1973 S.C. Op. Atty. Gen. 309 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3633, 1973 WL 21085

Office of the Attorney General

State of South Carolina
Opinion No. 3633
September 28, 1973

***1 The Department of Parks, Recreation and Tourism is not exempt by the provisions of Section 65–802(4) from the collection of admissions tax.**

Director
License Tax Division
South Carolina Tax Commission

This opinion is written at the request of the Tax Commission to answer the following question: 'Are charges made by the Department of Parks, Recreation and Tourism to facilities such at Putt Putt Golf Courses, fishing piers, Charles Towne Landing and other previously classified amusement type facilities subject to the South Carolina Admission Tax?'

The admission tax is levied by Section 65–802 of the South Carolina Code and provides that a tax shall be collected upon 'all paid admissions to all places of amusement within this State.' Subparagraph (4) of this section provides that admissions charges made by certain eleemosynary and nonprofit corporations shall not be subject to the tax.

The word 'admission' is defined in Section 65–801(1) to mean 'the right or privilege to enter into or use a place or location.' 'Place' is defined in Section 65–802(2) as 'any definite enclosure or location.' In the case of *Beach v. Livingston*, 248 S. C. 135, 149 S. E. 2d 328, the Court recognized that a bowling alley was a place of amusement and a tax upon charges for the use of the bowling facilities was upheld. The Court said that the word 'use' as used in the statute means that the tax is imposed upon the person who avails himself of the facilities. In the case of *Furman University v. Livingston*, 244 S. C. 200, 136 S. E. 2d 254, the Court held that the tax is required to be paid by the person paying the admission and that Furman University was merely a collecting agent for the State.

In this opinion we recognize that the Department of Parks, Recreation and Tourism may charge admissions that are exempt by specific provisions enumerated in Section 65–802 and we therefore limit the opinion to the question whether or not subparagraph (4) of Section 65–802 exempts the Department as an eleemosynary and nonprofit corporation. Subparagraph (4) provides that no tax shall be charged or collected.
'On admissions charged by any eleemosynary and nonprofit corporation or organization organized exclusively for religious, charitable, scientific or educational purposes; * * *.'

The Department of Parks, Recreation and Tourism was created as a body corporate by Act No. 133 of the 1967 General Assembly to 'advertise, promote and encourage travel and tourist industry for the State' and to 'develop and promote state parks and provide recreational programs in such areas.' We recognize it to be a public corporation within the definition given to such corporations by the Court in the case of *York County Fair Association v. South Carolina Tax Commission*, 249 S. C. 337, 154 S. E. 2d 361.

In 18 Am. Jur. 2d, Corporations, Sections 8 and 10, corporations are said to be classified generally as public or private. Private corporations are further classified as business or eleemosynary. In *Sandel v. State*, 126 S. C. 1, 119 S. E. 776, the Court made the statement that 'an eleemosynary corporation is a private as distinguished from a public corporation.'

***2** We are of the opinion that the Department of Parks, Recreation and Tourism is not exempt by the provisions of Section 65–802(4) and that admissions it charges are subject to admissions taxes.

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