

The State of South Carolina

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March 1, 1991

The Honorable Thomas H. Pope, III
Senator, District No. 18
P. O. Box 190
Newberry, South Carolina 29108

Dear Senator Pope:

You advise that Newberry County Council has entered into a contract with the Newberry County Humane Society to operate the county animal shelter. You also advise that county funds and prison labor are provided by the county and are used by the Humane Society to assist in the operation of the shelter. You have asked this Office to issue an opinion as to the propriety of utilization of prison labor on a project that has been delegated to a private non-profit organization.

Article X, Section 11 of the State Constitution provides in pertinent part:

The credit of neither the State nor any of its political subdivisions shall be pledged or loaned for the benefit of any individual, company, association, corporation ...

Article X, Section 11 of the State Constitution proscribes the expenditure of public funds "for the primary benefit of private parties." State ex rel. McLeod v. Riley, 276 S.C. 323, 329-30; 278 S.E.2d 612 (1981); Feldman & Co. v. City Council of Charleston, 23 S.C. 57 (1886). However, this Office has previously opined that public funds may be appropriated to a private nonprofit, nonsectarian organization if the funds are used for a valid public purpose. See S.C. Atty. Gen. Ops. dated June 27, 1988; October 31, 1985; April 17, 1985; July 12, 1984; November 16, 1983; September 31, 1981, September 16, 1980; and December 18, 1979. The appropriation of public funds to private entities in such instances is, in effect, an exchange of value which results in the performance

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by those entities of a public function for the state. S.C. Atty. Gen. Op. November 16, 1983. See Gilbert v. Bath, 267 S.C. 171, 227 S.E.2d 177 (1976); Bolt v. Cobb, 225 S.C. 408, 82 S.E.2d 789 (1954). This Office has previously determined that the work product of county inmates belongs to the public as the "prisoners are maintained by county funds and supervised by county salaried personnel". S.C. Atty. Gen. Op. February 26, 1971. Therefore, use of county equipment and inmate labor must be restricted to public property and purpose. See Article X § 11; S.C. Atty. Gen. Op. April 2, 1987. It is necessary, then, to examine the purpose for which inmate labor is used in the situation you describe to ensure that the function involved is a public purpose.

The South Carolina Supreme Court in Caldwell v. McMillan, 224 S.C. 150, 77 S.E.2d 798, 801 (1953) determined that a public purpose

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, so that whatever is necessary for the preservation of the public health and safety is a public purpose, and if an object is beneficial to the inhabitants and directly connected with the local government, it will be considered a public purpose ...

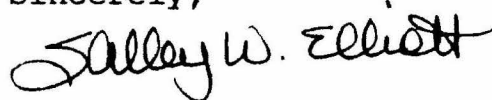
The finding of a public purpose is primarily a legislative determination and courts generally will not interfere with the finding unless it is clearly wrong. S.C. Atty. Gen. Op. July 12, 1984. The General Assembly has enacted several statutes providing for the establishment and operation by counties of animal shelters. See S.C. Code Ann. §§ 47-3-10 to 47-3-70 (Establishment and regulation of animal shelters by the various counties); 47-5-140 (Provision by counties of enclosure for impounding pets); 47-5-160 (Funds to be provided by the counties); and 47-3-410 (Definition of animal shelter). The legislature has determined that expenditure of public funds for the operation of an animal shelter serves a public purpose and is a proper county function. This Office cannot say that the legislative finding is clearly wrong. Therefore, this Office is of the opinion that a county may provide inmate labor to a private nonprofit, nonsectarian organization to assist the organization in the operation of an animal shelter as such involves the performance of a public purpose. See American Society for the Prevention of Cruelty to Animals v. City of New York, 205 App. Div. 335, 199 N.Y.S. 728 (1923) (Public funds may be expended under contract to S.P.C.A. for its rendition of a public service).

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We would caution, however, that certain prerequisites must be complied with prior to the use of inmates in local inmate work programs. These requirements include prior authorization of a work program by the governing body of the county, establishment by the county governing body of regulations under which labor is to be performed, establishment of written policies for inmate management and supervision, and compliance with the minimum standards for local detention facilities which have been promulgated by the Department of Corrections. See S.C. Code Ann. §§ 24-13-235; 24-13-910; 24-13-920; 24-13-930; 24-13-950; 24-9-20. See also South Carolina Department of Corrections, 4000 Series, Local Inmate Work Programs; South Carolina Department of Corrections, Minimum Standards for Local Detention Facilities in South Carolina, Type IV Facility (Revised August 1985). I would direct your attention to the guidelines provided in S.C. Code Ann. §§ 24-3-20; 24-3-30; 24-3-130; and 24-3-131 regarding prisoners under the control of the South Carolina Department of Corrections and located in a county facility at the designation of the Department, S.C. Code Ann. §§ 17-25-70; 24-13-235; and 24-13-910 to 24-13-950 regarding work programs for county prisoners and the minimum standards established by the Department of Corrections as well as any local ordinances, regulations, or policies.

I hope that I have been responsive to your inquiry and invite you to contact me if I can of further assistance.

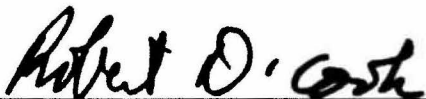
Sincerely,



Salley W. Elliott
Assistant Attorney General

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REVIEWED AND APPROVED BY:



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