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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

November 19, 1996

The Honorable Thomas C. Alexander
Senator, District No. 1
150 Cleveland Drive
Walhalla, South Carolina 29691

Re: Informal Opinion

Dear Senator Alexander:

You have requested an opinion as to "whether Oconee County which approves the School District of Oconee County's budget, can apply for a grant and have the grant funds, if approved, be administered by the School District." You are concerned about the effect which an Opinion of this Office dated March 6, 1979 Opinion "did not address funds obtained through a grant that outlined the School District as being the recipient of those funds under the grant proposal submitted."

LAW \ ANALYSIS

The March 6, 1979 Opinion questioned whether, pursuant to Article X, Section 6 of the South Carolina Constitution, the Oconee School District could validly "transfer general county tax funds to the Oconee County School Board to the latter's use for school purposes during a given fiscal year but after the school taxes levied for that year have been expended ... ." While the Opinion referenced a number of cases decided by the South Carolina Supreme Court which had held that education was a valid county purpose, the Opinion writer nevertheless, was of the view that

> [t]hose cases were decided before the enactment of new Article X of the South Carolina Constitution, however, and, in

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> my opinion, certain provisions of new Article X may no longer allow this practice. Section 5 of Article X provides in 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.' See, State v. Osborne, 193 S.C. 158, 7 S.E.2d 526. Section 14(4) of Article X provides in part that any political subdivision of this State, including a county, which incurs general obligation debt can do so 'only for a purpose which is a public purpose and which is a corporate purpose of the applicable political subdivision'. ... While education undoubtedly subserves a public purpose, it may no longer be a corporate purpose of a county. ... Consequently, a county may no longer be authorized to use general county tax funds for educational purposes but, instead, may be limited, insofar as the funding of educational purposes is concerned, to the levying and appropriation of school taxes only. This conclusion is borne out by other provisions of new Article X of the State Constitution which empower all political subdivisions, including school districts, to incur bonded indebtedness without limitation so long as an approving referendum is first held. See, e.g., S.C. CONST. art. X, Sec. 15(5). The intent of the General Assembly, in authorizing all political subdivisions to incur bonded debt without limitation pursuant to an election, was, in part, to make them self-sufficient and to do away with any necessity for one political subdivision to assist in financing the activities of another because of the latter's inability to do so.

The Opinion also cautioned that its conclusion "is not free from doubt, however, inasmuch as the South Carolina Supreme Court has in the past authorized such assistance."

However, in a subsequent opinion, Op.Atty.Gen. No. 85-5 (January 21, 1985), this Office concluded that a contribution of funds by a county to assist in the construction of a performing arts center constituted a valid public and corporate purpose. Therein, we referenced Smith v. Robertson, 210 S.C. 99, 415 S.E.2d 631 (1947) where our Supreme Court had upheld the issuance of bonds by Charleston County for the construction of a teaching hospital by the Medical University of South Carolina. We also concluded that the change in Article X, § 14(4) would not affect the earlier decisions of the South Carolina Supreme Court holding that contributions by a county to another governmental

entity for a variety of purposes such as education is a valid corporate purpose of a county. We said:

> [i]t is true that the majority of the foregoing decisions were rendered prior to the adoption of new Article X of our Constitution and before the enactment of the Home Rule Act. See, Sec. 4-9-10 et seq. However, it would appear that these prior decisions are consistent with the aforesaid newly adopted provisions of law.

And in an opinion dated January 30, 1978, this Office concluded that Fairfield County Council was authorized to transfer surplus general county funds to the Fairfield County Board of Education for the latter's use in school matters. While the Opinion, like the March 6, 1979 Opinion, cautioned that education "may not be a corporate purpose of a county", the Opinion reasoned that since the cases decided prior to the new Article X such as Gilbert v. Bath, 267 S.C. 171, 227 S.E.2d 177 (1976) had not been overruled by the Court, such cases were still valid.

Gilbert held that a contribution of funds by a county for the construction of a full service regional teaching hospital did not violate Art. XI, § 4 of the Constitution forbidding the use of public funds for the benefit of any private educational institution. The Court concluded that "[t]hose educational functions are positive factors in treating the sick, and it is illogical to conclude that such functions would convert the facility into a private educational institution within the language of the constitution."

Furthermore, Art. VIII, § 13 of the South Carolina Constitution provides that

> [a]ny county, incorporated municipality, or other political subdivision may agree with the State or with any other political subdivision for the joint administration of any function and exercise of powers and the sharing of the costs thereof.
>
> Nothing in this Constitution may be construed to prohibit the State or any of its counties, incorporated municipalities, or other political subdivisions from agreeing to share the lawful cost, responsibility, and administration of functions with any one or more governments, whether within or without this State.

Art. VIII, § 17 also provides that the powers of counties "shall be liberally construed in their favor" and shall include those powers "not prohibited" by the Constitution. Based upon the foregoing authorities, it certainly can be argued that education remains a corporate purpose of a county.

Notwithstanding this issue, however, it would appear that your situation is more clearly guided by the case of Charleston County School District v. Charleston Co., 297 S.C. 300, 376 S.E.2d 778 (1989). There a county withheld federal funds from a school district. The County had received such funds from the State of South Carolina pursuant to a federal statute, 16 U.S.C. Sec. 500 (1976) which provided funds from the State to be earmarked for public schools and roads in counties where a national forest is located. Funds were required to be distributed to school districts in Charleston County pursuant to an Act of the General Assembly.

After a time, the County ceased distributing the funds on the basis that the Act of the General Assembly was invalid. The Court held that because the Act dealt with education, it was not invalid pursuant to the Constitution and Home Rule. Thus, the County could properly distribute the monies to the school district.

Likewise, it is our understanding that, here, Oconee County is not generating the revenues it will pass on to the School District by virtue of its own taxation. Instead, it is my information that the County would simply distribute these funds as part of a grant. Thus, the 1979 Opinion is not really applicable to this situation. In my judgment, Oconee could distribute grant monies originating from the State in the same way that the county did in the Charleston County School District case.[1]

Thus, consistent with Charleston School District, I see no reason why the March 6, 1979 opinion would prevent the County from distributing grant monies to the school district. I limit my conclusions to the question of the applicability of the March 6, 1979 Opinion.

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.

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[1] Of, course, I presume as there was in Charleston School District, there is here some statutory enactment authorizing the County to distribute the grant monies, generally.

With kind regards, I am

Very truly yours,

Robert D. Cook
Assistant Deputy Attorney General

RDC/ph