1977 S.C. Op. Atty. Gen. 197 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-266, 1977 WL 24607

Office of the Attorney General

State of South Carolina
Opinion No. 77-266
August 23, 1977

***1** Mr. John M. Holpe
City Manager
City of Dillon
Post Office Drawer 431
Dillon, SC 29536

Dear Mr. Holpe:
You have inquired whether the City of Dillon can contract with several local, non-profit recreational organizations for the purpose of providing specified recreational programs and activities for the City. The City would provide funds for the administration of these programs from its budget under its 'general government' account.

Generally speaking, it is recognized that a municipality may provide by contract for the performance of a public, corporate function through the agency of a nonprofit, non-sectarian organization. See Bolt vs. Cobb, 225 S.C. 408, 82 S.E.2d 789, 793 (1954); 1970–71 Ops. Att'y Gen. 3113, p. 61; McQuillen, Municipal Corporations, § 29.08 n. 54 (1970); cf. Green vs. City of Rock Hill, 149 S.C. 234, 147 S.E. 346, 357–58 (1929). The power to contract may be authorized expressly, or by necessary or fair implication. See McQuillen, supra, § 29.05.

Under the existing law, all expenditures of public money by municipalities must be for a 'public and corporate purpose', as distinguished from a 'private purpose'. See S.C. Constitution, Art. 10, §§ 5 and 6; Anderson vs. Baehr, 269 S.C. 153, 217 S.E.2d 43 (1975); McQuillen, supra, § 39.19 (1970). Similarly, a municipality has no power to donate monies for private uses unless expressly authorized by law. See 1961 Ops. Att'y Gen. 1059, p. 124; McQuillen, supra, § 39.19, n. 4 (1970).

The courts of this state have recognized that the provision of recreational services by a municipality may serve an appropriate public purpose. In disposing of a case challenging the constitutionality of a bond issue proposed by the City of Marion, whose purpose in part was to finance the construction of a recreation center and swimming pool, the circuit court's opinion, which was printed on appeal as the judgment of the South Carolina Supreme Court, stated:
The acquisition and maintenance of public parks, thereby securing healthful rest and recreation, have long been recognized as proper municipal purposes and I see no difference whatsoever between municipal parks and the recreation center and swimming pool desired by the voters of Marion. As I conceive it, the constitutional provisions to which I have referred did not intend to limit municipalities to provide only for the absolute necessities of their citizens. Had such been the intention, more restrictive language would have been used. On the contrary, I am satisfied that a reasonable use of public money for objects to promote the general welfare was intended. Marshall vs. Rose, 213 S.C. 428, 49 S.E.2d 720, 725 (1948).

See also Gould vs. Barton, 256 S.C. 175, 181 S.E.2d 662, 668 (1971) (a zoological park, which is primarily educational and instructive, but which also has a recreational aspect, subserves a public purpose). This point is underscored by the 'home rule' legislation, enacted in 1975, which clearly grants authority to the municipality to provide recreational services through the language contained in S.C. Code Ann. § 5–7–30 (1976):
***2** All municipalities of the state shall, in addition to the powers, conferred to their specific form of government, have authority to enact regulations, resolutions and ordinances, not inconsistent with the constitution and general law of this state, . . . respecting any subject as shall appear to them necessary and proper for the security, general welfare, and convenience of such municipalities

of for preserving health, peace, order and good government therein, including the authority to . . . engage in the recreation function; . . ..

It is my opinion that the City of Dillon is empowered to contract for the provision of recreational services by local, non-profit organizations for 'specified recreational programs and activities', assuming that these recreational programs in fact subserve a public purpose. While the South Carolina Supreme Court has held that each case which defines public purpose, as contrasted with a private purpose, is determined on its own peculiar circumstances, the court has stated:
As a general rule a public purpose has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity and contentment of all the inhabitants or residents, or at least a substantial part thereof. Legislation does not have to benefit all of the people in order to serve a public purpose. Anderson vs. Baehr, 265 S.C. 153, 217 S.E.2d 43, 47 (1975).

Despite these general considerations, the court in Anderson held unconstitutional an act which authorized municipalities to finance slum clearance through contracts and agreements with local developers. The court in Anderson stated:
In our view, it (the act) permits the City to join hands with a developer and undertake projects which would be primarily to the benefit of the developer, with no assurance of more than negligible advantage to the general public. 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'. Anderson v. Baehr, supra, 217 S.E.2d at 48.

In accordance with these principles, if the 'specified recreational program and activities' which you refer to in your letter are designed primarily for the benefit of the individual organizations and their members, and will provide only a negligible and speculative benefit to the public, any contributions or expenditures by the City of Dillon for such recreational programs would be made for a private, rather than public, purpose, and would be unlawful. On the other hand, if the objective of these programs is to provide recreational services for the direct and immediate benefit for all or a substantial portion of the residents of the City, the expenditures by the City for these recreational programs would be for a public purpose, and would not be illegal.

I hope this information will be sufficient, and I sincerely apologize for the unusual delay in responding to your previous request for an opinion on this matter. Thank you for your cooperation and patience.
Sincerely yours,

***3** Nathan Kaminski, Jr.
Assistant Attorney General

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