

1975 S.C. Op. Atty. Gen. 238 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4183, 1975 WL 22478

Office of the Attorney General

State of South Carolina

Opinion No. 4183

November 17, 1975

***1** The South Carolina State Development Board is a constitutional exercise of legislative power to act in areas of public concern and general welfare, although two of the Board's enumerated powers are constitutionally suspect.

TO: South Carolina State Development Board

QUESTION PRESENTED:

General Constitutionality of the South Carolina State Development Board.

STATUTES, CASES:

South Carolina Constitution, Article 10, Section 6, and Article 12, Section 1;

Code of Laws of South Carolina, 1962, as amended, Section 9–301 et seq.;

[Anderson, et al. v. Baehr, et al.](#), 265 S. C. 153, 217 S. E. 2d 43.

DISCUSSION OF ISSUES:

The South Carolina Constitution, Article 12, Section 1, specifically grants the authority and responsibility for protecting the health and welfare of Citizens to the General Assembly:

Matters of public concern; General Assembly to provide appropriate agencies.—The health, welfare, and safety of the lives and property of the people of this State and the conservation of its natural resources are matters of public concern. The General Assembly shall provide appropriate agencies to function in these areas of public concern and determine the activities, powers, and duties of such agencies.

In line with this broad grant of statutory power and responsibility, the General Assembly has created the State Development Board. See Code of Laws of South Carolina, 1962, Section 9–301 et seq. The Development Board's purpose is defined in Code Section 9–303:

The purpose of this chapter is to establish a State agency which will conduct an adequate State-wide planning program and a State-wide program for the stimulation of economic activity to develop the potentialities of the State. To this end, the objectives of this agency shall be:

(1) To conserve, restore and develop the natural and physical, the human and social and the economic and productive resources of the State;

(2) To promote coordination of the functions and activities of the various agencies of the State and to act as the official State liaison office between the State and Federal and local planning, research and development agencies;

- (3) To promote a system of transportation for the State, through development and expansion of the highway, railroad, port, waterway and airport systems;
- (4) To promote and correlate State and local activity in planning public works projects;
- (5) To promote public interest in the development of the State through cooperation with public agencies, private enterprises and charitable and social institutions;
- (6) To promote and encourage industrial development, private business and commercial enterprise, agriculture production, transportation and the utilization and investment of capital within the State;
- (7) To assist the development of existing State and interstate trade, commerce and markets for South Carolina goods and in the removal of barriers to the industrial, commercial and agricultural development of the State;
- *2 (8) To assist in ensuring stability in employment, to increase the opportunities for employment of the citizens of the State and to devise ways and means to raise the living standards of the people of the State; and
- (9) To advance the general welfare of the people.

It is apparent from reading Code Section 9–303 that the South Carolina legislature intended to promote a public purpose through the creation of the Development Board. The question of public purpose *vs.* private purpose has been considered most recently by the South Carolina Supreme Court in [Anderson, et al. v. Baehr, et al.](#), 265 S. C. 153, 217 S. E.2d 43. In [Anderson](#), Chief Justice Moss, speaking for a unanimous Court, indicated that some private benefit resulting from legislation primarily designed to promote a public purpose does not make the legislation invalid:

The courts have, as a rule, been reluctant to attempt to define public purpose as contrasted with a private purpose, but have generally left each case to be determined on its own peculiar circumstances. As a general rule 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. Legislation does not have to benefit all of the people in order to serve a public purpose. At the same time legislation is not for a private purpose as contrasted with a public purpose merely because some individual makes a profit as a result of the enactment.

Code Sections 9–309 and 9–310 spell out the duties and powers of the State Development Board. This grant of power appears on its face to be a proper exercise of the Board's enumerated purposes and functions in all but two areas. These areas both involve ownership of stock in a private corporation and appear at § 9–310(4)(a) and (4)(q). § 9–310(4)(a) reads as follows:

To purchase, hold, use, lease, mortgage, sell, transfer, convey, assign, pledge or otherwise to acquire, enumerate or dispose of any property, real, personal or mixed, or any estate or interest therein, including, but without limiting the foregoing, stock in any corporation;

9–310(4)(q) reads as follows:

To endorse or otherwise to guarantee the obligations of any corporation all of the voting stock of which the Board may own or acquire;

It should be noted that the powers granted in § 9–310(4)(a) and (q) have not been exercised to date by the State Development Board, and there is no plan to do so in the future.

CONCLUSION:

The South Carolina Development Board was created by the legislature pursuant to its constitutional responsibility to provide appropriate agencies to function in areas of public concern. The public purpose is the promotion and development of the human and physical resources of this state in a manner designed to encourage and protect the highest level of physical and economic prosperity for the citizens of South Carolina.

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