1978 WL 34976 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
July 11, 1978

***1** William B. Bryan, Esquire
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Post Office Box 1365
Lake City, South Carolina 29560

Dear Mr. Bryan:
This is in response to your request of May 22, 1978, concerning the validity of a proposed expenditure of public funds by the Town of Scranton for the installation of water service lines on private land owned by an eleemosynary corporation and intended for use as the site of a nursing home facility. It is the opinion of this Office that such action would constitute use of public funds for a private purpose, and would thus be improper.

The general rule governing such municipal disbursements is that '[a]ppropriations of public funds must be for a public purpose, and this rule applies notwithstanding the funds may have been derived from a source other than taxation.' 63 Am.Jur.2d 391, 446. As stated by another authority, '[a]ll appropriations and expenditures of public money by municipalities and indebtedness created by them must be for a public and corporate purpose, as distinguished from a private purpose. . . .' MCQUILLIN, MUNICIPAL CORPORATIONS § 39.19 (3rd ed. 1970). Unfortunately, these formulations of the rule are deceptively simple, as 'public purpose' does not readily yield to precise definition. Nonetheless, '[a]n appropriation is for a public purpose if it is for the support of government, or for any of the recognized objects of government. The test of whether a particular activity may rightly be called a duty or an obligatory function of government is whether the welfare of the State as a whole is substantially promoted by or involved in the exercise.' 63 Am.Jur.2d 391, 447-8. 'Otherwise stated, the test of a public purpose should be whether the expenditure confers a direct benefit of reasonably general character to a significant part of the public, as distinguished from a remote or theoretical benefit.' MCQUILLIN, MUNICIPAL CORPORATIONS § 39.19. As a corollary to this general rule, 'A municipality has no power, unless expressly conferred by a constitutional provision, charter, or statute, to denote municipal moneys for private uses to any individual or company, not under the control of the City and having no connection with it, although a donation may be based upon a consideration.' MCQUILLIN, MUNICIPAL CORPORATIONS § 39.19.

Although the South Carolina Code contains no section specifically restricting municipal disbursements and expenditures to public purposes, it is clear from certain statutory and constitutional provisions, as well as from the attendant case law, that this limitation on municipal power is recognized by the State. Article X, Section 5 of the South Carolina Constitution requires that '[a]ny tax which shall be levied shall distinctly state the public purpose to which the proceeds of the tax shall be applied.' Similarly, Section 14(4) of that Article states that a '[g]eneral obligation debt may be incurred only for a purpose which is a public purpose and which is a corporate purpose of the applicable political subdivision.' Section 11 of Article X provides that the 'credit of neither the State nor 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 educational institution. . . .' Section 5-7-30 of the South Carolina Code (1976) empowers municipalities 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 or for preserving health, peace, order, or good government therein.'

***2** According to the South Carolina Supreme Court, '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.' Anderson v. Baehr, 265 S.C. 153, 217 S.E.2d 43, 47 (1975). In Hunt v. McNair, 255 S.C. 71,

177 S.E.2d 362 (1970), the Court reaffirmed two earlier cases, Bolton v. Wharton, 163 S.C. 242, 161 S.E. 454 (1931), and Feldman v. City of Charleston, 23 S.C. 57, 55 Am.Rep. 6 (1884), which had held, respectively, that certain benefits from proposed expenditures, such as increased taxable values or 'impetus to the commercial life of the community', are ordinarily too incidental or secondary to justify the outlay of public funds, and that such incidental benefits to the general public, regardless of their certainty and magnitude, cannot establish the foundation of a public purpose.

It is clear from the foregoing that the appropriation and expenditure powers of a municipality are circumscribed by this prohibition against the use of public funds for other than public purposes. The donation of water service lines to a private eleemosynary corporation, while generating certain incidental economic and social benefits to the town, cannot be construed as serving a public purpose, and thus such action would be precluded.
With kind regards,

Karen LeCraft Henderson
Senior Assistant Attorney General

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