

1980 WL 120708 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 11, 1980

***1 RE: Public Funding Relative to Privately Owned Air Field Facilities**

Mr. John Hamilton
Director
S. C. Aeronautics Commission
P. O. Box 1987
Columbia, South Carolina 29202

Dear Mr. Hamilton:

Reference is made to previous communications, concerning whether funds administered by the South Carolina Aeronautics Commission can be utilized for repair, improvement, and other projects on air fields and airports which are privately owned. The inquiry also concerns maintenance of private air fields with Aeronautics Commission equipment, personnel, or funds.

[Section 55-5-30 of the 1976 South Carolina Code of Laws](#) authorizes the formation of the South Carolina Aeronautics Commission, with duties and powers enumerated under [Section 55-5-70 of the Code](#). The latter section provides in part that the Commission shall have supervision and control.

‘ . . . over all airports, landing fields, landing strips, air instruction, air parking, air beacons and all other air aviation facilities.’

This Code section also contemplates certain rules and regulations for public safety. The only exemption is found in Section 55-5-270, which states that,

‘[T]he terms and provisions of this chapter shall not apply to unlicensed aircraft engaged entirely in private flying and which do not engage in flying for hire in any way.’

The principal legislative intent in establishing the Aeronautics Commission was the regulation of aircraft, rather than the funding of markers, cutting of grass, and other maintenance projects deemed important in meeting safety regulations.

As a general rule, public officials may not expend public funds and use public resources for private purposes. 1974-75 OP. ATTY. GEN., Opinion No. 4214, December 9, 1975, page 256; 1975-76 OP. ATTY. GEN., Opinion No. 4234, page 16; 1963-64 OP. ATTY. GEN., Opinion No. 1676, page 123. In this connection, [Article X, Section 11, of the 1895 SOUTH CAROLINA CONSTITUTION](#), as amended, states that,

‘[T]he 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 except as permitted by [Section 3, Article XI of this CONSTITUTION](#)’

In [Gentry v. Taylor](#), 192 S.C. 145, 5 S.E.2d 857 (1939), the South Carolina Supreme Court ruled that an act authorizing the issuance and sale of county bonds to aid in enlarging a city airport was invalid because it contravened the constitutional provision prohibiting the Legislature from authorizing the county to issue bonds for any purpose except specified public purposes and ordinary county purposes. In [Bauer v. S. C. Housing Authority](#), 271 S.C. 219, 245 S.E.2d 869 (1978), the Supreme Court defined ‘public purposes’ 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 . . .'

*2 'It is not sufficient that an undertaking bring about a remote or indirect public benefit to categorize it as a project within the sphere of 'public purpose.'" 246 S.E.2d at 873, 874.

In our conferences, the indication was that public funds now administered by the Aeronautics Commission or equipment, would be available to owners of private air fields for improvements and maintenance. Even though the public would indirectly benefit, the availability of public funds would, nevertheless, enable the owners of the private air fields to avoid using their own funds in order to comply with the safety regulations of the South Carolina Aeronautics Commission. To permit the Aeronautics Commission to expend funds in this manner would probably be counter to the expressed intent of [Article X, Section 11, of the SOUTH CAROLINA CONSTITUTION](#), which prohibits the credit of the State from being pledged or loaned for the benefit of any individual, company, association, or corporation, at least to the extent that any implementing policy of the Aeronautics Commission is interpreted to authorize a pledge or loan of the credit of the State to a private source for primarily private purposes, as contrasted to public purposes. See, [Anderson v. Baer](#), 265 S.C. 153, 217 S.E.2d 43 (1975); [Jacobs v. McLane](#), 262 S.C. 425, 205 S.E.2d 172 (1974); Cf., [Bauer v. Housing Authority](#), *Supra*.

If the Aeronautics Commission is to utilize its funding availability to assist airports which are privately owned, the minimum requirement would be to open such airports to public use without restrictions. Frankly, if an action were brought pursuant to the Uniform Declaratory Judgment Act (Sections 15-53-10, *et seq.*, Code of Laws of 1976, as amended), I am of the opinion that the use of public money administered by the Aeronautics Commission for the benefit of private airport would be considered unconstitutional, as violative of [Article X, Section 11, of the SOUTH CAROLINA CONSTITUTION](#), and cases interpreting said provision of the CONSTITUTION. I realize that the problem of State financial assistance for privately owned airports is of paramount consideration in development of air navigation facilities within the State. However, if such private airports are controlled for private use, and not opened to the public, I see no possible justification for expending public money for the repair, improvement, or maintenance of such airports.

Yours very truly,

Victor S. Evans
Deputy Attorney General

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