

1977 S.C. Op. Atty. Gen. 171 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-224, 1977 WL 24566

Office of the Attorney General

State of South Carolina

Opinion No. 77-224

July 18, 1977

***1 Re: The legality of a private foundation linked to the College being able to issue tax exempt bonds.**

Mr. N. C. Frederick
Vice President of Business and Finance
Francis Marion College
Florence, SC 29501

Dear Mr. Frederick:

You have inquired as to the legality of a private foundation linked to the College being able to issue tax exempt bonds.

It is the opinion of this Office that such a foundation is not empowered to issue tax exempt bonds. According to § 12-1-60 of the South Carolina Code, a tax exempt bond may be issued 'on behalf, of this State, and any authority, agency, department or institution of the State . . .'. Moreover, the term 'on behalf of' is defined by Words and Phrases, permanent edition as follows: Treasury regulations promulgated in connection with Revenue Act provision excluding, from gross income, interest received on obligations of states or their political subdivisions which regulation defined political subdivision and generally exempted interest on obligations issued by or 'on behalf of' the State or a duly organized political subdivision acting by constituted authority empowered to issue such obligations, covered bonds of Port of New York Authority, the bonds of which were issued 'on behalf of' the States of New York and New Jersey within the meaning of the regulations. (Emphasis added.)

Clearly, the authorities dictate that tax exempt bonds can be issued 'on behalf of this State, any authority, agency, department or institution . . .'. Francis Marion College is an 'institution' within the meaning of this statute. 'Institution' is defined as 'One which is created and exists by law or public authority, . . .'. Black's Law Dictionary at 941 (4ed., 1968). However, a private foundation linked to the College is not such an institution and is not a political subdivision of the State. Furthermore, I have not been able to find any statutory authority allowing a private foundation to issue tax exempt bonds on behalf of or in lieu of a State institution.

Therefore, it is the conclusion of this Office that if a private foundation linked with the College issues bonds, they will not be tax exempt.

Yours very truly,

M. Elizabeth Crum
Assistant Attorney General

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