..." because such expenditure "would constitute a valid public purpose." Op. S.C. Atty. Gen., Op. No. 88-52 (June 27, 1988). In Op. S.C. Atty. Gen., Op. No. 93-44 (June 23, 1993), we noted that "... the courts of this State have looked favorably at the use of public funds with respect to nonprofit (eleemosynary) corporations serving public purposes ...." Citing, Bolt v. Cobb, 225 S.C. 408, 415, 82 S.E.2d 789 (1954) and Gilbert v. Bath, 267 S.C. 171, 227 S.E.2d 177 (1976). See also, Ops. S.C. Atty. Gen., January 16, 1978; April 20, 1982; July 12, 1984; March 1, 1991. And, in Op. S.C. Atty. Gen., January 16, 1997, we concluded that a private corporation such as SCNHC, Inc. serves a public purpose – the "promotion and tourism and historical development." Compare, Op. S.C. Atty. Gen., March 19, 1985 (tuition grants to attend for profit school, invalid); Talley v. S.C. Higher Ed. Tuition Grants Comm., 289 S.C. 483, 347 S.E. 99 (1986) (same).

In Alexander v. Madison, 247 Wis.2d 576, 634 N.W.2d 577 (2001), the Wisconsin Court of Appeals upheld as constitutionally valid city ordinances providing for economic development grants of $10,000 equal to the fee for a Class B liquor license. The Court held that such grants did not violate the public purpose doctrine. In the Court's view, the "[e]ncouragement of economic development and tourism and the creation of employment opportunities provide direct advantages

or benefits to the public at large and therefore have been held to be public purposes." 634 N.W.2d at 580-581. Rejecting the argument that the public benefit was too indirect and remote, the Court found that

> [i]ncreasing the property tax base, providing employment opportunities and attracting tourists are all legitimate public purposes, and the City may constitutionally appropriate funds to accomplish these goals.

Id. at 581. Moreover, the Wisconsin Court concluded that the application process insured adequate control and accountability of the grant funds in order to "'secure public interests.'" Id.

Likewise, in Hucks v. Riley, 292 S.C. 492, 357 S.E.2d 458 (1987), our own Supreme Court recognized the importance of tourism to the State of South Carolina as well as the fact that promotion of tourism serves a valid public purpose. The Court stated that

> [i]n our opinion, legislation authorizing the issuance of industrial revenue bonds to finance the construction of public lodging and restaurant facilities primarily to foster tourism, the second largest industry in the State, improves the economic welfare of the State, and therefore serves a valid public purpose.

357 S.E.2d at 459.

It is not unusual for a governmental entity, such as PRT, to contribute to the construction of or the refurbishing of a facility for a public purpose. For example, in Op. S.C. Atty. Gen., Op. No. 85-5 (January 21, 1985), we concluded that a contribution by Richland County to assist in the construction of a performing arts center to serve the Midlands area was valid as serving a public purpose. In that opinion, we referenced as one of the authorities upholding this transaction the case of Gilbert v. Bath, 267 S.C. 171, 227 S.E.2d 177 (1976). In Gilbert, the South Carolina Supreme Court found that a proposed grant of money from the County of Florence to a regional health services district for expenditure in support of construction of a new regional hospital to be leased to a private nonprofit corporation was constitutional. The Court in Gilbert concluded that the proposed transaction "is clearly within the County's corporate purposes for which the expenditure of tax funds is authorized ... ." 227 S.E.2d at 182. The foregoing case and opinion of this Office is further authority for support of the proposed grant of funds at issue here.

Accordingly, based upon the foregoing, in our opinion, it is highly probable that the public interest will be substantially served by the grant referenced in your letter. Nichols, supra. You note that these funds are absolutely necessary to complete the Region IV Discovery Center project. It is apparent to us, and we believe would be to a court as well, that the Discovery Center would directly benefit the public as a public purpose – the promotion of tourism in South Carolina.

This does not end our inquiry, however. Article X, § 11 of the South Carolina Constitution 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. Neither the State nor any of its political subdivisions shall become a joint owner of or stockholder in any company, association, or corporation.

Thus the question is what is meant in Art. X, § 11 by the term "pledge[] or loan[] " of the "credit" of the State and whether a grant of funds to SCNHC, such as you have described, contravenes this provision. Our own Supreme Court has stated that the purpose of Article X, § 11 [formerly Art. X, § 6] is "to prevent the State from entering into business hazards which might involve obligations of the public." Chapman v. Greenville Chamber of Commerce, 127 S.C. 173, 120 S.E. 584 (1923). The word "credit" has been construed to mean any "pecuniary liability" or "pecuniary involvement." Elliott v. McNair, supra.

In Carll v. S.C. Jobs-Economic Development Authority, supra, the Court concluded that programs which provide affordable capital and management assistance to eligible South Carolina businesses did not contravene Art. X, § 11. Plaintiff argued in that case that the Act authorized the Jobs-Economic Development Authority (JEDA) to "pledge its assets, including all real and personal property" to the program thereby unconstitutionally pledging the State's credit to private corporations. However, the Court noted that the Act creating JEDA prohibited the authority from obligating itself except with respect to program funds and "cannot incur a pecuniary liability or a charge upon the general credit of the authority or of the State or against the taxing powers of the State." In the Court's view, "[t]his disclaimer is sufficient to protect the State from pecuniary obligations." 327 S.E.2d at 335 (emphasis added). The Court further commented as follows:

> [i]n Elliott v. McNair, we discussed the purpose behind the constitutional limitation: "... the word 'credit' ... was intended to protect the state from pecuniary liability ...." Elliott v. McNair, 250 S.C. 75, 86, 156 S.E.2d 421 (1967). The Act in no way imposes any pecuniary liability on the State. Appellant speculates that if the Authority defaults on its bonds, the State may choose to pay off the bonds.
>
> The purpose of the constitutional limitation is to prevent the State from being obligated to use State tax revenues to pay off the bonds. Elliott v. McNair, supra; Bauer v. South Carolina State Housing Authority, supra; and State ex rel. Medlock v. South Carolina Family Farm Development Authority, 279 S.C. 316, 306 S.E.2d 605, 609 (1983).

Id.

The Court also commented upon the meaning of Art. X, § 11 in Nichols. In that case, the South Carolina Research Authority had stipulated that, in some instances, it intended "to pledge its assets through mortgage or other encumbrance of its property to secure the obligations of high technology industries which locate in its research parks." The Circuit Court held that such a mortgage would indeed pledge the State's credit. The Authority argued that the pledge of 1500 acres did not constitute a pledge of the State's credit within the meaning of the constitutional provision. Our Supreme Court agreed, stating that "the 1500 acres represents a known, quantifiable asset imposing no potential taxpayer liability, now or in the future." 351 S.E.2d at 158. Nichols cited with approval Haesloop v. City Council of Charleston, 123 S.C. 272, 115 S.E. 596 (1923), "in which an ordinance donating city owned land to a private developer for erection of a tourist hotel was held valid as a public purpose." Id. Thus, the Court held "that the mortgaging of the 1500 acres by the Authority does not constitute a pledging of the State's credit." Id.

Moreover, in Caddell v. Lexington County School Dist. No. 1, 296 S.C. 397, 373 S.E.2d 598 (1988), the Court held that a lease-purchase arrangement containing a so-called "non-appropriation clause" under which the school district could decline, without penalty, to renew the annual lease by failing or refusing to appropriate the necessary funds did not constitute "general obligation debt." The Court referenced Nichols v. South Carolina Research Authority, supra as dispositive of any argument that "because the District would temporarily lose the use of its property upon an election not to renew, the lease-purchase agreement constitutes pledges of the District's credit." In the Court's view,

> [w]e rejected a similar contention in Nichols v. South Carolina Research Authority, supra., In Nichols, the Budget and Control Board deeded 1500 acres of state-owned property to the Authority. The Authority, in turn, sought to mortgage the acreage to secure obligations of privately owned firms locating in its industrial parks. Notwithstanding that the property could be permanently lost upon a business failure, we held that the mortgage, which covered a known and quantifiable asset only, was not a pledge of the State's credit in that it imposed no potential taxpayer liability.
>
> Likewise, the District's lease of land and school buildings to the Corporation imposes no potential taxpayer liability. Indeed, the potential detriment to the District is less than that created by the mortgage in Nichols. Here, the ownership of the land and buildings could never be impaired by an election not to renew; at most, the use of the property would be lost for a limited period of time.

373 S.E.2d at 599. See also, Redmond v. Lexington Co. School Dist. No. Four, 314 S.C. 431, 445 S.E.2d 441 (1994).

Other jurisdictions have analyzed similar constitutional provisions with the same result. For example, in Callan v. Balka 248 Neb. 469, 536 N.W.2d 47 (1995), the Nebraska Supreme Court summarized a constitutional prohibition against the giving or loaning of credit thusly:

> [w]e also stated that the purpose of Article XIII, § 3, is to prevent the state or any of its governmental subdivisions from extending the state's credit to private enterprise ... . " It is designed to prohibit the state from acting as a surety or guarantor of the debt of another." Haman [v. Marsh, 237 Neb. 699, 467 N.W.2d 836 (1991)], 237 Neb. at 718, 467 N.W.2d at 850. We noted that the first question involving the statute was whether it involved the "credit of the state." "The state's credit is inherently the power to levy taxes and involves the obligation of its general fund." Id. at 719, 467 N.W.2d at 850. In noting the distinction between the loaning of state funds and the loaning of the state's credit, we stated that a loan of state funds places the state in the position of a creditor, and the loan of credit places the state in the position of a debtor.

536 N.W.2d at 51.

Moreover, in Minnesota Energy and Econ. Devel. Auth. v. Printy, 351 N.W.2d 319 (Minn. 1984), the Supreme Court of Minnesota upheld a loan program noting that "[t]his case does not present unrestricted pledges to insure bonds or insure loans out of future tax revenues." The Court observed that "[i]t is clear from the Act, the structure of the bonds, agreements, and loans in question that future tax appropriations are not required to be used to insure the bonds or loans in question." 351 N.W.2d at 348.

Likewise, a number of other cases have recognized that expenditure of present appropriations or grants-in-aid typically do not pledge the credit of the State. For example, in the case of In re Interrogatories By The Colorado State Senate, 193 Colo. 298, 566 P.2d 350 (1977), the Colorado Supreme Court, sitting en banc, stated that

> [t]he appropriation does not constitute a pledge of the state's credit in violation of section 1, article XI of the Colorado Constitution. ... First, since no debt is created, there is no lending of credit. When no debt or obligation of the state is created, the state cannot be said to have lent its credit in violation of article XI, section 1.

See also, Craig v. North Mississippi Community Hospital, 206 Miss. 11, 30 So.2d 532 [statute extending grants in aid with funds appropriated from those already in state treasury for care of indigent sick in hospitals in the state not invalid as an attempt to pledge or loan credit of the state]; Hager v. Ky. Children's Home Soc., 119 Ky. 235, 83 S.W. 605 (1904) [an appropriation for $15,000 annually to a private corporation for purely charitable purposes – providing destitute children with homes – is not unconstitutional as a loan of credit to the corporation]; Bedford Co. Hosp. v. Browning, 189 Tenn. 227, 225 S.W.2d 41 (1949) [citing Hager and Craig with approval]; Betz v. Jacksonville Transportation Authority, 277 So.2d 769 (Fla. 1973); Johns Hopkins Univ. v. Williams, 199 Md. 382, 86 A.2d 892 (1952); Conder v. University of Utah, 123 Utah 182, 257 P.2d 367 (1953) [loan agreement to finance building of dormitories whereby university would pledge income from

state land funds does not contravene constitutional prohibition against pledging the credit of the State].

In Johns Hopkins, supra, the Court recognized a clear distinction between a grant or gift and a pledge of the state's credit. The Court noted that

> [c]ash is not credit. Credit is sometimes a means of procuring cash, but the word is never used to describe a gift of cash. There is no prohibition in the Constitution against making appropriations to private institutions, provided the purpose is public, and thousands and thousands of dollars are appropriated out of the annual receipts every year. If the State should have a balance of a million and a half in its treasury from annual receipts, there could be no constitutional objection to its giving this amount to the Johns Hopkins University for the construction of an engineering building. If the State does not have this amount available, but borrows it and then gives the cash to the University, which is what it is attempting to do, it is not giving or loaning its credit to, or in aid of, the university – it is using its credit with banking institutions to borrow the money, and it is giving the University its cash.

86 A.2d at 901. And in Betz, the Court said the following:

> [t]hese [private] companies are not given any right in these contracts to look to any other public body to pay any of the sums stipulated in said contracts. Payment under these contracts are to be made by the Authority from the operating earnings and from the described grants of funds already appropriated and allocated to the Authority .... .
>
> In sum, we find that the purchase of the bus system is to be a completed transaction consummated with the use of duly granted and appropriated federal, state, and city revenues, and is not a purchase on a deferred basis requiring the issuance of bonds; that the aid of the City of Jacksonville provided through the use of municipal funds was for the public acquisition and operation of the bus system and the same was duly authorized by law; that such purchase was an acquisition predominantly for public purposes and did not constitute an extending of public funds or credit to aid private corporations .... .

277 So.2d at 772

And, as noted above, the Court in Gilbert v. Bath, supra held that the proposed grant of money by Florence County for the construction of a new regional hospital to be leased by a private, nonprofit corporation did not violate Article X, § 6, the predecessor to present Article X, § 11. While a lease agreement was involved in Gilbert, it is evident that the grant of funds by Florence County did not constitute a "pledge of credit" by the county to the private corporation.

Based upon the foregoing authorities, it is our opinion that the proposed grant would not contravene Article X, § 11. In our view, since the funds, consisting of $180,000, have already been appropriated by the General Assembly and are quantifiable, no pledge of the State's "credit" is involved. Because the proposed expenditure of these funds will be used by SCNHC for a public purpose – the facilitation of the securing of property for SCNHC's Region IV Discovery Center – no contravention of Article X, § 11 is, in our opinion, here involved. See, Gilbert v. Bath, supra.

Neither do we believe that the proposed transaction violates Article XI, § 4 of the South Carolina Constitution which prohibits the use of public funds for the "direct benefit" of a "private educational institution" in this State. In our opinion, for PRT to provide a grant to SCNHC is not giving a direct benefit to a private educational institution as that term was intended by Article XI, § 4. The constitutional prohibition was instead intended to reach "educational institutions" in the traditional sense of the word, i.e. private schools and colleges.

Conclusion

In our opinion, based upon the foregoing authorities and the facts as you have referenced them, the proposed expenditure of $180,000 by PRT to SCNHC is constitutionally valid. The expenditure to insure that SCNHC obtains funding for the refurbishing of the proposed Discovery Center location in Charleston is for a public purpose – the promotion of tourism in South Carolina. Secondly, it is our view that Article X, § 11 of the South Carolina Constitution is not violated by the expenditure because a lending or pledge of the State's credit is not involved. A grant or donation of State funds already appropriated does not, in our opinion, pledge the credit of the State. Third, Article XI, § 4 of the State Constitution is not contravened because the funds do not directly benefit a "private educational institution" in the traditional sense or the meaning of the Constitution.

You have further advised that there exist no restrictions by the General Assembly regarding the expenditure of these funds in the manner described which would preclude such expenditure. So long as PRT insures that this grant is expended as described above, the grant would, in our opinion, be constitutionally valid.

Yours very truly,

Henry McMaster

HM/an