

The State of South Carolina



Office of the Attorney General

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January 8, 1991

Jack R. Callison, Esquire
Attorney, Lexington School District Two
501 State Street
West Columbia, South Carolina 29169

Dear Mr. Callison:

You have asked our Office for an opinion as to whether School District Two of Lexington County (hereinafter District) may make what appears to be a one time financial contribution to the West Metro Development Corporation. You indicate that West Metro Development is a non-profit public service corporation organized for the purpose of acquiring and developing real property in the District, either independently or with other public or private entities, where such will promote the public welfare. You advise also that the corporation will assist economic development in the district through: (1) commercial, residential and recreational development; (2) revitalization of older areas of Cayce and West Columbia; and (3) controlled development of remaining raw land in the District. The summary of corporate purpose provided to this office also indicates that the majority of the first year funds will be invested in an income producing real estate site in order that the corporation will become partially self sufficient.

Constitutional and Statutory Considerations

Article X, Sections 5 and 13 of the State Constitution require that indebtedness and expenditure of public funds be made only for a public purpose. S.C.Atty.Gen.Op. dated October 16, 1989. Article X, Section 11 provides that

{t}he credit of neither the State nor
of any of its political subdivisions shall

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be pledged or loaned for the benefit of any individual, company, association, corporation, or any religious or other private education institution...

Article 10, Section 15 of the State Constitution requires that the indebtedness of a school district relate to a public and corporate purpose.

South Carolina Code Sections 59-19-180; 59-19-190; and 59-19-250 permit school districts to purchase, reassign, and dispose of land. South Carolina Code Section 59-19-90(1) regarding general powers and duties of school trustees, provides that trustees may

...{p}rovide suitable schoolhouses in its district and make them comfortable, paying due regard to any schoolhouse already built or site procured, as well as to all other circumstances proper to be considered so as best to promote the educational interest of the districts;...

Also, South Carolina Code Section 59-17-10 permits a school district to contract its school fund, and hold real and personal estates and requires that all be used exclusively for school purposes.

Public Purpose

The South Carolina Supreme Court has noted, in discussing the definition of "public purpose," that it

...has for its objective the promotion of the public health, morals, general welfare, security, prosperity and contentment of all the inhabitants or residents within a given political division.' See Caldwell v. McMillan, 224 S.C. 150, 157, 77 S.E.2d 798, 801 (1953) (quoting other authority).

Public purpose is "a fluid concept which changes with time, place population, economy and countless other circumstances. It is

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a reflection of changing needs of society."
Bauer v. S.C. State Housing Authority,
271 S.C. 219, 227, 246 S.E.2d 869, 872 (1978).

Nichols v. South Carolina Research Authority, 290 S.C. 415, 351 S.E.2d 155, 160 (1986). The Court in Nichols v. South Carolina Research Authority, supra, recognized that the trend regarding "public purpose" is to expand those activities which are properly classified as public. As previously discussed by this Office, the South Carolina Supreme Court in Nichols and Byrd v. County of Florence, 281 S.C. 402, 315 S.E.2d 804 (1984) set forth a four-prong test by which bond issues may be judged to serve a public purpose.

The Court should first determine the ultimate goal or benefit to the public intended by the project. Second, the Court should analyze whether public or private parties will be the primary beneficiaries. Third, the speculative nature of the project must be considered. Fourth, the Court must analyze and balance the probability that the public interest will be ultimately served and to what degree.

Byrd, 281 S.C. at 407. S.C. Atty. Gen. Op. dated March 16, 1988. This Office has opined that each case must be "determined on its own merits as to whether a public purpose is served thereby," and that public funds may be appropriated to a private entity as long as it performs a public function. Id. See also S.C. Atty. Gen. Ops. dated July 12, 1984; November 16, 1983; December 18, 1979; and April 28, 1971.

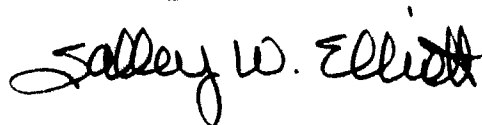
This Office has previously recognized that economic, industrial and recreational development are deemed a public purpose. S.C. Atty. Gen. Ops. March 16, 1988; February 18, 1986; April 2, 1987; January 21, 1985; April 17, 1985; October 31, 1985; November 16, 1983; August 23, 1977. However, the determination of whether the expenditure you question is an appropriate one for the District is a matter which rests with the governing body which, in this

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instance, is the District board. S.C.Atty.Gen.Op. August 2, 1988. Resolution of whether the function performed by West Metro Development Corporation would satisfy the public purpose test is a factual question and is beyond the scope of an opinion of the Office. S.C.Atty.Gen.Op. March 16, 1988. The District board should evaluate the specific proposal involved based upon the criteria set forth in Byrd and Nichols which have been discussed above. However, in reviewing the Board's decision, it is possible that a court may view any benefit to be gained from revitalization, development of raw land and general commercial, residential, and recreational development to be incidental, speculative and not of a corporate purpose to the school district, particularly where the means by which these initiatives are to be achieved appear to be unknown. While it may be argued that the functions to be performed may increase the taxable value of real estate in the district, may enhance commercial enterprise and create jobs, any direct or substantial benefit to the District may be speculative and not germane to the purpose of a school district. Nevertheless, the ultimate decision must be with the District board.

If there are any other questions, please advise.

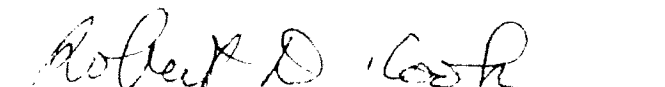
Sincerely,



Salley W. Elliott
Assistant Attorney General

SWE:klw

REVIEWED AND APPROVED BY:



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