

1980 WL 120581 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 4, 1980

***1 Re: Opinions Concerning Non-Profit Organizations**

Mr. John P. Stokes
Deputy Secretary of State
Wade Hampton Office Building
P. O. Box 11350
Columbia, SC 29211

Dear John:

You have recently referred two opinions previously issued by this office to Deputy Attorney General Victor S. Evans for review. Specifically, I am referring to an opinion which I wrote dated November 6, 1979, and an opinion written by Assistant Attorney General Edwin E. Evans, dated November 21, 1979. Both opinions dealt with the subject of whether or not the sheriff in the county in which a non-profit organization proposes to have its principle place of business must sign a declaration and petition for the incorporation of the organization before your office issues a certificate of incorporation. Your concern arises from the fact that my opinion stated that in the factual situation presented it was necessary for the sheriff to sign, while in Mr. Evans' opinion the sheriff is not required to sign. Vic referred the opinions to me with the request that I speak with Mr. Evans and attempt to resolve any inconsistency which may exist.

Ed and I have reviewed our respective opinions and have discussed the matter in depth. We are satisfied that there is no inconsistency between the two opinions and that the correct answer was given to the question asked in each case.

As you know, South Carolina Code § 33-31-40 provides that approval of a declaration and petition for incorporation of a non-profit organization is not required by the designated county officers where an application for a charter is made on behalf of religious or eleemosynary institutions. My opinion simply stated that the non-profit organization whose declaration and petition for incorporation I was reviewing was neither a religious nor an eleemosynary institution. This information was gleaned from the face of the declaration and petition for incorporation which plainly stated that the purpose of the corporation was to operate a non-profit social and fraternal club. 'Social' and 'fraternal' are entirely different purposes from 'religious' or 'eleemosynary.' Consequently, since I did not feel that the organization under review would fall within the exemption contained in § 33-31-40, it was my opinion that all of the county officers designated in the statute would be required to sign the declaration and petition before a certificate of incorporation could be issued.

Ed's opinion basically stated that if the nonprofit organization exists for 'benevolent' purposes, it comes under the exemption provided in § 33-31-40 and therefore approval by the sheriff is not required. He arrived at this conclusion by citing case law in this State which indicates that 'benevolent' would be synonymous with 'eleemosynary.' And, of course, if the organization is an eleemosynary institution it comes within the exemption of § 33-31-40.

I trust that the foregoing explanation of the two opinions will clarify what might at first blush appear to be inconsistent conclusions. If you have any additional questions about this, please do not hesitate to contact me or Ed Evans.

*2 With kind regards, I am
Very truly yours,

L. Kennedy Boggs
Assistant Attorney General

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