1983 WL 182057 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
November 16, 1983

***1** Honorable Tom G. Mangum
Chairman
House Ways and Means Committee
Post Office Box 11867
Columbia, South Carolina 29211

Dear Representative Mangum:
You have requested an opinion from this Office as to the constitutionality of an appropriation of public funds to certain private entities for 'special promotions' and 'contributions' under the Parks, Recreation, and Tourism budget. It is our opinion that this type of appropriation may be lawfully made to certain private entities.

Enclosed is a copy of an earlier Attorney General's opinion which generally reaches this same conclusion. We have reviewed this matter again, however, in light of your request. The question presented is whether a contribution to a private entity is prohibited by that section of the South Carolina Constitution which provides that:
The credit of neither the state nor of any of its political subdivisions shall be pledged or loaned for the benefit of any individual, company, association [or] corporation . . ..

Art. X. § 11, SOUTH CAROLINA CONSTITUTION. This section (formerly Art. X, § 6) has been construed by the Court to prohibit 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, 615-16 (1981); Feldman & Co. v. City Council of Charleston, 23 S.C. 57 (1886). Courts in other states with similar constitutional provisions have permitted appropriations to private entities which use those public funds to perform a proper 'function for the state.' Dickman v. Defenbacher, 128 N.E.2d 59 (Ohio, 1955); Bedford County Hospital v. Browning, 225 S.E.2d 41 (Tenn. 1949); People v. Green, 47 N.E.2d 465 (Ill. 1943); Hager v. Kentucky Childrens Home Society, 83 S.W. 605, 609 (Ky. 1904). See also Tosto v. Pennsylvania Nursing Home Loan Agency, 331 A.2d 198, 205 (Pa., 1975). The appropriation of public funds to these private entities is, in effect, an exchange of value which results in the performance by those entities of a public function for the state. [1] Cromer v. Peoria Housing Authority, 78 N.E.2d 276, 284 (Ill. 1948). Generally, however, some public control is also required on those expenditures by the private entities in order for the constitutionality of the appropriation to be upheld. O'Neill v. Burns, 198 So.2d 1, 4 (Fla. 1967); Dickman v. Defenbacher, supra; State v. City of New Orleans, 24 So. 666, 671 (La. 1898). In our opinion, such control could be accomplished, at least in part, by including in each such appropriations act the provision set out in § 135 of the 1983-84 General Appropriations Act, which requires those private organizations to submit to certain accounting and review procedures by the State.

For the foregoing reasons it is our opinion that the General Assembly may lawfully appropriate public funds to a proper private entity to enable it to perform a public function. Of course each such appropriation should be examined on a case-by-case basis to insure that it meets a proper public purpose. It appears necessary, furthermore, that some public control should be retained, as indicated above, over the expenditure of those funds by the private entity.
Sincerely yours,

***2** David C. Eckstrom
Assistant Attorney General

Footnotes

1 There are other constitutional restrictions on the types of entities which may receive state appropriations, such as a prohibition against religious or certain private education institutions receiving public funds. Art X. § 11, supra. However, those restrictions do not appear to be implicated here.

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