



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

May 19, 1995

The Honorable John B. Rhoden
Mayor, Town of Hampton
608 First Street, West
Hampton, South Carolina 29924

RE: Informal Opinion

Dear Mayor Rhoden:

By your letter of May 9, 1995, to Attorney General Condon, you have sought an opinion as to whether the Town of Hampton may go onto private property, close one drainage ditch, and dig another drainage ditch. You state that the Town has had a policy about not going onto private property but in a few cases where the Town has done so, the Town has gotten a release.

You further explained that the drainage ditch now goes across the back of land owned by one of the members of Hampton Town Council. It was dug in the 1940s by the WPA and now it takes a good amount of water from a certain side of town and a shopping center. It goes into a main ditch controlled by the highway department. The council member now has storage buildings on the front part of his land and has asked the Town to close this ditch and dig a new one to where this one now goes. The council member wants to put more storage buildings where the current ditch is. Where the proposed ditch is to go is on private property owned by the council member and other individuals.

You have sought advice from the State Ethics Commission, which agency responded as to the issues that agency would address and referred you to the Office of the Attorney General as to the legal issues.

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As best I can tell from your letter, it appears that the issue is the use of public funds or resources for the benefit of private property or individuals. Article X, Section 5 of the Constitution of the State of South Carolina provides in relevant part that "[a]ny tax which shall be levied shall distinctly state the public purpose to which the proceeds of the tax shall be applied." This Office has opined on numerous occasions that use of public (county or municipal) equipment on private property, within the context of Article X of the South Carolina Constitution, is generally prohibited. See Ops. Att'y Gen. dated June 4, 1990; September 30, 1987; April 2, 1987; January 31, 1980; March 12, 1979; July 11, 1978; December 9, 1975; and September 12, 1975 (copies enclosed).

To determine what constitutes a public purpose, the reasoning found in Anderson v. Baehr, 265 S.C. 153, 217 S.E.2d 43 (1975), is helpful:

As a general rule a public purpose has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all the inhabitants or residents, or at least a substantial part thereof. ...

Id., 265 S.C. at 162. To be a public purpose, the advantage to the public must be direct, not merely indirect or remote. Caldwell v. McMillan, 224 S.C. 150, 77 S.E.2d 798 (1953). The court in Anderson v. Baehr stated that each case must be determined on its own merits, considering each situation.

Because the determination of whether a particular expenditure of public funds would necessarily involve the determination of facts, and since this Office has no jurisdiction or authority to undertake the determination of facts, see Op. Att'y Gen. dated December 12, 1983, such a decision to expend public funds in the manner described above can only be made by the Hampton Town Council after a consideration of all relevant facts and circumstances, in accordance with the constitutional provision discussed above and in the enclosed opinions. Of course, the guidance of the State Ethics Commission as to ethical considerations must also be taken into account in the decision-making process. You may wish to share the enclosed opinions with the attorney who ordinarily advises Town Council, to obtain his views on the issue.

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 questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion. I trust that it is as responsive to your inquiry as is possible under the circumstances.

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With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

Enclosures