ALAN WILSON
ATTORNEY GENERAL

February 12, 2016

Mr. Tod Augsburger
Chief Executive Officer, Lexington Medical Center
2720 Sunset Boulevard
West Columbia, SC 29169

Dear Mr. Augsburger:

Attorney General Alan Wilson has referred your letter dated November 19, 2015 to the Opinions section for a response. The following is this Office's understanding of your question and our opinion based on that understanding.

Issue (as quoted from your letter)**:** *Whether Lexington County Health Services District (d/b/a Lexington Medical Center) may donate funds to the Good Samaritan Clinic when the funds are to be used solely to operate free clinics located in Lexington County and to provide for healthcare services at those clinics. L[exington] M[edical] C[enter] believes such donation will not violate South Carolina law because the funds will not be used to promote any religious purpose or goal and the Good Samaritan Clinic is not a religious organization or controlled by a religious organization. ... LMC is a regional health services district created in 1988 by Lexington County Ordinance No. 88-1 pursuant to S.C. Code Ann. § 44-7-2010 et seq. to provide medical services to the residents of Lexington County. The district incorporated in 1988 pursuant to S.C. Code § 44-7-2150 et seq., stating as its purpose*:

> *The purpose of the proposed corporation is to engage in the planning, establishing, financing, developing, constructing, enlarging, improving, maintaining, equipping, operating, regulating, protecting, policing,* ***or in other ways assisting in the development of hospitals, health care facilities, assistance or facilities for the aged, or other health care related facilities;*** *to organize or cause to be organized under the laws of the state of South Carolina a subsidiary corporation or corporations for the purpose of* ***transacting, promoting, or carrying on any governmental, for-profit, or non-profit activities permitted under South Carolina law; and all other related purposes not in contravention of South Carolina law.***

(Certificate of Incorporation, section 10) (emphasis added).

Thus, LMC was created to provide for the health care needs of the residents of Lexington County and to improve the health of the community. This purpose spreads beyond the confines of LMC's campus and manifests in many ways, one of which is by financial contributions to health care organizations in the community that offer charitable care. LMC believes these financial contributions align with LMC's purposes and goals and offer an avenue for LMC to provide for increased access to quality health care in Lexington County.

...

LMC believes the Good Samaritan Clinic serves a legitimate public purpose and fulfills an important need in the community. Charitable clinics are vital to the continued improvement of access to quality health care in Lexington County. LMC's charitable donation to the clinic is consistent with LMC's stated goals and purposes. Further, because participation in spiritual services is not entwined with the offered health care services, LMC's donation to the Good Samaritan Clinic will be earmarked solely for health care and dental services, and the clinic has agreed to isolate the funds from LMC to provide for health care services such that no LMC dollars will fund spiritual programs. ...

Law/Analysis:
By way of background, it is this Office's understanding that Lexington County Health Services District was created as a health services district pursuant South Carolina Code Ann. § 44-7-2010 and thus is a "body politic and corporate within the counties and municipalities so designated" as stated therein. This Office has issued previous opinions regarding health services districts, including your health services district. In one opinion concerning the Lexington Medical Center Board of Directors we stated that:

> [W]e understand the Lexington County Council ("County Council") established the Lexington County Health Services District (the "District"), a regional health services district for the operation of Lexington County Hospital. Lexington County, S.C., Ordinance No. 88-1 (1988). As such, County Council also established the Board of Directors to govern the District consisting of twenty members appointed by County Council. Id. ...
> Thus, because the Board of Directors was established through legislative action describing its member's qualifications and terms of office and the fact that the ordinance grants to the Board of Directors a portion of the sovereign power of the State, we find membership on the Board of Directors is an office. Furthermore, this conclusion is consistent with numerous opinions of this Office finding membership on a county hospital board to be an office for purposes of article XVII, section 1A. See Ops. Atty. Gen., February 26, 2007 (Barnwell County Hospital Board of Trustees); June 1, 2005 (Bamb[e]rg County Hospital Board); April 20, 2004 (Abbeville County Memorial Hospital Board of Trustees); January 17, 2000 (Edgefield County Hospital Board); January 11, 1999 (board of trustees for the Regional Medical Center of Orangeburg and Calhoun Counties).

Op. S.C. Att'y Gen., 2007 WL 1651330 (S.C.A.G. May 2, 2007). In prior opinions, we opined that a health service district created pursuant to S.C. Code § 44-7-2010 was a political subdivision of the State. See Op. S.C. Att'y Gen., 1981 WL 158178 (S.C.A.G. March 11, 1981). See also Ops. S.C. Att'y Gen., 1964 WL 8330 (S.C.A.G. July 30, 1964); 1987 WL 245488 (S.C.A.G. September 14, 1987). However, as you mention in your letter, Lexington County Health Services District was also incorporated as a nonprofit corporation in South Carolina in 1988 pursuant to S.C. Code § 44-7-2150 et seq. as Lexington County Health Services District, Inc. See http://www.sos.sc.gov/index.asp?n=18&p=4&s=18&corporateid=172480 (last updated January 4, 2016).

There are two statutes regarding health services districts we will want to first reference in answering your question. The first one is South Carolina Code § 44-7-2080 regarding the disposition and expenditure of revenues belonging to health services districts. It states:

> All revenues derived by the district from the operation of any revenue-producing facility other than revenues which may be required to discharge covenants made by it in issuing bonds, notes, or other obligations as authorized herein shall be held, disposed of, or expended by the board for purposes germane to the functions and purposes of the district. Any expenditure permitted by the provisions of this act pursuant to § 44-7-2157 to be made by or on behalf of a district is considered an expenditure of operating and maintaining public hospitals and public facilities for a public purpose and no expenditure permitted by this act or any other provisions of law may be considered to be a lending of credit or a granting of public money or a thing of value or an aid of any individual, association, or corporation within the meaning of any constitution or statutory provision.

S.C. Code Ann. § 44-7-2080 (1976 Code, as amended) (emphasis added). The statute requires the district to spend its proceeds for purposes "germane to the functions and purposes of the district." Id. The statute references South Carolina Code § 44-7-2157, which is the second statute we want to mention. It states:

> Upon incorporation, the district has the following powers which are in addition to those powers, duties, and authority conferred upon it by Act 490 of 1976:
> (1) To lease or otherwise make available any health care facilities or other of its properties and assets under such terms and conditions as the board considers appropriate.
> (2) To provide instruction and training for and to contract for the instruction and training of nurses, technicians, and other technical, professional, and paramedical personnel.
> (3) To affiliate with and to contract to provide training and clinical experience for students of other institutions.
> (4) To contract for the operation of any department, section, equipment, or holdings of the district and to enter into those contracts which, in its judgment, are in the best interest of the district.
> (5) To assume any obligations of any entity that conveys and transfers to the district any health care facilities or other property or interests therein.
> (6) To make any expenditure of any monies under its control that would be considered as ordinary and necessary expenses of the district within the meaning of state and federal taxation laws.
> (7) To provide scholarships for students in training for work in the duties peculiar to health care.
> (8) To enter into affiliation, cooperation, territorial management, or other similar agreements with other institutions for the sharing, division, allocation, or exclusive furnishing of services, referral of patients, management of facilities, and other similar activities.
>
> Nothing contained in this article may be considered to affect or alter the existing laws as they relate to the rights, privileges, medical staff membership, or remedies of physician members of the medical staff of hospitals, hospital facilities, or health care facilities. No district has the power to levy taxes.

S.C. Code Ann. § 44-7-2157 (1976 Code, as amended). Pursuant to a health services district's incorporation, the statute authorizes an incorporated district to contract for any part of its operation, spend money as necessary and enter into agreements with other institutions. S.C. Code § 44-7-2157. Nevertheless, in regards to health services districts we must also note here that they are statutorily prohibited from levying taxes. Id. However, it is our understanding that Lexington County Health Services District receives no income from the levy of taxes, including no taxpayer dollars from the County.

Now let us examine some Constitutional issues. Article X, Section 11 of the South Carolina Constitution states that:

> The credit of neither the State nor of 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 education institution except as permitted by Section 3, Article XI of this Constitution. Neither the State nor any of its political subdivisions shall become a joint owner of or stockholder in any company, association, or corporation. ...

Regarding Article X, Section 11 of the South Carolina Constitution, your letter provides as follows:

> *In prior opinions, your office has relied on South Carolina Supreme Court cases in finding that public monies expended to support non-profit entities do not violate Article X, Section 11 when the funds are used for a public purpose.* See S.C. Atty. Gen. Op., *July 28, 2008, citing* Gilbert v. Bath, *267 S.C. 171, 227 S.E.2d 177 (1976);* Bolt v. Cobb, *225 S.C. 408, 82 S.E.2d 789 (1954). Further, your office has opined that providing for the care of indigents is "an appropriate governmental function for which public funds may be expended."* S.C. Atty. Gen. Op., *1969 WL 15627 (July 25, 1969). The funds LMC wishes to donate to the Good Samaritan Clinic will be used exclusively to provide for health care and dental services to indigent persons. From the standpoint of "public purpose,", therefore, LMC believe[s] that the funds it wishes to donate meet this requirement of the law.*
>
> *As explained below, Article X, Section 11 has been interpreted to preclude a governmental entity from expending any public funds in support of an organization under the control of a religious or sectarian organization. LMC believes that this prohibition does not preclude a donation to the Good Samaritan Clinic because the clinic is not under the control of a religious or sectarian organization.*
>
> *In a 1969 opinion, the Attorney General considered whether state funds could be used to support "religiously controlled" nursing homes that care for indigent patients. The opinion determined that the expenditure of public funds to nursing homes that are "under the control of sectarian bodies" is a violation of Article X, Section 11's prohibition, even though providing for indigent patients is an appropriate governmental function.* S.C. Atty. Gen. Op., *1969 WL 15627 (July 25, 1969).*

> *In a 1975 opinion, the Attorney General was asked to consider whether public monies could be used to support the YMCA and YWCA's building programs. The Attorney General noted that the organizations' purposes were explicitly religious.* ... S.C. Atty. Gen. Op., *1975 WL 29488 (Feb. 10, 1975). Because the YMCA and YWCA were found to be explicitly religious organizations, the contribution of public monies to a building program for those organizations was held to violate the state constitution.* S.C. Atty. Gen. Op., *1975 WL 29488 (Feb. 10, 1975). This interpretation was affirmed in a 1995 Attorney General Opinion that concluded the Newberry County Recreation Commission was constitutionally prevented from donating public money to the YMCA.* S.C. Atty. Gen. Op., *1995 WL 805764 (Sept. 22, 1995).*
>
> *In contrast to the situations presented in the above referenced opinions, the Good Samaritan Clinic is not an explicitly religious organization, nor is it under the control of a religious or sectarian organization. Unlike the YMCA and the YWCA, the Good Samaritan Clinic does not promote a particular religion or religious activities.*[1] *As stated on its website, the clinic's purpose is to provide free health and dental care to individuals in need. The spiritual counseling offered at the clinic is simply one of a number of additional services the clinic provides upon request to meet the needs of its patients. Many organizations contribute to the Good Samaritan Clinic, including secular organizations and religious organizations from a variety of denominations.* ...

This Office has also previously opined concerning Article X, Section 11 that:

> Our courts interpret this provision as prohibiting the expenditure of public funds for the primary benefit of private parties. State ex rel. McLeod v. Riley, 276 S.C. 323, 329, 278 S.E.2d 612, 615 (1981). Moreover, in prior opinions, this Office concluded that this provision is violated "when public funds are appropriated to a private entity and such appropriation is not for a public purpose." Op. S.C. Atty. Gen., March 19, 1985 (citations and quotations omitted).

Op. S.C. Att'y Gen., 2008 WL 4829833 (S.C.A.G. October 28, 2008). Nevertheless, regarding that same section of the Constitution, this Office has also previously opined that "[c]onstruing the constitutional provision according to its plain, literal, and ordinary meaning as must be done in the absence of ambiguity, Henderson v. Evans, 268 S.C. 127, 232 S.E.2d 331 (1977) ...." Op. S.C. Att'y Gen., 1987 WL 245488 (S.C.A.G. September 14, 1987). In a previous opinion we discussed our State Supreme Court's conclusion regarding this same section of the Constitution, stating that:

> Thus the question is what is meant in Art. X, § 11 by the term "pledge[] or loan[]" of the "credit" of the State and whether a grant of funds to SCNHC, such as you have described, contravenes this provision. Our own Supreme Court has stated that the purpose of Article X, § 11 [formerly Art. X, § 6] is "to prevent the State from entering into business hazards which might involve obligations of the public." Chapman v. Greenville Chamber of Commerce, 127 S.C. 173, 120 S.E. 584

[1] For purposes of this opinion, we have not researched the Good Samaritan Clinic but presume all facts and information in your letter are accurate.

> (1923). The word "credit" has been construed to mean any "pecuniary liability" or "pecuniary involvement." Elliott v. McNair, supra.

Op. S.C. Att'y Gen., 2003 WL 22050883 (S.C. A.G. August 29, 2003). However, this Office has also opined that "[i]n the case of a health services district and a hospital corporation, the public purpose is clear and has been emphasized by statute; no private individual or corporation will gain or profit from the use of public funds. No private purpose will thereby be served." Op. S.C. Att'y Gen., 1987 WL 245488 (S.C.A.G. September 14, 1987). The 1987 opinion goes into detail concerning health services districts and stated:

> In Section 35 of Part II, Act No. 512 of 1984, the General Assembly made specific findings with respect to health services districts:
> (1) That publicly-owned hospitals and other health care facilities furnish a substantial part of the indigent, reduced rate care, and other health care services furnished to residents of the State by hospitals and other health care facilities generally;
> (2) That as a result of current significant physical and budgetary limitations and restrictions, the State and its various counties and municipalities are no longer able to provide, from taxes and other general fund monies, all the revenues and funds necessary to operate these publicly-owned hospitals and other health care facilities in an adequate and efficient manner; and
> (3) That in order to enable these publicly-owned hospitals and other health care facilities to continue to operate adequately and efficiently, it is necessary that the entities and agencies operating them have the same powers with respect to health care facilities as are now vested in various not-for-profit or proprietary hospitals or health care authorities and corporations, and have the ability to provide a corporate structure somewhat more flexible than those now provided for in existing laws relating to public hospital and health care facilities.
> It is therefore the intent of the General Assembly by passage of this act to promote the public health of the people of the State:
>
> > (a) by authorizing the several counties and municipalities in the State to form public corporations whose corporate purpose is to acquire, own, and operate health care facilities as that term is defined in this act; and
> > (b) by permitting with the consent of the counties or municipalities (or both) authorizing their formation, existing public health corporations to reincorporate. To that end, this act invests each public corporation so organized or reincorporated with all powers that may be necessary to enable it to accomplish its corporate purposes.
>
> Thus, the General Assembly has attempted to provide more flexibility in the corporate structures of health services districts and hospitals incorporated pursuant to Section 44–7–2130 et seq. of the Code. Further, the General Assembly has established a specific corporate purpose "to acquire, own, and operate health care facilities,"[2] and has vested in each corporation "all powers that may be necessary to enable it to accomplish its corporate purpose." Id.
> In addition, Section 44–7–2080 of the Code stresses the public nature of the operations and expenditures of hospitals and health services districts:

> All revenues derived by the district from the operation of any revenue-producing facility other than revenues which may be required to discharge covenants made by it in issuing bonds, notes, or other obligations as authorized herein shall be held, disposed of, or expended by the board for purposes germane to the functions and purposes of the district. Any expenditure permitted by the provisions of this act pursuant to § 44–7–2157 to be made by or on behalf of a district is considered an expenditure of operating and maintaining public hospitals and public facilities for a public purpose and no expenditure permitted by this act or any other provisions of law may be considered to be a lending of credit or a granting of public money or a thing of value or an aid of any individual, association, or corporation within the meaning of any constitution or statutory provision.
> The last sentence in particular is important in the analysis of applicability of the constitutional provision.
> Finally, again it may be noted that in the definition of "public hospital corporation," the power to "own or operate any health care facilities, including without limitation, any public corporation or authority heretofore or hereafter organized ..." (Emphasis added) is included. Authority to own a public corporation appears to have been specifically granted; the lack of limitation within the statute must be noted.

Op. S.C. Att'y Gen., 1987 WL 245488 (S.C.A.G. September 14, 1987). Furthermore, this Office opined regarding health services districts that:

> A health service district is governed by a board of directors, the members of which are appointed by the governing body of the political subdivision which has established the district. See S.C. Code Ann. §44-7-2020. The board of directors' powers and duties are provided for in Sections 44-7-2060, 2070, 2080, 2100, etc. The board's overriding duty is that of" ... planning, establishing, financing, developing, constructing, enlarging, improving, maintaining, equipping, operating, regulating, protecting, policing or in other ways assisting in the development of nonprofit hospitals and health care related facilities .... " See S.C. Code Ann. §44-7-2100. Further, Section 44-7-2130 provides that a" ... health service district constitutes an agency of the county to operate health care facilities and shall receive the proceeds from any special public hospital tax levied by the authorizing subdivisions." The board is also authorized to receive and expend money from private sources to further the purposes of the district. See 44-7-2060(12).
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> Given the nature in which they are created and the functions they perform, this Office previously opined that health service districts would most likely be considered political subdivisions of the State of South Carolina. See OP. ATTY. GEN. dated September 14, 1987. Health Service districts are specifically made agencies of the county, are authorized to receive public funding and they perform a recognized governmental or public function. Supra. As this Office has consistently opined, public funds may be expended only for a public purpose, not a private purpose. See OP. ATTY. GEN. dated December 18, 2000. Further, even though a district may receive funding from private sources, once private money is donated to a political subdivision of the State, that money becomes public funds just as

> though it had originated from public revenue sources. See OP. ATTY. GEN. dated May 21, 2001. Accordingly, even money received as a private donation would be subject to the limitation that it be expended for a public purpose. Supra. It seems doubtful that a political contribution to a State candidate or State political action committee could ever be considered an expenditure of money for a public purpose.

Op. S.C. Att'y Gen., 2002 WL 1925749 (S.C.A.G. June 24, 2002) (emphasis added).

Furthermore, as you may be aware, Lexington County Health Services District filed a brief with the South Carolina Court of Appeals where it asserted that:

> ... the General Assembly then amended the Regional Health Services District Act in several important respects designed to maximize the spending powers of the district to provided health care to the public.
>
> Section 8 of the original Act (codified as § 44-7-2080) was amended to add a provision that clarifies that any expenditure made by or on behalf of a district is for a "public purpose" and would not be considered to be made for the benefit of a private party such as would be prohibited under the Constitution or other statutes. (Act No. 512, Section 35, 1984 S.C. Acts 3058-3059).

Final Brief of Respondent Lexington Health Services District d/b/a Lexington Medical Center, Lexington County Health Services District v. S.C. Department of Revenue, 2008 WL 5008775 at 17 (S.C.A.G. September 4, 2008), appeal from the Administrative Law Court Case No. 06-ALJ-17-0619-CC. This Office will presume the District's position in the brief is still its position today, and even if it is not, a court may likely hold the District's to its previous position. Moreover, a 1975 opinion by this Office concluded that the South Carolina Department of Health and Environmental Control should not donate funds to a private, nonprofit hospital unless the South Carolina Supreme Court "confirms an extension of Bolt v. Cobb ... in such circumstances." Op. S.C. Att'y Gen., 1975 WL 29727 (S.C.A.G. April 17, 1975). A 1977 opinion noted that in both the Bolt and Gilbert cases the public entity retained title to the property. Op. S.C. Att'y Gen., 1977 WL 37273 (S.C.A.G. March 18, 1977). The opinion went on to conclude that the title to the land should be in the county's name in order for the county to appropriate funds to the nonprofit corporation. Id. Another 1977 opinion by this Office concluded that the Town of St. George could donate funds to a nonprofit cemetery as long as the cemetery operated in a nonprofit, nondiscriminatory manner "so that no funds would accrue to the benefit of any individual from the operation of the cemetery and all citizens of St. George would be eligible for burial irrespective of race, color, creed or national origin" based on Bolt v. Cobb (225 S.C. 408, 82 S.E.2d 789), Gilbert v. Bath (267 S.C. 171, 227 S.E.2d 177) and prior opinions of this Office. Op. S.C. Att'y Gen., 1977 WL 24460 (S.C.A.G. April 26, 1977). In determining whether a public purpose exists, a 2003 opinion by this Office noted that the demarcation was drawn between nonprofit and for-profit corporations. It went on to state that:

> ...we have concluded that the Beaufort County Council could "allocate public funds to the Child Abuse Prevention Association, albeit a private nonprofit corporation ..." because such expenditure "would constitute a valid public purpose." Op. S.C. Atty. Gen., Op. No. 88-52 (June 27, 1988). In Op. S.C. Atty. Gen., Op. No. 93-44 (June 23, 1993), we noted that "... the courts of this State

> have looked favorably at the use of public funds with respect to nonprofit (eleemosynary) corporations serving public purposes..." Citing, Bolt v. Cobb, 225 S.C. 408, 415, 82 S.E.2d 789 (1954) and Gilbert v. Bath, 267 S.C. 171, 227 S.E.2d 177 (1976). See also, Ops. S.C. Atty. Gen., January 16, 1978; April 20, 1982; July 12, 1984; March 1, 1991.

Op. S.C. Att'y Gen., 2003 WL 22050883 (S.C. A.G. August 29, 2003). In a more recent opinion this Office has discussed the Bolt v. Cobb case and stated that "a hospital or hospital system may provide 'for the performance of a public, corporate function through the agency' of a nonprofit corporation." Op. S.C. Att'y Gen., 2015 WL 5896029 (S.C.A.G. September 28, 2015) (quoting Bolt v. Cobb, 225 S.C. 408, 415, 82 S.E.2d 789, 793 (1954)).[2]

Additionally, this Office has previously opined regarding public purpose that:

> It is well-settled that the expenditure of state funds must be for a public, not a private purpose. Elliott v. McNair, 250 S.C. 75, 156 S.E.2d 421 (1967); Haesloop v. Charleston, 123 S.C. 272, 115 S.E. 596 (1923). As the Court suggested in Elliott, the Due Process Clause of the Constitution (federal and state) requires that public funds must be expended for a public purpose. Moreover, Article X, Section 5 of the South Carolina Constitution requires that taxes (public funds) be spent for public purposes. While each case must be decided on its own merits, the notion of what constitutes a public purpose has been described by our Supreme Court in Anderson v. Baehr, 265 S.C. 153, 217 S.E.2d 43 (1975) as follows:
>
> > [a]s a general rule a public purpose has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity and contentment for all the inhabitants or residents, or at least a substantial part thereof. Legislation [i.e., relative to the expenditure of funds] does not have to benefit all of the people in order to serve a public purpose.
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> 217 S.E.2d at 47. See also, WDW Properties v. City of Sumter, 342 S.C. 6, 535 S.E.2d 631 (2000); Nichols v. South Carolina Research Authority, 290 S.C. 415, 351S.E.2d155 (1986); Carll v. South Carolina Jobs-Economic Development Authority, 284 S.C. 438, 327 S.E.2d 331 (1985); Bauer v. S.C. State Housing Authority, 271S.C.219, 246 S.E.2d 869(1978); Caldwell v. McMillan, 224 S.C. 150, 77 S.E.2d 798 (1953). As emphasized in Bauer, the "mere fact that benefits will accrue to private individuals or entities does not destroy public purpose." 271 S.C. at 29. In Nichols, the Court established the following test to determine whether the "public purpose" requirement has been met:
>
> > [t]he Court should first determine the ultimate goal or benefit to the public intended by the project. Second, the Court should analyze whether public or private parties will be the primary beneficiaries. Third, the speculative nature of the project must be considered. Fourth, the Court

[2] This Office has referred to the Bolt v. Cobb, 225 S.C. 408, 82 S.E.2d 789 (1954) case in over eighty of its opinions. Thus, while we mention a few instances in this opinion, there are numerous others and would encourage you to read those opinions for further analysis.

> must analyze and balance the probability that the public interest will be ultimately served and to what degree.
>
> 351 S.E.2d at 163.

Op. S.C. Att'y Gen., 2003 WL 22050883 (S.C.A.G. August 29, 2003). Using the test in Nichols, we believe based on the information provided to us that a court could determine the funds would be used for a public purpose for the goal of benefitting the public with healthcare without violating Article X, Section 11. Moreover, Article XII, Section 1 of the South Carolina Constitution states that "[t]he health, welfare, and safety of the lives and property of the people of this State and the conservation of its natural resources are matters of public concern." Certainly a donation for health and dental care for the public would fit within the health, welfare and safety of the lives of the people of South Carolina.

Furthermore, your letter mentions a 1969 opinion written by our office, that opinion was based on Article XI, Section 9 of our State Constitution. See Op. S.C. Att'y Gen., 1969 WL 15627 (S.C.A.G. July 25, 1969). However, that section of our Constitution no longer exists. In 1973 it was "transformed" into the less-restrictive, present day Article XI, section 4" of the South Carolina Constitution which states that "no money shall be paid from public funds nor shall the credit of the State or any of its political subdivisions be used for the direct benefit of any religious or other private educational institution." Op. S.C. Att'y Gen., 2012 WL 1036301 (S.C.A.G. March 20, 2012). Article XI, Section 4 of the South Carolina Constitution only applies to educational institutions, and thus our analysis in the 1969 nursing home opinion does not apply.

However, the other Constitutional issue that may need addressing regarding such a donation has to do with the respecting an establishment of religion. Our South Carolina Constitution states that:

> The General Assembly shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the government or any department thereof for a redress of grievances.

S.C. Const. art I, Section 2.[3] While this Office has issued many opinions concerning the Establishment Clause, we suggest examining our analysis of the Child Development Education Pilot Program. See Op. S.C. Att'y Gen., 2007 WL 419435 (S.C.A.G. January 9, 2007). In that opinion, we concluded that the program did not violate the Establishment Clause nor did it violate article XI, Section 4 of the South Carolina Constitution and could accept a private pre-kindergarten education program with a religious curriculum at the choice of the parents. Id. Moreover, in 2011, this Office concluded concerning scholarship and tax credits in the Education Opportunity Act that:

> So long as the program in question is based upon neutral, secular criteria that neither favor nor disfavor religion, and is made available to both religious and secular beneficiaries on a nondiscriminatory basis, such a program would likely survive constitutional scrutiny even in its application. As our Supreme Court has previously held in Durham, the aid must, in reality, be to the student, rather than to any institution or group of institutions.

[3] For purposes of this opinion we are equating U.S. Const. amend. I ("the Establishment Clause") concerns to our State constitutional prohibition of the establishment of religion.

Op. S.C. Att'y Gen., 2011 WL 1444725 (S.C.A.G. March 21, 2011). Both of these opinions concern the constitutionality of acts passed by the South Carolina Legislature affecting education but we feel they can be analogized to members of the public receiving healthcare at a clinic such as the one you describe in that the healthcare is given on a nondiscriminatory basis to members of the public.

Conclusion:

As mentioned above, this Office has previously opined that a health services district is a political subdivision of the State and as such, its money, even from private donations, would be considered public funds subject to the requirement that they be spent for a public purpose. Ops. S.C. Att'y Gen., 1964 WL 8330 (S.C.A.G. July 30, 1964); 2002 WL 1925749 (S.C.A.G. June 24, 2002).[4] Therefore, we agree with your conclusion that a court could conclude the funds donated to the Clinic will be used for a valid public purpose and that such a donation does not violate the Constitution based on reasoning such as that which established the Child Development Education Pilot Program in South Carolina and other such programs. Conversely, while it is certainly plausible a court may uphold an outright donation, the incontrovertible course of action would be to form an agreement for services with the Clinic pursuant to S.C. Code Ann. § 44-7-2157 if the utilization of the funds is germane to the District's purpose and the agreement otherwise complies with the law. Since the statute does not specify the requirements of an agreement, we presume the agreement could be a simple description of how the funds are to be used as part of the District's "allocation" of the "furnishing of services." S.C. Code Ann. § 44-7-2157(8). Nonetheless, we will leave such a decision as to how to proceed in the District's discretion, but we hope our analysis has been helpful. As you know, this Office is only issuing a legal opinion based on the current law at this time. Until a court or the Legislature specifically addresses the issues presented in your letter, this is only an opinion on how this Office believes a court would interpret the law in the matter. Additionally, you may also petition the court for a declaratory judgment, as only a court of law may interpret statutes and make such determinations. See S.C. Code § 15-53-20. If it is later determined otherwise, or if you have any additional questions or issues, please let us know.

Sincerely,

Anita S. Fair

Anita S. Fair
Assistant Attorney General

REVIEWED AND APPROVED BY:

Robert D. Cook
Solicitor General

[4] As an aside, this Office has previously opined that any type of lease or contract for services where a private party would make a profit using State resources may need to go through the applicable procurement code. See Op. S.C. Att'y Gen., 1996 WL 265495 (S.C.A.G. April 4, 1996); S.C. Code § 11-35-50.