

1976 WL 30586 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 7, 1976

***1 Re: PRT long-term lease for proposed Waties Island Park**

Mr. Robert L. Gunter
Assistant Director
Administration
S. C. Department of Parks, Recreation and Tourism
Box 113
Edgar A. Brown Building
1205 Pendleton Street
Columbia, SC 29201

Dear Bob:

In response to your letter requesting an opinion concerning the leasing of Waties Island and the building of capital improvements thereon, please find enclosed a memorandum and attached opinions setting forth the legal problems surrounding the development of the Island. The gist of this memorandum is that PRT has the ability to enter into a long-term lease of Waties Island. The problems come in and develop in the Island and in paying the lease rental fees.

As explained in the memorandum, Article X, Section 6 of the State Constitution provides that 'the credit of the State shall not be pledged or loaned for the benefit of any individuals, company, association, or corporation . . .' The problem with investing considerable capital improvement monies on leased property is insuring that upon termination of the lease, the monies spent on such improvements do not inure to the benefit of the lessor, a private individual. This problem can be overcome by careful drafting of the lease which would allow PRT to do one of several things: either remove the capital improvements or have the value of the improvements at the expiration of the lease deducted from the overall terms of the lease. PRT, then, can enter into a long-term lease for Waties Island and put capital improvements on the Island provided that any such lease insures that the benefit is one to the public as opposed to one to a private individual.

Finally, you ask whether or not lease payments may be made from the revenues of the park. I find nothing which specifically prohibits such payments. However, the total payment should not exceed the fair market value of the Island. If you have any further questions regarding this lease, please do not hesitate to contact me.

Yours very truly,

M. Elizabeth Crum
Assistant Attorney General

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