1979 WL 42796 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
February 6, 1979

***1** William M. Brice, Jr., Esquire
Town Attorney
Hickory Grove
Post Office Box 275
York, South Carolina 29745

Dear Mr. Brice:
You have requested an opinion from this Office concerning the use of surplus municipal tax revenues in the construction of a medical facility outside the corporate limits of Hickory Grove. In my opinion, municipal funds may be validly donated to a public hospital facility to defray construction costs, whether within or without the corporate limits of the municipality, so long as a public purpose is thereby served.

The general rule governing such municipal disbursements is that appropriations of public funds must be for a public purpose, and this rule applies notwithstanding the funds may have been derived from a source other than taxation.' 63 Am.Jur.2d 391, 446. As stated by another authority, '[a]all appropriations and expenditures of public money by municipalities and indebtedness created by them must be for a public and corporate purpose, as distinguished from a private purpose . . ..' MCQUILLIN, MUNICIPAL CORPORATIONS § 39.19 (3rd ed. 1970). Unfortunately, these formulations of the rule are deceptively simple, as 'public purpose' does not readily yield to precise definition. Nonetheless, '[a]n appropriation is for a public purpose if it is for the support of government, or for any of the recognized objects of government. The test of whether a particular activity may rightly be called a duty or an obligatory function of government is whether the welfare of the State as a whole is substantially promoted by or involved in the exercise.' 63 Am.Jur.2d 391, 447-8.

Otherwise stated, the test of a public purpose should be whether the expenditure confers a direct benefit of reasonably general character to a significant part of the public, as distinguished from a remote or theoretical benefit.' MCQUILLIN, MUNICIPAL CORPORATIONS § 39.19. As a corollary to this general rule, 'A municipality has no power, unless expressly conferred by a constitutional provision, charter, or statute, to denote municipal moneys for private uses to any individual or company, not under the control of the City and having no connection with it, although a donation may be based upon a consideration.' MCQUILLIN, MUNICIPAL CORPORATIONS § 39.19.

Although the South Carolina Code contains no section specifically restricting municipal disbursements and expenditures to public purposes, it is clear from certain statutory and constitutional provisions, as well as from the attendant case law, that this limitation on municipal power is recognized by the State. Article X, Section 5 of the South Carolina Constitution requires that '[a]ny tax which shall be levied shall distinctly state the public purpose to which the proceeds of the tax shall be applied.' Similarly, Section 14(4) of that Article states that a general obligation debt may be incurred only for a purpose which is a public purpose and which is a corporate purpose of the applicable political subdivision.' Section 11 of Article X provides that the 'credit of neither the State nor any of its political subdivisions shall be pledged or loaned for the benefit of any individual, company, association, corporation, or any religious or other private educational institution . . ..' Section 5-7-30 of the South Carolina Code (1976) empowers municipalities to 'enact regulations, resolutions, and ordinances, not inconsistent with the Constitution and general law of this State, . . . respecting any subject as shall appear to them necessary and proper for the security, general welfare and convenience of such municipalities or for preserving health, peace, order, or good government therein.'

***2** According to the South Carolina Supreme Court, 'A public purpose has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity and contentment of all the inhabitants or residents, or at least a substantial part thereof.' Anderson v. Baehr, 265 S.E. 153, 217 S.E.2d 43, 47 (1975). There appears to be no explicit territorial restriction in this requirement of a public purpose, so long as there is a legitimate public benefit conferred upon the municipal donor. Of course, the hospital could be so distant that the residents of the municipality might receive only a conjectural or indirect benefit; however, this limitation is obviously not applicable here, where the proximity of the facility indicates a clear and direct public benefit to the citizens of Hickory Grove. In such a case, the requirement of a valid public purpose for the expenditure of public funds is satisfied regardless of the precise location of the hospital in relation to the municipal boundaries.

This opinion assumes that the medical facility is to be publicly owned. If the hospital is a public one, and the title to the property remains in a public entity, the donation is valid under the authority of Bolt v. Cobb, 225 S.C. 408, 82 S.E.2d 789 (1954), and Gilbert v. Bath, 267 S.C. 171, 227 S.E.2d 177 (1976). If, however, the hospital is privately owned, the donation would most probably be invalid under Anderson v. Baehr, 265 S.C. 153, 217 S.E.2d 43 (1975), and Jacobs v. McClain, 262 S.C. 425, 205 S.W.2d 172 (1974).

With kind regards,

Karen LeCraft Henderson
Senior Assistant Attorney General

ATTACHMENT

Syllabus:

The Code of Judicial Conduct prohibits participation by candidates in an advisory primary for magistrate.

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