

The State of South Carolina



Opinion # 85-127

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October 29, 1985

The Honorable John Drummond  
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Gentlemen:

You have asked this Office, which has supervisory authority over charitable trusts, to review certain documents relative to an organization known as The Educational Trust Fund of Employees for Made In U.S.A. You have inquired whether the organization would be considered as a charitable organization under South Carolina law.

As explained in the registration statement filed with the Secretary of State's Office pursuant to the Solicitation of Charitable Funds Act, the purpose of the organization is to conduct an educational campaign through the media, promoting American made textile products. More specifically, recognizing that the economies of certain states, such as South Carolina, "rely on the textile and apparel industries" and that such industries are presently "economically depressed", the organization has as its goal educating the American public as to how such industries "can be conserved, utilized and improved."

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Our review of your request is based strictly upon information provided to this Office and we have not attempted any independent review of the organization. However, based upon documents supplied, it would appear that the organization known as The Educational Trust Fund of Employees for Made In U.S.A. would be a charitable organization and the trust established to fund the organization's purpose would constitute a charitable trust.

Pursuant to Section 1-7-30 of the 1976 Code of Laws, the Attorney General supervises and enforces charitable trusts. Moreover, the trustees of charitable trusts are required by Sections 21-31-10 and 21-31-20 to file copies of trust instruments of charitable trusts and annual reports relative to such trusts with this Office.

A charitable trust has been defined as a trust created for the public benefit. Bogert, Trusts and Trustees, § 369; 15 Am.Jur.2d, Charities, § 6; Medical Society of South Carolina v. South Carolina Nat. Bank of Charleston, 197 S.C. 96, 14 S.E.2d 577 (1941). Basic requirements of a charitable trust include a charitable purpose and indefinite beneficiaries. Porcher v. Cappelmann, 187 S.C. 491, 198 S.E. 8 (1938); Medical Society of South Carolina v. South Carolina National Bank of Charleston, supra.

Our Supreme Court has stated that a charitable purpose is synonymous with an eleemosynary purpose. Ellerbe v. David, 193 S.C. 332, 8 S.E.2d 518 (1940). The most often used description of charitable purpose is that stated by the Massachusetts Supreme Court in Jackson v. Phillips, 96 Mass. (14 Allen) 539:

a charity in the legal sense, may be more fully defined as a gift to be applied more consistently with existing laws for the benefit of an indefinite number of persons ... by erecting or maintaining public buildings or works or otherwise lessening the burdens of government. (emphasis added).

Recognized charitable purposes include the relief of poverty; the advancement of education; the advancement of religion; governmental or municipal purposes and other purposes the accomplishment of which is useful and beneficial to the community. Boyd v. Frost Nat. Bank, 145 Tex. 206, 196 S.W.2d 497, 168 A.L.R. 1326 (1946). However, while there are certain

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easily identifiable charitable purposes, it has been said that

[c]harity is not limited to the care of the sick and the relief of the destitute.... In its broader aspects it may include any purpose of general benefit untainted by motives of private gain.

Corporation of the Chamber of Commerce v. Bennett, 143 Misc. 513, 257 N.Y.S. 2, 5 (1932). In other words, charitable purposes include all purposes "which are of a character sufficiently beneficial to the community to justify permitting property to be devoted forever to their accomplishment." Restatement Trusts, 2d, § 374.

Upon review of the documents submitted by you it is apparent that several possible charitable purposes would be served by the referenced organization. These include education, patriotism, relief for the unemployed and the alleviation of community deterioration. Generally speaking, with respect to education, in determining whether such is charitable, the educational activity is by no means limited to traditional education. Indeed, it has been said that 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, § 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).

Likewise, the promotion of patriotism is considered a charitable purpose. It has been written that

[a]ll reasonable efforts to stimulate love and admiration for our national history and

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traditions, for our flag and other symbols of our national ideals and for our constitution and institutions have a widespread beneficial social effect in that they increase national solidarity and security, and strengthen the forces of government, law and order by producing a loyal group of citizens ready to cooperate in law enforcement and other public enterprises.

Bogert, Trusts and Trustees, § 378. Unquestionably, trusts designed to inculcate patriotism are charitable trusts. Thorp v. Lund, 227 Mass. 474, 116 N.E. 946 (1917).

Also considered charitable in nature are the relief of unemployment and the alleviation of community deterioration, as well as overall community development. Courts have determined that financial aid to employees of a plant which closes has a charitable purpose, Eagan v. Commr. of Internal Revenue, 43 F.2d 881, 71 A.L.R. 863 (5th Cir. 1930), as does general relief to unemployed workers. In Re Pattberg's Will, 123 N.Y.S.2d 564 (1953), affd., 118 N.E.2d 903 (1954). Moreover, courts clearly recognize that the achievement of economic stabilization and the promotion of economic development are of a charitable nature. Aid to Artisans, Inc. v. C.I.R., 71 T.C. 202 (1978); Attison v. Consumer-Farm Milk Cooperative, Inc., 94 N.Y.S. 2d 891 (1950); Corp. of the Chamber of Commerce v. Bennett, supra; Thomas v. Harrison, 191 N.E.2d 862 (Ohio 1962). The fact that the purpose of the purported charity is to promote the economic development or well-being of a particular industry or group does not necessarily preclude a court's finding that the particular purpose is charitable. Aid to Artisans, Inc., supra [artisans in underdeveloped community]; Palmer v. Evans, 124 N.W.2d 856 (Iowa 1963) [aid in the perpetuation of chiropractic philosophy, science and art]; Thomas v. Harrison, supra [working women and children in trade and industry]; State Tax Commission v. Whitehall Foundation, 214 Md. 316, 135 A.2d 298 (1957) [dairy industry]; Bowditch v. Attorney General, 241 Mass., 168, 134 N.E. 796 (1922) [sewing girls in Boston]; Attison v. Consumer-Farmer Milk Cooperative, supra [dairy industry]; American Society for Testing and Materials v. Bd. of Revision, 423 Pa. 530, 225 A.2d 557 [engineering industry]; Oklahoma State Fair and Exposition v. Jones, supra [agricultural and horticultural industry].

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Courts have cautioned, however, that the purported charity must not be, in reality, primarily for the aid of private individuals or industry. Cases involving chambers of commerce are most clearly indicative of the hesitation which courts have to declare charitable organizations which are primarily devoted to the development of particular industries or businesses. For example, in a leading decision, the Massachusetts court in Boston Chamber of Commerce v. Assessors of Boston, 54 N.E.2d 199 (Mass. 1944) refused to denominate a chamber of commerce as charitable for income tax purposes. Recognizing that the term "charity" was broad in scope and now goes beyond the traditional concept of charitable purposes, the Court, however stated:

Notwithstanding the law's acknowledgement of the manifold new forms in which charity may find expression, the more remote the objects and methods become from the traditionally recognized objects and methods the more care must be taken to preserve sound principles and to avoid unwarranted exceptions from the burdens of government. This statement becomes especially pertinent where the alleged charity operates in the fields of trade and commerce. It may be that the promotion of trade and commerce in an abstract sense, with the sole purpose of benefiting the public by a larger and more efficient exchange of goods entirely divorced from any attempt on the part of the promoters to augment their own businesses to their own profit, might be so carried on as to become a charity. A foundation for industrial research for the sole purpose of discovering and making generally available more efficient methods of production and distribution might be a charity. But of the multitude of trade organizations and associations existing today in all branches of industry and commerce it is believed that few could pass the test.

54 N.E.2d at 202. Other decisions are in accord. See, Memphis Chamber of Commerce v. City of Memphis, 232 S.W. (Tenn. 1921); People's Nat. Bank of Greenville v. Greenville County, 174 S.C. 256, 177 S.E. 369 (1934). In the latter case, our Supreme Court held that a chamber of commerce was not a corporation operated

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exclusively for religious, charitable, scientific or educational purposes, citing with approval the Memphis Chamber of Commerce case. In Memphis, the Court had concluded that the "primary object" of a chamber of commerce was to "promote the business and commercial interests of the City of Memphis." 232 S.W. at 74.

Thus, it is clear that where the primary beneficiary of the alleged charity is not the public at large, but private businesses or individuals, the courts will not recognize the venture or organization as charitable. Otherwise stated,

... the test formulated in Boston Chamber of Commerce v. Assessors of Boston, 315 Mass. 712, 54 N.E.2d 199, 202 (1944) is a concise compilation of the consistent view of the courts. The court formulated the view that an institution will be classed as charitable if the dominant purpose of its work is for the public good, and the work done for its members is but the means adopted for this purpose. But, if the dominant purpose of its work is to benefit its members or a limited class of persons, it will not be so classed even though the public will derive an incidental benefit from such work.

Intern. Found. of Employees Benefit Plans, Inc. v. City of Brookfield, 290 N.W.2d 720, 727 (Wisc. 1980). The foregoing test must be applied on a case by case basis.

In its Statement of Proposed Activities, the Educational Trust Fund of Employees For Made in U.S.A. notes that

In particular, the textile, apparel and related industries in the State of South Carolina, and in North Carolina and Georgia, are financially ailing to the detriment of the states who rely on the tax base of such industries to provide them with funds through sales taxes, franchise taxes, employment taxes, income taxes, property taxes, etc. In addition, because of the loss of jobs in these industries, the state is burdened by unemployment costs, welfare

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costs and retraining costs for employees of plants that have been closed or temporarily disabled.

The trust instrument creating the Trust Fund thus states that the purpose of the trust is to "prevent community deterioration and erosion of tax bases within areas of such states whose economies rely on the textile and apparel industries." More specifically, the design of the trust is to "educate the public nationwide on how economically depressed industries, especially textiles can be conserved, utilized and improved." The trust instrument further states that

No part of the trust fund shall inure to the benefit of any private individual, and no substantial part of the activities of this trust shall consist of carrying on propaganda, or otherwise attempting, to influence legislation, or of participating in, or intervening in ... any political campaign on behalf of any candidate for public office.

It is well recognized that the economy of South Carolina is vitally dependent upon the textile, apparel and related industries for its sustenance and well being. Sixteen percent of all of the nation's textile jobs are located in South Carolina. The textile industry is the State's largest manufacturing industry. It has been recently estimated that textiles are responsible for 103,000 jobs in this State, synthetics another 17,000 and apparels 47,000. This accounts for approximately 50% of all the manufacturing jobs in South Carolina. 1/ To our knowledge, no other industry is as pervasive in our State.

Moreover, the present plight of the textile industry in this State is well known. In 1984, 8 textile plants and 9 apparel plants closed, with 4,650 people being affected. This year already at least 6 apparel plants and 9 textile plants have closed; two other textile divisions have been shut down. A total of over 3,500 jobs have been lost. For August of this year, approximately 30% of all the unemployment insurance weeks

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1/ This information has been provided to this Office by the South Carolina Employment Security Commission and the South Carolina Textile Manufacturers Association.

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claimed in South Carolina were in the textile and apparel industries. 2/

Based on the foregoing, we believe that application of the test recognized in the Boston Chamber of Commerce case leads to the conclusion that the Educational Trust Fund of Employees for made in U.S.A. is a charitable organization. Unlike the chamber of commerce cases 3/, referenced above, the purpose of this organization is not simply the growth of business and general economic development in the State; we are not here concerned with a situation where the primary purpose is the aid of private groups. While undoubtedly the means sought by the organization will have the effect of benefiting private companies and individuals, the overall effect will be to attempt to alleviate the economic ills of the single most important industry in the State by educating the public at large as to how that industry in its present plight "can be conserved, utilized and improved."

The information disseminated by The Trust Fund is made available to the public at large through the use of the general media. It has been held that "an extensive public education program relative to the many important problems" in a major industry suffering from economic ills is "a civic enterprise and ... a very valuable public service." Attison v. Consumer-Farmer Milk Cooperative, 94 N.Y.S. 2d at 894. The alleviation of economic ills from an industry upon which the economy is dependent is thus a valid charitable purpose. Supra. Moreover, aid to assist disadvantaged craftsmen in a depressed industry is likewise considered charitable in nature. Aid to Artisans v. C.I.R., supra. And the importance of an industry to the overall community is a significant consideration in determining an organization's charitable status; where the objective is to promote the welfare of employees of an industry which represents a large segment of the community, it has been deemed charitable because it benefits the public at large. Thomas v. Harrison, supra. See also, Shipp v. Southeastern Oklahoma Industries Auth., 498 P.2d 1395 (Okla. 1972). Our own Supreme Court has

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2/ This information was provided this Office by the South Carolina Employment Security Commission and the South Carolina Textile Manufacturers Association.

3/ See also, Textile Hall Corp. v. Hill, 215 S.C. 262, 54 S.E.2d 809 (1949) [exposition for the advancement of the textile industry].



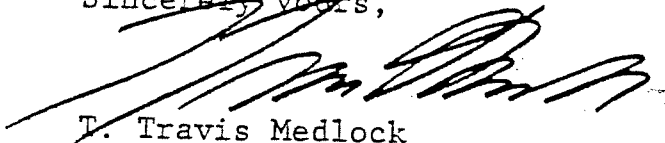
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determined that economic development represents a valid public purpose. Carll v. S. C. Jobs - Economic Devel., 327 S.E.2d 331 (S.C. 1985); see also, Elliott v. McNair, 250 S.C. 75, 156 S.E.2d 421 (1967); compare, Byrd v. Co. of Florence, 315 S.E.2d 804 (S.C. 1984). The foregoing cases are closely analogous to the present situation and appear to be controlling with respect thereto.

In short, we believe the situation presented here is virtually unique. To our mind, the envisioned activities of Trust Fund do not represent simply the "commercial hue" spoken by the United States Supreme Court in Better Business Bureau of Washington, D.C. v. United States, 326 U.S. 279, 283 (1945). Because the State is so dependent upon the textile industry for its economic well-being, we do not see the purpose of this organization merely as a device for the promotion of private interests. Instead, the documented pervasiveness of textiles and the textile industry in South Carolina and the economically depressed state of that industry serve to single out this organization from one which is in reality designed to promote private interests. Unlike such organizations, pursuant to its expressed purpose the Trust Fund would on balance appear to "benefit the public at large as well as those who make and distribute" textile products. See, Thomas v. Harrison, 191 N.E.2d at 872. Consequently, based upon the information provided this Office, we believe the Trust Fund would constitute a charitable trust under South Carolina law.

With best personal regards, I am

Sincerely yours,



T. Travis Medlock  
Attorney General

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