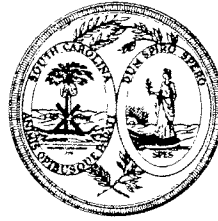


6427 Giberney



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

December 17, 1997

The Honorable John Courson  
Chairman, Strom Thurmond Monument Commission  
P. O. Box 12003  
Columbia, South Carolina 29211

Dear Senator Courson:

In a recent letter to this Office, you note that the Strom Thurmond Monument Commission, which was created by the South Carolina General Assembly to establish a monument on the State House grounds to recognize the service of Senator Strom Thurmond, is raising funds entirely from private sources to pay for the monument. As you indicate, Senator Thurmond has served his native state and nation throughout most of this century as a citizen, soldier, educator, judge, Governor, United States Senator and statesman. You state that the monument "will be in the form of statuary, depicting the Senator, and emphasizing his historic service." You further note that

[d]uring the course of this project, we have received inquiries from private educational foundations who would like to make contributions. They have asked whether this project would be considered educational in nature under South Carolina Law. As a sponsor of the resolution that authorized this project and Chairman of the Commission, I think it is fair to say the intent was, and is, to create a monument that will offer a strong educational message for generations to come about the remarkable service of a world-famous native son.

However, before we responded to inquiries of this nature, I thought it would be wise to seek an advisory opinion from your office on the question of whether, under South Carolina Law, contributions to the Strom Thurmond Monument Commission could appropriately be considered educational in nature.

*Request Letter*

Law / Analysis

The question of whether a particular activity is "educational" in nature or serves an "educational purpose" has been addressed by this Office on several occasions. In Op. Atty. Gen., Op. No. 85-127 (October 29, 1985) we dealt with the issue in the context of The Educational Trust Fund of Employees for Made In U.S.A. The purpose of such organization was to conduct a campaign through the media, promoting American made textile products. In that opinion, we found that an "educational activity is by no means limited to traditional education." In fact, we observed, education includes

'[w]hatever results in the spread of knowledge, the dissemination of useful information, the training and discipline of the mind, the discovery of the truth, and in the accomplishment of numerous similar ends, increases culture and extends civilization and obviously is of the highest value to mankind. Bogert, Trusts and Trustees, s 375. The propagation of particular ideas is considered 'educational' in nature and is thus charitable. See, 12 A.L.R. 2d 849. Moreover, our Supreme Court has held that informing the public about the virtues of a particular industry which constitutes an essential part of the economy of the community is educational.' Powell v. Thomas, 214 S.C. 376, 386, 52 S.E.2d 782 (1949); see also, Oklahoma State Fair and Exposition v. Jones, 44 F.Supp. 630 (W.D. Okla. 1942).

In Op. Atty. Gen., Op. No. 2724 (August 21, 1969), we concluded that monies appropriated by the county to celebrate the South Carolina Tricentennial festivities in Anderson County were for an "educational purpose." We noted that the Tricentennial Commission was created for the purpose of celebrating the importance of the first permanent settlement in South Carolina and to establish a series of historical projects to show the achievements of this State since its founding. Finding that a county could properly expend county tax monies for "educational purposes," we were of the opinion that such expenditures were within the authority of Anderson County. We stated that

[a]mong the purposes for which counties may properly expend public moneys is 'educational purposes.' The program undertaken by the Tricentennial Commission can, in the opinion of this office, be characterized as coming within the scope of this permissible object for the expenditure of county funds. There is some question as to whether the mere

celebration of an event by parades and ceremonies would be a proper county purpose, but the celebration of the Tricentennial involves research into the history of the State and a demonstration of the progress of this State since the first settlement thereof in 1670.

Thus, it was the "opinion of this office that the entire Tricentennial program would most probably be viewed [by the Supreme Court] ... as serving an educational purpose."

Moreover, in Powell v. Thomas, *supra*, our Supreme Court concluded that bonds issued for the Chester County Cattle Barn and Show Ring served an educational purpose even though such use did not necessarily conform to the traditional form of education. The Court concluded that "it may be reasonably inferred that the proposed undertaking is of an educational nature designed to disseminate among farmers, for practical purposes, scientific knowledge for the improvement of the cattle and milk business." Quoting from Briggs v. City of Raleigh et al., 195 N.C. 223, 141 S.E. 597, 599, the Court reasoned that "education" was much broader in scope:

"The purpose and design of a state fair is to promote the general welfare of the people, advance their education in matters pertaining to agriculture and industry, increase their appreciation for the arts and sciences, and bring them in closer touch with many things which otherwise might remain in reserve or 'caviare to the general,' to borrow an expressive phrase from Shakespeare's Hamlet."

214 S.C. at 386-87.

Courts in other jurisdictions have found a variety of endeavors to constitute "educational" activities. For example, in Kibbe v. City of Rochester, 57 F.2d 542, 549 (D.W.D.N.Y.), the Court held that a library and fine arts building served to promote education. Greenman v. Phillips, 217 N.W. 1 (Mich. 1928) concluded that a playground for children was an educational purpose. In Re Evergon's Will, 52 N.Y.S.2d 395, 401 deemed a museum as facilitating education. An experimental station has been found to serve an educational purpose. State v. Murphy, 210 N.W. 53, 54 (N.D. 1926), as has a church summer camp for children. Flathead Lake Metho. Camp v. Webb, 399 P.2d 90, 93 (Mont. 1965). In the latter case, the Court concluded that the term "'educational purposes' is not, by the weight of authority, defined in terms of the common scholastic institutions of grammar school, high school, and university or college." 399 P.2d at 93. And in Fitchburg Hous. Authy. v. Bd. of Zoning Appeals of Fitchburg, 380 Mass. 869,

873, 406 N.E.2d 1006 (Mass. 1980), the Massachusetts Court held that a residential facility in which formerly institutionalized, but educable adults, with histories of mental difficulties, would live while being trained in skills for independent living was a use for a "public education purpose." The Court noted that "it has long recognized 'education' as 'a broad and comprehensive term.'" Adding that "[t]he proposed facility would fulfill a significant educational goal in preparing its residents to live by themselves outside the institutional setting," the Court found there to be a clear "educational purpose" involved.

Courts have also concluded that historic homes and artifacts serve educational purposes. See, e.g., Manning Assoc. v. Commissioner of Internal Revenue, 93 T.C. No. 50, 67, Tax Ct. Rep. (CCH), 46, 158, Tax Ct. Rep. DCC. (P-H) 93.50 ("Obviously, the Manning homestead is a historic structure and its preservation and display of colonial artifacts therein certainly serve an educational purpose." Finally, in Opinion of the Justices, 297 Mass. 567, 8 N.E.2d 753 (1937), the Court, in upholding a statute authorizing the City of Salem, Massachusetts to acquire certain land for a memorial to the sailors of Salem, said this:

[t]he land authorized to be taken in the proposed statute is also described as an 'historic monument.' The word 'monument' in its common use means ordinarily a shaft, statue, or memorial of stone, bronze, or other appropriate material. It has a more comprehensive sense as comprising a structure or a place designed to commemorate an important event, to honor distinguished service, or to perpetuate the memory of a notable individual or a highly useful class in the community. Rhode Island Hospital Trust Co. v. Benedict, 41 R.I. 143, 145, 146, 147, 103 A. 146. In its broad signification a monument may denote land or structures dedicated to public historical, patriotic, educational, and recreational purposes. A monument to a great spiritual leader is a public charity. Eliot v. Trinity Church, 232 Mass. 517, 521, 122 N.E. 648. A monument may commemorate aspirations and principles, or even the foundations of community prosperity or preeminence. Another purpose of the taking is declared in section 3 of the proposed statute to be 'educational' and 'for the benefit of the public.' The purpose of taking the property, as stated in the proposed statute, in our opinion constitute a public use in a constitutional sense. [citations omitted].

The Honorable John Courson  
Page 5  
December 17, 1997

For the foregoing reasons, it is our opinion that the proposed monument to the tireless work and to the lasting achievements of Senator J. Strom Thurmond would constitute an "educational purpose." Clearly, Senator Thurmond has been and continues to be a major public figure in South Carolina history. His remarkable career and voluminous record of service, not only to his State, but to his country, is virtually without peer. South Carolina has produced few presidential candidates, but Senator Thurmond's name is among those, such as John C. Calhoun, who have offered for the presidency. His first election to the United States Senate -- by write-in -- is unparalleled. His devotion to the strengthening of this Country's military and to the weakening of the federal government's stranglehold over the States has been unwavering. Unquestionably, historians will record that Senator Thurmond's place in this State's history as a member of all three branches of state government -- chief executive, judiciary and legislative, as well as a distinguished member of the United States Senate, is forever preserved. Thus, a monument celebrating his life and attesting to his accomplishments is, without doubt, educational to the people of South Carolina.

With kind regards, I am

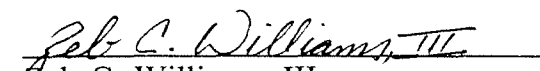
Very truly yours,



Robert D. Cook  
Assistant Deputy Attorney General

RDC/an

REVIEWED AND APPROVED BY:

  
Zeb C. Williams, III  
Deputy Attorney General