

1977 S.C. Op. Atty. Gen. 41 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-39, 1977 WL 24382

Office of the Attorney General

State of South Carolina

Opinion No. 77-39

February 1, 1977

*1 The Honorable Irene K. Rudnick

The Honorable Marion D. McGowan

The Honorable Judson Busbee

The Honorable Cecil L. Collins

The Honorable William A. Reel

The Honorable Gilbert E. McMillan

The Honorable William E. Knotts

The Honorable Tom Turnipseed

The Honorable Nikki Setzler

Members

Aiken County Legislative Delegation:

Ladies and Gentlemen:

Your inquiry of January 10, 1977, reads as follows:

‘The Aiken County Education Association has requested the Aiken County Legislative Delegation to seek an Attorney General's opinion concerning the action of the Aiken County Board of Education on December 14, 1976. The Board made a donation of \$300.00 and these funds were to be used for the purchase and renovation of a headquarters building to the South Carolina School Board Association.

‘The Representative Assembly of the Aiken County Association has asked that we inquire whether or not this action is legal.’

The South Carolina School Boards Association (Association) is a private, non-profit, charitable, non-sectarian organization, with its objective being ‘to bring about the improvement of the public schools of South Carolina, to determine the needs of public education and to arouse a continuing public interest in the public schools of South Carolina.’

Upon dissolution, the charter of the Association provides that all assets should go to tax-exempt organizations or to the federal, state or local government for public purposes.

The membership of the Association is composed of district school boards, the individual members of which are termed ‘participating members.’ Affiliate membership covers a wide variety of public educational bodies, as well as trustees of private or church-supported colleges and universities and certain other organizations of a private and public nature.

It is my opinion that the donation of funds for the construction of a building for the Association is not a proper and valid expenditure by the Board of Education of Aiken County.

Article X, Section 6 of the Constitution of South Carolina provides, in part:

‘The credit of the State shall not be pledged or loaned for the benefit of any individual, company, association or corporation;—.’

This constitutional provision has been held to apply not only to the State but also to its political subdivisions. [Elliott v. McNair](#), 250 S.C. 75, 86, 156 S.E.2d 421. It is thus applicable to the Board. In [Bolt v. Cobb](#), 225 S.C. 408, 82 S.E.2d 789, the Supreme Court approved the issuance by a county of general obligation bonds for the construction of hospital facilities and for the use of those facilities by a private, non-profit, non-sectarian entity. The Court stated, in approving such a procedure, that, by such action, the County was ‘providing for the performance of a public corporate function through the agency of an existing non-profit and non-sectarian hospital.’ See also [Gilbert v. Bath](#), decided May 24, 1976, in which the Supreme Court upheld a procedure by which the City of Florence would donate lands to the County of Florence, which would, in turn, lease the lands to a private hospital for a period of time, thus creating a landlord-tenant relationship between the County of Florence and the eleemosynary corporation. It is important to note that in each of these cases title to the land remained in the public body, whereas, in the present circumstances, title to the land and building is vested exclusively in the private corporation.

*2 It is my opinion that the corporate function of the Board as outlined in its organic act of 1968 is to provide ‘for the operation of the public schools of the school district—.’ In my view, participating in the purchase of a building to be owned by a private, eleemosynary corporation does not come within the Scope of the corporate function of the Board as a Board of Education. In this view, I am persuaded, to some degree, by consideration of [Powell v. Thomas](#), 214 S.C. 376, 52 S.E.2d 782, in which the Court struck down the use of public funds to construct a building, one-half of which was to be occupied by the American Legion and the remainder of which was to be used as a War Memorial and to house county offices, on the ground that such a building was not a ‘public building’ which the County was constitutionally authorized to construct. Of interest also is [Anderson v. Baehr](#), 265 S.C. 153, 217 S.E.2d 43, in which the Court struck down a proposal to finance, through the issuance of revenue bonds, a procedure which would authorize the City of Spartanburg to condemn land to improve downtown property by the construction and maintenance of some type of public facility typical of a downtown area. The Court considers the primary beneficiary of such a procedure to be the private developers and concluded that the benefit to the City was of an incidental nature. Of prime interest is [Jacobs v. McLain](#), 262 S.C. 425, in which the Court struck down a proposal to finance the construction of a building to be occupied by physicians on the staff of a public hospital.

The General Assembly has authorized school boards of trustees generally to pay from the public funds the fees and dues of trustees who become members of the Association, and this action recognizes the relationship of the Association and the objectives of school boards generally but, in my opinion, there is a line of distinction between statutory authority to use public funds for the payment of fees and dues and the utilization as members funds to construct a building. Participation as members bestows clear benefits upon the members of school boards and upon their public function but the construction or purchase of a headquarters building, which I assume to be the objective in this instance, involves more than participating in the programs and activities of the Association. The building may be granted on dissolution to any number of various tax-exempt organizations or to one of an equally numberless governmental bodies which may or may not be related to public education of the type with which school boards are concerned.

The Board possesses also the authority of school trustees generally, which gives them the authority ‘to manage and control the school district’ (Section 21–221). See also Section 21–230(7), which vests in the Board as trustees of the district the management and control of the ‘local educational interests of the district, with exclusive authority to operate or not to operate any public school.’ I do not believe that these grants of authority include the right to participate in the construction of a building, the ownership of which will be vested in a private, non-profit organization, as laudable as the objectives of such a private organization may be.

*3 I have personal knowledge of the extremely valuable services rendered by the Association, having myself participated in its functions and programs, and it is with great reluctance that I express the opinion that the donation of the funds accruing to the Board from public sources cannot validly be made for the construction or purchase of this building.

Very truly yours,

Daniel R. McLeod
Attorney General

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