



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

February 21, 2003

Ms. Belinda Davis-Branch, General Counsel:
South Carolina State University
300 College Street, Northeast
Orangeburg, South Carolina 29117-0001

RE: Use of Public Funds to Purchase Water Coolers

Dear Ms. Davis-Branch:

You have requested an opinion of this office concerning whether the use of public funds to purchase water coolers for South Carolina State University's (SCSU's) employees constitutes a proper expenditure. By way of background, you provide that

In 1998, the SC Department of Labor, Licensing & Regulation, Division of Labor (LLR) issued a report indicating that water samples collected from various locations on SCSU's campus exhibited unacceptable levels of lead. The report further indicated that the source of the lead could not be determined.

In your request you stated that until the problem has been eliminated, SCSU has purchased water coolers to provide safe drinking water for the employees. The University purchased these coolers with monies from its state funded budget.

Law / Analysis

It is well-settled that the expenditure of state funds must be for a public, not a private purpose. Elliot v. McNair, 250 S.C. 75, 156 S.e.2d 421 (1967); Haesloop v. Charleston, 123 S.C. 272, 115 S.E. 596 (1923). The South Carolina Supreme Court defined a "public purpose" in Anderson v. Baehr, 265 S.C. 153, 217 S.E.2d 43 (1975), saying that "[as] a general rule a public purpose has for its objective the promotion of public health, safety, morals, general welfare, security, prosperity and contentment of all the inhabitants or residents, or at least a substantial part thereof." The expenditure of public funds does not have to benefit all people in order to constitute a public purpose. Expenditures serve a public purpose if they are incidental to the promotion of the public welfare. Nichols v. South Carolina

Ms. Davis-Branch
Page 2
February 21, 2003

Research Authority, 290 S.C. 415, 351 S.E.2d 155 (1986).

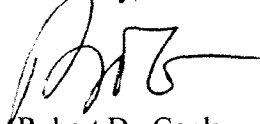
The South Carolina Supreme Court has recognized that the efficiency and welfare of public employees serve a public purpose. Caldwell v. McMillan, 224 S.C. 150, 77 S.E.2d 798 (1953). The Court added that the health and mental alertness of the employees are matters of vital concern to the people of the state.

However, this Office has frequently reiterated that public purpose is not easily defined. Courts decide each case with reference to the object sought to be accomplished and to the degree and manner in which that object affects the public welfare. Op. Atty. Gen., March 16, 1988. The court in Nichols v. South Carolina Research Authority, 290 S.C. 415, 351 S.E.2d 155 (1986), however, provided an analysis to be used to determine whether expenditures meet the requirement of a public purpose. The analysis is as follows: First, determine the ultimate goal or benefit to the public intended by the project. Second, decide whether the beneficiaries are public or private parties. Third, consider the speculative nature of the project. Finally, analyze the probability that the public interest will be served and to what degree.

Several Attorney General Opinions from other states have recognized that certain expenditures which benefit public employees serve a public purpose. A Louisiana Opinion, Op. Atty. Gen. 99-68, stated that a fitness program for the benefit of public employees constitutes a public purpose. The opinion reasoned that such a program promotes the health of the employees and prevents illness and injuries. An Ohio Opinion, Op. Atty. Gen. 77-090, concluded that a state agency can "allow state employees to park free of charge on state property when it is necessary to the efficient operation of the state agency." Finally, an Opinion from the Texas Attorney General provided that the provision of state funding for a child care center for the children of public employees serves a public purpose. Op. Atty. Gen. 94-036.

Of course, this office may advise only as to the legal issues which may arise concerning a particular public expenditure. We express no opinion regarding the policy considerations underlying the expenditure. With these guidelines in mind, here, you indicate that state funding was used to provide a necessity for the employees of SCSU. The LLR report indicated that the University's water contains lead. The purchase of water coolers ensures that the employees of SCSU have access to safe drinking water. Such an expenditure promotes welfare, prevents illness, and may promote the employee's efficiency. The health and welfare of state employees are concerns of the people of South Carolina. Accordingly, based upon the information you have provided, it is our opinion that a court would find that the referenced expenditure serves a valid public purpose.

Sincerely,



Robert D. Cook

Assistant Deputy Attorney General