

1976 WL 30785 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 18, 1976

***1 In Re: Berkeley County Library**

The Honorable R. Markley Dennis
County Attorney
Messrs, Dennis & Dennis
Attorneys at Law
Post Office Drawer 1174
Moncks Corner, South Carolina 29461

Dear Markley:

Thank you for your letter of June 3, 1976, concerning the Berkeley County Library.

According to the Secretary of State, the Berkeley County Library was chartered as an eleemosynary corporation in 1937, with a charter to exist in perpetuity. In 1957 the Berkeley County Library Board was created, which was merely a body politic and corporate. Section 42-318, Code of Laws.

That enabling statute was repealed in 1965 by Act No. 440. The Secretary of State informs me that the name was changed in 1965 to the Berkeley County Memorial Library and that is the name in which the charter granted in 1937 is now carried. The change of name was effected by action of the corporation itself. The 1967 Act apparently restored the Berkeley County Library to the status of an eleemosynary corporation. It is not chartered as such, although the Berkeley County Memorial Library is a chartered eleemosynary corporation, as noted above.

The duration of a charter of an eleemosynary corporation is in perpetuity unless otherwise specified and the Berkeley County Memorial Library will continue to function as an eleemosynary corporation until it is extinguished by action of that corporation. The Berkeley County Library, established by the 1967 Act, in my opinion, continues as an eleemosynary corporation created by statute, although it is, in actual reality, a political subdivision just as was originally contemplated by Section 42-318 prior to its repeal.

A number of county libraries appear to be created as eleemosynary corporations, although the purpose for following this procedure is baffling to me. I think that the eleemosynary corporation is a totally distinct entity from the statutory organization created by the 1967 Act and that there is no legal relationship between the two nor do I believe that it is necessary to procure a charter from the Secretary of State. I think it is essentially a subdivision of the county government and I am researching the opinions in this Office to see if we have passed upon this precise matter. I do know that it came into question in Laurens County, as well as Florence County, and it is my recollection that it brought up the problem of dual officeholding.

I will research this latter phase of the problem and write you further but, in the meantime, I do not feel that there is any action necessary for the procurement of a charter. I think that the Berkeley County Library is a political subdivision of the county.

With best wishes,
Cordially,

Daniel R. McLeod
Attorney General

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