

1977 WL 37273 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

March 18, 1977

*1 Roy McBee Smith, Esquire
County Attorney
P. O. Box 5306
Spartanburg, South Carolina 29301

Dear Mr. Smith:

You have requested an opinion from this Office as to whether or not the Spartanburg County Council can constitutionally make an appropriation to the Charles Lea Center toward the construction of a building for the training of handicapped children and adults. In my opinion, it can as hereinafter discussed.

The Charles Lea Center for Rehabilitation and Special Education, Inc. (Center) is a non-profit, non-sectarian charitable corporation whose purposes are to:

establish rehabilitation center of centers; to assist governmental and private agencies in pursuance of their endeavors as may concern rehabilitation of citizens; to establish necessary relations with other organizations or functions to bring about benefit to this organization.

Its corporate charter provides that, upon dissolution, its residual assets will revert to the United Fund of Spartanburg County or to the local, state or federal government for exclusively public purposes.

Article X, Section 6 of the South Carolina Constitution of 1895, as amended, provides in part:

[t]he credit of the State shall not be pledged or loaned for the benefit of any individual, company, association or corporation; . . . the General Assembly shall not have power to authorize any county . . . to levy a tax or issue bonds for any purpose except for educational purposes; . . .

As you note, [Bolt v. Cobb](#), 225 S.C. 408, 82 S.E.2d 789, held that a county could constitutionally issue general obligation bonds for the construction of hospital facilities and the use of those facilities by a private, non-sectarian and non-profit organization because the county was 'providing for the performance of a public corporate function through the agency of an existing non-profit and non-sectarian hospital.' Again, in [Gilbert v. Bath](#), 267 S.C., 171, 227 S.E.2d 177, a county was allowed to appropriate funds to a regional health services district to be leased to a private hospital. In both instances, title to the property remained in a public entity and, for that reason, the property upon which the Center construction is to take place most probably needs to be vested in Spartanburg County and then leased back to the Center in order for the proposed appropriation to come within the scope of [Bolt](#) and [Gilbert](#) holdings. My understanding is that the Center authorities will be willing to engage in such a transaction if it is necessary in order to qualify for the County appropriation. This procedure would most probably remove the proposed expenditure from the possibly invalidating effect of two recent decisions of the South Carolina Supreme Court in [Anderson v. Baehr](#), 265 S.C. 153, 217 S.E.2d 43, and [Jacobs v. McLain](#), 262 S.C. 425, 205 S.E.2d 172. In any event, assuming the question of the title to the property is successfully resolved, in my opinion, the function performed by the Center is of the [Bolt v. Cobb](#) nature, i.e., 'a public corporate function,' especially in view of the fact that the Center contracts with public school districts, *inter alia*, to educate and train handicapped children. See generally, §§ 21-295.14 and . 15, CODE OF LAWS OF SOUTH CAROLINA, 1962, as amended (Cum. Supp.).

*2 In response to your second inquiry, I agree with your conclusion that there is no State statute requiring competitive bidding on county construction projects, Section 1-466 of the Code having reference to public buildings constructed with State funds. Therefore, if there is no Spartanburg County ordinance requiring competitive bidding on construction projects, the County is free to award a construction contract without competitive bidding therefor.

With kind regards,

Karen LeCraft Henderson
Assistant Attorney General

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