1976 S.C. Op. Atty. Gen. 16 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4234, 1976 WL 22854

Office of the Attorney General

State of South Carolina
Opinion No. 4234
January 16, 1976

***1** Because of Existing constitutional restraints, the State of South Carolina would be unable to legally participate in the Individual and Family Grant Programs conducted within Section 408 of the Federal Disaster Relief Act of 1974.

TO: Director
South Carolina Disaster Preparedness Agency

QUESTION PRESENTED

Whether the State of South Carolina may legally participate in the Individual and Family Grant Programs provided for in Section 408 of the Federal Disaster Relief Act of 1974.

STATUTES, CASES, ETC., INVOLVED

Public Law 93–288 (Federal Disaster Relief Act of 1974); South Carolina Constitution, Art. I, §§ 3 and 13 (1971); Art. III, § 1A (1971); Art. X, §§ 5 and 6 (1971); Feldman and Co. v. City Council of Charleston, 23 S.C. 57 (1885); Elliott v. McNair, 250 S.C. 75, 156 S.E.2d 421 (1967); Hunt v. McNair, 255 S.C. 71, 177 S.E.2d 362 (1970), vacated on other grounds, 403 U.S. 945, 91 S.Ct. 2276, 29 L.Ed.2d 854 (1971); Jacobs v. McLain, 262 S.C. 425, 205 S.E.2d 172 (1974).

DISCUSSION OF ISSUE

The assistance of this office was previously requested to review the Federal Disaster Relief Act of 1974, Public Law 93–288 and in particular Section 408 thereof dealing with Individual and Family Grant Programs in order to identify any legal impediment to the implementation of such a program in this State. That section provides in pertinent part:
(a) The President is authorized to make a grant to a State for the purpose of such State making grants to meet disaster-related necessary expenses or serious needs of individuals or families adversely affected by a major disaster in those cases where such individuals or families are unable to meet such expenses or needs through assistance under other provisions of this Act, or from other means. The Governor of a State shall administer the grant program authorized by this section.

(b) The Federal share of a grant to an individual or a family under this section shall be equal to 75 per centum of the actual cost of meeting such an expense or need and shall be made only on condition that the remaining 25 per centum of such cost is paid to such individual or family from funds made available by a State. Where a State is unable immediately to pay its share, the President is authorized to advance to such State such 25 per centum share, and any such advance is to be repaid to the United States when such State is able to do so. No individual and no family shall receive any grant or grants under this section aggregating more than $5,000 with respect to any one major disaster.

. . ..

As you were advised by the letter of former Assistant Attorney General John B. Grimball dated December 5, 1974, participation by the State of South Carolina in the Section 408 disaster assistance program is impermissible under our State Constitution

as now written because of the requirement that the State contribute 25 per cent of the total funds allocated to an individual or family under the federal program. It is further noted the federal act envisions the possibility that a state will have to draw 'advances' of its share from the United States thus obligating itself to make future reimbursements.

***2** Involved in our consideration is Article X, Section 6 of the South Carolina Constitution which expressly prohibits the State from pledging or loaning its 'credit' for the benefit of any individual, company, association or corporation. As noted by our Supreme Court 'the word 'credit' as used here was intended to protect the state against pecuniary liability.' Elliott v. McNair, 250 S.C. 75, 156 S.E.2d 421 (1967). In Elliott v. McNair, supra, our Court was confronted with a challenge to the constitutionality of the Industrial Revenue Bond Act which authorized political subdivisions to issue bonds for the purpose of financing industrial enterprises. Noting that the constitutional proscription above referred to runs both to the State and its political subdivisions, the Court nevertheless determined that there was no 'pecuniary involvement' under the act since the payments of the obligation to be assumed by the State or its political subdivisions for the benefit of a private concern were to be made from the rents to be received from the industry and only the real estate on which the industry is located would be secured as the source of repayment, thereby insulating public tax dollars from the obligation.

Those cases interpreting Article X, Section 6 have all dealt with bonded indebtedness and it is unclear whether that section would proscribe direct appropriations or expenditures. Many jurisdictions interpret such constitutional provisions as prohibiting transactions which create the customary relationship of borrower and lender or the imposition of some new financial liability which, in effect, results in creating a State debt. See Nohrr v. Brevard County Educational Facilities Authority, 247 So.2d 304 (Fla. 1971); Bannock County v. Citizens Bank and Trust Company, 53 Idaho 159, 22 P.2d 674 (1973). There would seem to be no doubt, however, that Article X, Section 6 would be read to at least prohibit this State's drawing an 'advance' of its share with the obligation of future payback.

Nevertheless, the legality of this State's participation in a program of individual or family grants faces another legal impediment. It has long been recognized and universally conceded that all legislative action must serve a 'public' rather than a 'private' purpose. See South Carolina Constitution, Art. X, §§ 5 and 6 (1971); Art. III, § 1A (1971); and Art. I, §§ 3 and 13 (1971). Recent decisions of the South Carolina Supreme Court appear to grant considerable weight to the opinion of the Legislature in regard to what plans and programs are sufficiently public in nature to justify governmental involvement; see, e.g., Hunt v. NcNair, 255 S.C. 71, 177 S.E.2d 362 (1970), vacated on other grounds, 403 U.S. 945, 91 S.Ct. 2276, 29 L.Ed.2d 854 (1971); Elliott v. McNair, supra, '[b]ut when the legislature has clearly overstepped its constitutional powers, it is not only the right, but the duty of [the] court to so declare.' Feldman and Co. v. City Council of Charleston, 23 S.C. 57 (1885). Applied in Jacobs v. McLain, 262 S.C. 425, 205 S.E.2d 172 (1974).

***3** Of particular significance in our consideration is the 1885 decision of our Supreme Court in Feldman and Co. v. City Council of Charleston, supra, which expressly held that the Legislature had no authority to approve a municipal bond issue designed to provide monetary loans to private individuals to aid in rebuilding dwellings, stores, warehouses, etc., destroyed by a major fire, because such loans were for a private rather than a public purpose. As noted by the Court,

That this was a private, and not a public purpose, seems to us clear. The real object was to loan the credit of the city to private individuals to afford them aid in repairing their losses occasioned by a disastrous fire. It was practically nothing more nor less than lending the credit and funds of the city to private individuals to aid them in building on their own lots dwellings, stores, warehouses, or such other structures as their interest or convenience might prompt, for their own individual use, and to promote their own individual comfort or gain. There was nothing whatever in it of a public nature. Id., at p. 64.

The Court's reasoning as stated in Feldman and subsequently reaffirmed in Jacobs v. McLain, supra, also stated thusly:

The promotion of the interests of individuals, either in respect of property or business, although it may result incidentally in the advancement of the public welfare is, in its essential character, a private and not a public object. However certain and great the resulting good to the general public, it does not, by reason of its comparative importance, cease to be incidental. The incidental advantage to the public, or to the State, which results from the promotion of private interests, and the prosperity of

private enterprises or business, does not justify their aid by the use of public money raised by taxation, or for which taxation may become necessary. It is the essential character of the direct object of the expenditure which must determine its validity as justifying a tax, and not the magnitude of the interests to be affected, nor the degree to which the general advantage of the community, and thus the public welfare, may be ultimately benefited by their promotion. Id., at p. 63.

CONCLUSION

The previous opinion of Mr. Grimball and the cases and constitutional provisions above referenced have been again reviewed and the same discussed with the Attorney General and it remains the opinion of this office that this State cannot at the present time legally participate in the Section 408 Individual and Family Grant Programs provided for in the Federal Lisaster Relief Act of 1974 and that to do so will require a constitutional amendment.

John P. Wilson
Senior Assistant Attorney General

159. S.C. AGENCIES—GENERAL

Archives and history does not have to support Richland Historic Preservation Commission 7.7.75

Chiropractic procedures—Student practice on patients 12.20.75 Cosmetic Art Examiners legal representation 4.15.75

***4** Historic Preservation act 1966 9.7.75 Commission (Richland County) 7.7.75

Human Affairs Commission—legal aid contract for elderly 8.1.75 legal services to elderly 6.26.75 revenue sharing discrimination 9.7.75

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