



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLIE CONDON
ATTORNEY GENERAL

February 14, 2001

The Honorable Herb Kirsh
Member, House of Representatives
532-A Blatt Building
Columbia, South Carolina 29211

RE: Informal Opinion

Dear Representative Kirsh:

By your letter of February 6, 2001, you have requested an opinion of this Office concerning the Fiscal Year 2000-2001 Appropriations Act. The Act allows the State Museum to provide appropriate office space for the South Carolina Museum Foundation Chief Administrative Officer and staff without reimbursement for rent. You have two questions about this provision. First, you ask if the provision can allow the Museum Foundation to occupy the office space without rent reimbursement. Second, you ask if the rent arrangement would violate South Carolina law if the provision did not remain in next year's Appropriations Act.

In response to your first question, we have addressed this issue in a prior opinion of this Office dated May 1, 2000. We concluded that because the State Museum operates for a public purpose, a private, non-profit corporation established solely to benefit the Museum would also operate for a valid public purpose. Thus, state law would not be violated if the office space were provided rent-free. The opinion of May 1, 2000 is enclosed for your review.

The answer to your second question is less clear. If the provision were removed from next year's Appropriations Act, the express statutory authority for the arrangement is lacking. The absence of the General Assembly's express authority does not necessarily mean the Museum cannot provide the office space to the foundation without reimbursement for rent. South Carolina Code of Laws Section 60-13-40 grants the South Carolina Museum Commission the authority to "establish a plan for, create and operate a State Museum" and to "control the expenditure in accordance with law of such public funds as may be appropriated to the Commission." This Office has consistently stated that state law is not violated when public funds are contributed to a non-profit organization if the funds are expended for a proper public purpose. See Op. Atty. Gen. May 13, 1996. We have

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concluded in particular that the State Museum's donation of office space to the Museum Foundation would be for a legitimate public purpose. Thus, even if the proviso were not included in next year's Appropriation's Act, the South Carolina Museum Commission could probably offer the office space to the Museum Foundation without violating South Carolina law.

As a final note, although the office rental arrangement between the Museum and the Museum Foundation does not appear to violate any South Carolina law, we understand that there may be tax implications for the Foundation's 501(c)(3) tax status under this type of arrangement. Regardless of the provisions of next year's Appropriations Act, we would recommend that the State Museum Foundation seek further assistance from a private attorney who specializes in such tax matters.

This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,



Susannah Cole
Assistant Attorney General