

The State of South Carolina



*Opinion 70-13 p. 12*

Office of the Attorney General

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April 17, 1985

Stephen D. Baggett, Esquire  
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Dear Mr. Baggett:

By your letter of April 4, 1985, to Attorney General Medlock, you have asked whether Greenwood County Council and the governing bodies of the municipalities in Greenwood County may enter into a contract with the Greenwood County Chamber of Commerce for the provision of services for industrial recruitment and economic development. You concluded that such a contract is permissible; this Office concurs with your conclusion.

It must be noted that two opinions discussed in your letter are distinguishable from the Greenwood County proposal. Opinion No. 2865, dated March 25, 1970, stated that Charleston County could not levy an accommodations tax and contribute the proceeds to the Trident Chamber of Commerce. <sup>1/</sup> In Opinion 77-49, dated February 7, 1977, this Office concluded that a municipality could not support a non-profit corporation with tax revenues. Instead, in Greenwood County, a contract is contemplated whereby

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<sup>1/</sup> Because the General Assembly, by Act No. 316, 1984 Acts and Joint Resolutions, has adopted an accommodations tax, with specific procedures for the expenditure of the proceeds, Opinion No. 2865 would now be valuable only for the idea that public funds could not be contributed to a private body. See Article X, Section 11 of the State Constitution.

Continuation Sheet Number 2  
To: Stephen D. Baggett, Esquire  
April 17, 1985

services will be rendered in consideration of funds paid by the County and the various municipalities. Rather than making a contribution or supporting a non-governmental entity, the County and the municipalities will receive services for their expenditures of public funds.

This Office has recently researched the issue of governmental bodies expending public funds with regard to for-profit and non-profit entities. See Ops. Atty. Gen. dated March 19, 1985 and July 12, 1984, copies of which are enclosed. The South Carolina Supreme Court has approved the expenditure of public funds to procure public services from a non-profit corporation in cases such as Gilbert v. Bath, 267 S.C. 171, 227 S.E.2d 177 (1976); and Bolt v. Cobb, 225 S.C. 408, 82 S.E.2d 789 (1954). See also Elliott v. McNair, 123 S.C. 272, 115 S.E. 596 (1967); McKinney v. City of Greenville, 262 S.C. 227, 203 S.E.2d 680 (1974); Haesloop v. City of Charleston, 123 S.C. 272, 115 S.E. 596 (1923); and other authority cited in the opinion dated July 12, 1984.

Use of a Chamber of Commerce to provide, by contract, services which might otherwise be provided by a governmental body or agency has been approved by courts in other jurisdictions. See, for example, O'Neill v. Burns, 198 So.2d 1 (Fla. 1967). In addition, the General Assembly has authorized counties and municipalities to contract with Chambers of Commerce to manage and direct the expenditure of tourism promotion funds received from the accommodations tax. See Section 12-35-720(1)(B), Code of Laws of South Carolina (1984 Cum.Supp.). Because economic development is a public purpose, Elliott v. McNair, supra, a Chamber of Commerce could be similarly engaged to provide industrial recruitment and economic development services.

A review of the proposed Agreement for Services enclosed with your letter details the Code sections which authorize the County and the various municipalities to take action in the area of economic development; the section of the Constitution permitting such joint efforts by cities and counties, Article VIII, Section 13; and the finding of a public purpose within the recitals. Consideration to be paid by the governmental entities and services to be performed by the Chamber of Commerce are specified. Because such a non-profit corporation may be utilized to provide these services and the public purpose for the expenditure of the funds is detailed, it would appear that the adoption of such Agreement would be permissible.

Continuation Sheet Number 3  
To: Stephen D. Baggett, Esquire  
April 17, 1985

We must caution that our opinion as to permissibility of the Agreement reflects the results of our research and application of existing law; while we believe a court would find the Agreement permissible, a final determination would, of course, ultimately be up to a court of competent jurisdiction.

Sincerely,

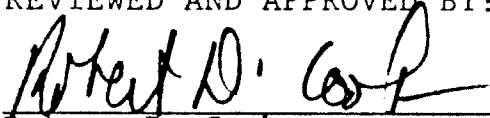
*Patricia D. Petway*

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PDP:djg

Enclosures

REVIEWED AND APPROVED BY:



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Robert D. Cook  
Executive Assistant for Opinions