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The State of South Carolina

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October 16, 1991

The Honorable Joe E. Brown
Member, House of Representatives
Post Office Box 11034
Columbia, South Carolina 29211

Dear Representative Brown:

You have advised that a portion of the Richland County Recreation District is in the process of being annexed into the City of Columbia; a park owned by the District is located within the property to be annexed. You have asked whether the District could donate the park to the City of Columbia once the area has been annexed; whether the City of Columbia would be required to reimburse the District for federal funds spent on the park; and whether the District may charge fair market value or any other price for the park.

The controlling statute in this case is in Act No. 409 of 1971, which act is to "... Provide For The Taking Of The Property And Facilities Of The District Within Such Annexed Portion And The Payment Therefor." Essentially, when an annexation of a portion of the District into a municipality (i.e., City of Columbia) occurs, the boundaries of the District are redrawn to exclude the annexed area. As to properties such as the park noted above, § 1(c) of the act provides: "All real property and fixtures, facilities, easements, real holdings, rights-of-way, and improvements to the same, and all public improvements held by the district within the annexed area shall become the property of the annexing municipality." (Emphasis added.) The term "shall" generally connotes mandatory action. S. C. Dep't of Hwys. and Public Transportation v. Dickinson, 288 S.C. 189, 341 S.E.2d 134 (1986). Thus, the act clearly contemplates that the park would become the property of the annexing municipality.

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Upon annexation, § 1(b) of the act authorizes the annexing municipality to "assume and pay annually on or before December thirty-first of each year, that portion of the bonded indebtedness of the district, determined as of the day of annexation, equal to the percentage of the assessed value of the taxable real estate of the district so annexed to the municipality." The municipality's opting to assume this portion of the indebtedness becomes important in determining the cost of the park to the annexing municipality. In addition, § 1(f) of the act authorizes the Auditor and Treasurer of Richland County to remove the levy of district taxes for any purpose from the property annexed to the municipality if the municipality opts to assume that portion of the District's indebtedness as outlined above.

Cost of the park to the City of Columbia, upon annexation, is the next consideration. Section 1(d) of the act provides:

> In the event the cost, including the amount of federal grants, to the district of the property and facilities thus transferred to an annexing municipality exceeds the amount of that portion of the district's indebtedness assumed by the municipality, the municipality shall pay such excess amount to the district within one hundred eighty days. [Emphasis added.]

The key consideration appears to be the cost, to the district, of the property and facilities being transferred to the municipality; federal funds or grants expended by the District are not subtracted from the cost. It thus appears that the cost of the park to the annexing municipality is fixed or readily ascertainable by determining the cost to the district of acquiring the facilities and/or property, the total to include federal funds which may have been expended in the process. The municipality would subtract from that cost the amount of the indebtedness it assumes, if any, and pay any remaining amounts to the District within 180 days. No mention is made of fair market value, present day valuation, charges appearing reasonable to the Commission, or any other means of calculating the price to be paid, other than cost to the District.

The act in question seems to contemplate that an annexing municipality will pay for the property of the District which it acquires by annexation, according to the formula in § 1(d), by using the term "shall" in § 1(d). The title of the act, which specifically contemplates the taking of property and "the payment therefor," is often useful in construing a statute. University of South Carolina v. Elliott, 248 S.C. 218, 149 S.E.2d 433 (1966). It thus appears that

the acquiring municipality is to pay for the property it acquires from the District by annexation. 1/

The final question to be decided is whether the park may be donated by the District to the City of Columbia. This District was created by Act No. 873 of 1960 to be a body politic (political subdivision). A review of the powers and duties to be exercised by the governing body of the District, specified in § 5 of Act No. 873 and subsequent acts, does not reveal that the District is expressly authorized to make gifts; ordinarily, political subdivisions have and can exercise only those powers and duties expressly granted by statute or the constitution, or those powers and duties necessarily implied therefrom. Cf., Williams v. Wylie, 217 S.C. 247, 60 S.E.2d 586 (1950); Marshall v. Rose, 213 S.C. 428, 49 S.E.2d 720 (1948). On the other hand, no act pertaining to the District expressly prohibits such a donation, either, although Act No. 409 of 1971 appears to contemplate that the annexing municipality will reimburse the District for property it may acquire in annexations.

Any expenditure of public funds by a political subdivision must be for a public purpose, as required by Art. X, § 5 of the State Constitution. (A donation of property would indirectly amount to an expenditure of public funds.) This Office has examined joint ventures between or among political subdivisions vis a vis contributions of public funds and the public purpose test in opinions such as those dated October 8, 1990; August 7, 1991; January 21, 1985 (copies enclosed); and others. In addition this Office has opined that one political subdivision cannot pledge its credit and taxing power for the sole use and benefit of another political subdivision, in the opinion of August 7, 1991. The governing board of the District would be required to examine the donation, the public purpose to be served thereby, whether such would amount to the use of public funds for the sole use and benefit of another political subdivision, and the effect (if any) that Act No. 409 of 1971 might have on the donation. Certain of these issues require factual determinations which are outside the scope of an opinion of our Office. Op. Atty. Gen. dated December 12, 1983. We cannot say with absolute certainty that a donation of the park to the City of Columbia would be prohibited in light of the unresolved issues.

1/ We recognize that the cost of the property and facilities to the District might not exceed that portion of the indebtedness of the District assumed by the municipality; thus, no additional payment by the municipality may be required under some circumstances.

We trust that the forgoing has satisfactorily responded to your inquiry. Please advise if clarification or additional assistance should be needed.

With kindest regards, I am

Sincerely,

Salley W. Elliott

Salley W. Elliott
Assistant Attorney General

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Enclosures

REVIEWED AND APPROVED BY:

Robert D. Cook

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