

1983 WL 182080 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 20, 1983

***1 RE: Opinion Request: State Agencies; Agriculture; Public Property; Public Funds**

D. Leslie Tindal
Commissioner
S. C. Department of Agriculture
Post Office Box 11280
Columbia, South Carolina 29211

Dear Commissioner Tindal:

Attorney General Medlock has referred the above-referenced opinion request to me for handling. You have asked whether your department, which manages the Columbia State Farmers' Market pursuant to [§ 46-15-10, et seq., CODE OF LAWS OF SOUTH CAROLINA \(1976\)](#), may charge the general public a fee for parking upon the market grounds during University of South Carolina football games. You have also indicated that your department has provided such parking free of charge in the past and has absorbed costs for cleaning, wear-and-tear on the paved surfaces, etc. This cost absorption is tantamount to the expenditure of public funds, although the market must, by statute, generate sufficient revenue for this operation and no appropriated funds are used.

In order to answer your question it will first be necessary to determine whether providing parking to those in attendance at football games is a proper public purpose and within the scope of your statutory authority. This office has held steadfast to the proposition that no public funds may be expended by state agencies unless such expenditures are for proper public purposes. 1961-1962 Op. Atty. Gen. pg. 176; 1975 Op. Atty. Gen. 38. Our Supreme Court has defined 'public purpose' as follows: In general, 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 subdivision . . . but in order to sustain public purpose the advantage accruing to the public must be direct, not merely indirect or remote. [Caldwell v. McMillan, 77 SE2d 798, 224 S.C. 150 \(1953\)](#).

We have little doubt that assistant the University, a sister state agency, with its seasonal parking problem constitutes a valid public purpose.¹ Similar services are provided to the University by the Highway Patrol, the Columbia Police Department, and the Richland County Sheriff's Department. It seems axiomatic that providing a clean and relatively secure place to park during athletic events constitutes a direct benefit to the public. It could also serve as a benefit to the market, because many vendors display their wares on game days. Also, many persons might be attracted to the market during the football season who might not otherwise shop there.

The next question to be determined is whether the above-mentioned arrangement exceeds the statutory mandates for the operation of the market. [Section 46-15-20\(5\) CODE](#) places a duty upon your department to collect reasonable rents and charges for the use of the market to defray the cost of its maintenance and operation. Of course, the statute, when read as a whole, speaks to the marketing of farm produce and other food products. Your primary consideration has, therefore, been to provide sufficient stalls, sheds, and warehouses to provide for this activity. This consideration carries with it the concomitant responsibility to provide such support services as restaurants, barber shops, basket retailers, and service station facilities. This type of support activity has been approved by the courts as incidental to the statutory function of a state agency. [Caldwell v. McMillan, supra](#).

*2 At first blush one would not consider the operation of a parking service to be incidental to the function of the market unless the parking was for retail market customers or market employees. However, in this instance your proposal is merely to recoup expenses being incurred by a service that is already being offered for the benefit of the public and a sister state agency. Viewed from this light it is clear that your department would be entitled to collect a fee from football patrons sufficient to defray the costs of security, clean-up, and a pro-rata share of the wear-and-tear on paving and other facilities.² Such a cost recoupment would contribute to the revenue base and thereby reduce the need for these cost items to be borne by the vendors or by your department.

Having determined that it would be constitutionally and statutorily permissible for your department to charge fees for parking upon the market grounds during U.S.C. football games, we must now turn to the potential for risk inherent in such a venture. Under the present law your department is immune from tort liability pursuant to the doctrine of sovereign immunity. However, this is a doctrine which is presently under attack. The last time our Supreme Court had occasion to consider the issue two members of the Court voted to abolish this long standing rule of law. [Reed v. Medlin](#), 281 S.E.2d 125 (1981). Pursuing the parking proposal would be at the risk of incurring liability for injuries and damages to parking patrons. You would also expose your employees to the same risk. They could face personal tort liability even if your department continues to be immune. If your department decides to implement the proposal I would strongly suggest liability insurance which would cover the department and its employees. There should also be an appropriate waiver of liability printed upon the parking ticket.

I trust that this has sufficiently answered your question. If not, please feel free to contact me at your convenience.

With kind regards,

Clifford O. Koon, Jr.
Assistant Attorney General

Footnotes

- 1 The General Assembly has recognized, at least implicitly, that expenditures for athletic programs at state colleges and universities are proper expenditures for public purposes. See, for example, Act No. 518, 1980 Acts and Joint Resolutions, in which issuance of revenue bonds was authorized for, inter alia, athletic purposes at the Citadel (§ 1, Part 3), Winthrop College (§ 1, Part 9), and for additions to Williams-Brice Stadium at the University of South Carolina (§ 9); see also, for a discussion of public purpose relative to bond issuance, [Bauer v. South Carolina State Housing Authority](#), 271 S.C. 219, 246 S.E.2d 869 (1978).
- 2 It is well-recognized that the State may levy fees to provide revenues to defray expenditures for public purposes. See, generally, 51 Am. Jur.2d Licenses and Permits § 4; also [Section 40-13-60](#), [40-23-80](#), and [40-28-190 of the CODE \(1982 Cum. Supp.\)](#) for examples of fees levied to cover expenses.

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