1975 WL 28938 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
June 18, 1975

***1** Mrs. Margaret E. Herring
Director
Ware Shoals Child Development Center
51 South Greenwood Avenue
Ware Shoals, South Carolina 29692

Dear Mrs. Herring:
This letter is to confirm your telephone conversation with this Office on June 9, 1975. You have asked if the Town of Ware Shoals may provide power and/or fuel for the Ware Shoals Child Development Center; more specifically, whether this expenditure is for a public purpose as specified by the South Carolina Constitution.

It is the opinion of this Office that such expenditures are not for a public purpose and that the power or fuel may not lawfully be donated. Article VIII, Section 3, of the 1895 Constitution provides that '. . . no tax or assessment shall be levied or debt contracted except in pursuance of law, for public purposes specified by law.' While this section is no longer in the Constitution, it is still controlling until new legislation is passed concerning municipal governments, as section 1 of new Article VIII provides that, '[t]he powers possessed by all counties, cities, towns, and other political subdivisions at the effective date of the Constitution shall continue until changed in a manner provided by law . . ..'

Thus the public purpose test is still relevant to the expenditures of municipal funds. In this instance, a private organization, not an agency of the State or municipality, is seeking funds for what is essentially a private charitable purpose—child care. Section 591 of 56 American Jurisprudence 2d (Municipal Corporations) states:
In a number of cases, the view has been taken that it is not within the power of a municipal corporation even with express legislative authority, to donate funds in aid of a private institution, although it is devoted to charitable or education work for which public funds might lawfully be expended by the municipality directly, if a private corporation or organization controls the institution, selects its own officers, manages its own affairs, and owes no duty to the State except that which arises from the nature of the work undertaken by it. The incidental benefit to a municipality from the location of such an institution within its limits has been deemed not to be the kind of benefit and interest which will authorize an expenditure of public funds.

Furthermore, the South Carolina Supreme Court stated a similar view in Jacobs v. McClain, 262 S.C. 425, 205 S.E.2d 172, 174 (1974), quoting from an earlier South Carolina case, Feldman Co. v. City Council of Charleston, 23 S.C. 57, 63 (1884):
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 businesses, does not justify their aid by the use of public money raised by taxation, or for which taxation may become necessary.

***2** As was suggested to you on the phone, you may wish to check with one of your Senators or House Members to determine what powers municipalities will have under the 'Home Rule' bill which is being debated currently.
Sincerely,

A. Camden Lewis
Assistant Attorney General

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