



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

January 9, 1996

The Honorable Glenn F. McConnell
Senator, District No. 41
311 Gressette Building
Columbia, South Carolina 29202

Re: Informal Opinion

Dear Senator McConnell:

You have asked "whether the Hunley Commission may act as a sponsor for a fund-raising dinner which is being planned to commemorate the sinking of the USS Housatonic by the H. L. Hunley on February 17, 1864." You state as follows:

[a]fter talking with representatives of the City of Charleston's Mayor's Office, I believe that the dinner will be arranged by the City of Charleston and that all profits made from the dinner will be donated to the Fund to Save the Hunley to defer costs relating to the raising, curation and display of the Hunley. In addition to raising monies for the Fund to Save the Hunley, the dinner will serve as a forum to educate the public about the Hunley and the State of South Carolina's efforts to raise the submarine and site it in South Carolina.

I see no reason why the Hunley Commission may not participate in this endeavor. Our Supreme Court long ago recognized that

[m]unicipal and public corporations may be the objects of public and private bounty. This is reasonable and just. They are in law, clothed with the power of individuality. They are placed by law under various obligations residing

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within restricted and narrow limits, to meet which, property and revenues are absolutely necessary, and therefore legacies of personal property, devises of real property and grants or gifts of either species of property directly to the ... corporation for its own use and benefit, intended to and which have the effect to ease it of its obligations or lighten the burden of its citizens, are, valid in law in the absence of disabling or restraining statutes.

McIntosh v. Charleston, 45 S.C. 584, 587 (1895). The State has the right to acquire personal property by purchase, gift or otherwise. Silvette v. Art Comm. of Commonwealth of Va., 413 F.Supp. 1342 (E. D. Va. 1976); Adkins v. Katter, 287 S.W. 388 (Ark. 1926). It is the prerogative of the State to derive revenue from sources other than by taxation. Schaffer v. Oxford, 117 S.E.2d 637 (Ga. 1960). Public officials may accept gifts for the state under color of law. Adkins v. Katter, *supra*.

In Advisory Op. to the Gov., 200 So.2d 534 (Fla. 1967), the Florida Supreme Court advised that the Governor of Florida could validly solicit and receive contributions from citizens of the State to assist in financing the Governor's "War on Crime". Specifically, the funds raised were to be used to fund investigative positions under the Office of the Governor. The Court stated that

[w]e find nothing in the State Constitution that precludes the receipt and use by the state or its officials of contributions from citizens provided the same are received and used for a public purpose in the manner authorized by the Legislature.

Id. at 536. In a subsequent opinion, the Court reiterated:

[e]mployment of gubernatorial special investigators, without police power ... is a public function for the support of which you, as Governor, ... may receive contributions of money from private sources.

Advisory Op. to Gov., 201 So.2d 226, 227 (Fla. 1967). The Court stressed, however, that such funds became "public funds" immediately upon receipt and, therefore, all the restrictions placed by law upon the expenditure of such funds became applicable.

Recently, in an Opinion of this Office, we approved with certain caveats, the acceptance by Union County of contributions from members of the general public to be

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used in helping to defray the costs of a highly-publicized prosecution. Op. Atty. Gen., January 25, 1995. There, we stated:

[b]ased upon these authorities, citizens may [contribute] and validly require that use of a contribution to the County be conditioned upon its use in the [particular criminal] ... case It should also be remembered that once such funds are donated to the County, they become public funds just as though they had originated as county revenues. See, Op. Atty. Gen., November 15, 1985 [in order to be public money, "it does not matter whether the money is derived by ad valorem taxes, by gift or otherwise," citing Elliott v. McNair, 250 S.C. 75, 156 S.E.2d 421 (1967)]. While such funds are designated for use in the [criminal] ... case by the private citizens who donate them, they are still subject to the same limitations and restrictions as any other public monies belonging to the County.

Clearly, the purposes for which funds will be raised here -- historic preservation and education of the public -- are valid public purposes. In Mims v. McNair, 252 S.C. 64, 165 S.E.2d 355 (1969), our Supreme Court upheld the issuance of bonds for support of the Tricentennial celebration in South Carolina. The Court stated:

[t]he Tri-Centennial Commission was created by Act No. 1141 of 1966 "to plan an overall program for the celebration of the 300th Anniversary of the founding of the State of South Carolina." The proposed published plans include the development of Old Town in Charleston County, the place where the first settlement was made, and the acquisition and construction of public facilities in Richland and Greenville Counties to commemorate the 300th Anniversary. These sites will thereafter be used as public parks or historical attractions for the people of South Carolina. There are no restrictions imposed by the Constitution upon the purposes for which the Legislature may levy taxes and expend public funds, except that it be a public purpose. Gaud v. Walker, 214 S.C. 451, 53 S.E.2d 316. The funds to be allocated to the Tri-Centennial Celebration from the bond proceeds are to be used for historical and recreational purposes. Powell v. Thomas, 214 S.C. 376, 52 S.E.2d 782; Marshall v. Rose, 213 S.C. 428, 49 S.E.2d 720.

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Therefore, if the State may pledge its credit to construct exhibitions for historic celebrations, it would seem evident that the State could lend its name as a sponsor to raise funds for the salvage, repair and display of the first submarine to sink an enemy vessel in wartime. The General Assembly created the Hunley Commission by S.844 of 1995, a concurrent Resolution. The Commission is authorized to

... make a study of the law regarding the rights to the salvage of the "Hunley", a Confederate submarine, and any claim that a person or entity may assert with regard to ownership or control of the vessel. The committee is authorized to direct the Attorney General on behalf of South Carolina to take appropriate steps to protect and enforce the rights of the State of South Carolina to the salvage of the Hunley and to defend the State against claims regarding this vessel and to make recommendations regarding the appropriate method of preservation of this historic vessel. (emphasis added).

In my judgment, the use of the Hunley Commission's name to raise funds "to defer costs relating to the raising, curation and display of the Hunley" would constitute a valid purpose and would be entirely consistent with the charge by the General Assembly to the Commission set forth in S.844 of 1995.¹

Therefore, where private contributions are solicited and donated to the City of Charleston as part of the "Save the Hunley" fund, to be used to defray the costs of raising, curating and displaying the "Hunley", the Hunley Commission may serve as a sponsor for such fund-raising event.²

¹ It is not uncommon for the General Assembly to authorize local bodies to solicit funds and accept donations from various sources which may be expended in carrying out the body's objective. See, e.g., Op. Atty. Gen., October 14, 1994; Op. Atty. Gen., December 28, 1988.

² The State Ethics Commission has advised previously that the solicitation of funds by an agency for public purposes is not violative of the State Ethics Reform Act. SEC A093-028 (October 21, 1992). The Commission opined:

Section 8-13-705 prohibits the solicitation or receipt of anything of value by a public official, public member or public employee in return for being influenced. The

(continued...)

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This letter is an informal opinion only. It has been written by a designated Assistant Deputy 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.

With kind regards, I am

Very truly yours,



Robert D. Cook
Assistant Deputy Attorney General

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²(...continued)

Commission does not believe that the provision of goods or funds to be GAL Program are ipso facto violations of Section 8-13-705. In Advisory Opinion SEC A092-172 and SEC A092-211, the Commission expressed the need for the establishment of guidelines for solicitation and donation so as to minimize the possibility of undue influence. ...

The prior opinions mentioned above have advised that private business support of agency activities is not prohibited if given to assist the agency in carrying out its agency responsibilities. Any funds, goods or services so solicited should be properly accounted for and should be used for the purpose of carrying out agency responsibilities.

As the Ethics Commission is the agency primarily responsible for interpreting the Ethics Act, the Hunley Commission may wish to consult with the Ethics Commission to insure that these interpretations remain current.

Moreover, the Hunley Commission may also wish to consult with the Secretary of State regarding the potential applicability of the Charitable Solicitation Act. See, Section 33-55-10 et seq.; Section 33-55-60(7) [charitable organizations seeking exemptions to submit to the Secretary of State].