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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

HENRY McMASTER
ATTORNEY GENERAL

November 24, 2004

Palmer E. Krantz, Executive Director
Riverbanks Zoo and Garden
P. O. Box 1060
Columbia, SC 29202-1060

Dear Mr. Krantz:

You have requested an opinion "as to whether Riverbanks Zoo and Garden is primarily an educational institution." By way of background, you note that "[i]f Riverbanks is considered primarily educational in nature it will qualify for academic pricing on an upcoming software purchase resulting in a savings of approximately \$24,000." You have enclosed "a memo and other information that was recently provided to the software company to support our position that we are primarily education and should qualify for academic pricing."

Law/Analysis

The question of whether a particular activity is "educational" in nature or serves an "educational purpose" has been addressed by this Office on several occasions. In Op. Atty. Gen., Op. No. 85-127 (October 29, 1985) we dealt with the issue in the context of The Educational Trust Fund of Employees for Made In U.S.A. The purpose of such organization was to conduct a campaign through the media, promoting American made textile products. In that opinion, we found that an "educational activity is by no means limited to traditional education." In fact, we observed, education includes

'[w]hatever results in the spread of knowledge, the dissemination of useful information, the training and discipline of the mind, the discovery of the truth, and in the accomplishment of numerous similar ends, increases culture and extends civilization and obviously is of the highest value to mankind. Bogert, Trusts and Trustees, § 375. The propagation of particular ideas is considered 'educational' in nature and is thus charitable. See, 12 A.L.R. 2d 849. Moreover, our Supreme Court has held that informing the public about the virtues of a particular industry which constitutes an essential part of the economy of the community is educational.' Powell v. Thomas, 214 S.C. 376, 386, 52 S.E.2d 782 (1949); see also, Oklahoma State Fair and Exposition v. Jones, 44 F.Supp. 630 (W.D. Okla. 1942).

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In Op. Atty. Gen., Op. No. 2724 (August 21, 1969), we concluded that monies appropriated by the county to celebrate the South Carolina Tricentennial festivities in Anderson County were for an "educational purpose." We noted that the Tricentennial Commission was created for the purpose of celebrating the importance of the first permanent settlement in South Carolina and to establish a series of historical projects to show the achievements of this State since its founding. Finding that a county could properly expend county tax monies for "educational purposes," we were of the opinion that such expenditures were within the authority of Anderson County. We stated that

[a]mong the purposes for which counties may properly expend public moneys is 'educational purposes.' The program undertaken by the Tricentennial Commission can, in the opinion of this office, be characterized as coming within the scope of this permissible object for the expenditure of county funds. There is some question as to whether the mere celebration of an event by parades and ceremonies would be a proper county purpose, but the celebration of the Tricentennial involves research into the history of the State and a demonstration of the progress of this State since the first settlement thereof in 1670.

Thus, it was the "opinion of this office that the entire Tricentennial program would most probably be viewed [by the Supreme Court] ... as serving an educational purpose."

Moreover, in Powell v. Thomas, supra, our Supreme Court concluded that bonds issued for the Chester County Cattle Barn and Show Ring served an educational purpose even though such use did not necessarily conform to the traditional form of education. The Court concluded that "it may be reasonably inferred that the proposed undertaking is of an educational nature designed to disseminate among farmers, for practical purposes, scientific knowledge for the improvement of the cattle and milk business." Quoting from Briggs v. City of Raleigh et al., 195 N.C. 223, 141 S.E. 597, 599, the Court reasoned that "education" was much broader in scope:

"The purpose and design of a state fair is to promote the general welfare of the people, advance their education in matters pertaining to agriculture and industry, increase their appreciation for the arts and sciences, and bring them in closer touch with many things which otherwise might remain in reserve or 'caviare to the general,' to borrow an expressive phrase from Shakespeare's Hamlet." 214 S.C. at 386-87.

Courts in other jurisdictions have found a variety of endeavors to constitute "educational" activities. For example, in Kibbe v. City of Rochester, 57 F.2d 542, 549 (D.W.D.N.Y.), the Court held that a library and fine arts building served to promote education. Greenman v. Phillips, 217 N.W. 1 (Mich. 1928) concluded that a playground for children was an educational purpose. In Re Evergon's Will, 52 N.Y.S.2d 395, 401 deemed a museum as facilitating education. An experimental station has been found to serve an educational purpose. State v. Murphy, 210 N.W. 53, 54 (N.D.

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1926), as has a church summer camp for children. Flathead Lake Metho. Camp. v. Webb, 399 P.2d 90, 93 (Mont. 1965). In the latter case, the Court concluded that the term "'educational purposes' is not, by the weight of authority, defined in terms of the common scholastic institutions of grammar school, high school, and university or college." 399 P.2d at 93. And in Fitchburg Hous. Authy. v. Bd. of Zoning Appeals of Fitchburg, 380 Mass. 869, 873, 406 N.E.2d 1006 (Mass. 1980), the Massachusetts Court held that a residential facility in which formerly institutionalized, but educable adults, with histories of mental difficulties, would live while being trained in skills for independent living was a use for a "public education purpose." The Court noted that "it has long recognized 'education' as 'a broad and comprehensive term.'" Adding that "[t]he proposed facility would fulfill a significant educational goal in preparing its residents to live by themselves outside the institutional setting," the Court found there to be a clear "educational purpose" involved.

With this background in mind, we turn to the question of whether Riverbanks Zoo and Botanical Garden is "primarily educational." Our Supreme Court, in Gould v. Barton, 256 S.C. 175, 181 S.E.2d 662 (1971), addressed the status of Riverbanks Zoo in the context of "whether there is any constitutional prohibition against the creation of the present special purpose district to finance the construction of a zoological park." There, in concluding that Riverbanks Zoo serves a valid public purpose, the Court stated as follows:

[w]e think that a zoological park subserves a public purpose. It is primarily educational and instructive, but also has a recreational aspect. Both aspects serve the public interest and welfare. The public purpose served by such parks is succinctly and adequately stated in the case of State ex rel. Zoological Board of Control v. City of St. Louis, 318 Mo. 910, 1 S.W.2d 1021:

'Their recreational and educational features, which are concomitants of all parks of this character, may be enjoyed by the general public, regardless of its citizenship. The instructive character of zoological parks, not only to school children, but to everyone interested in natural history, is too well known to admit of discussion. Such parks, therefore, may be said to be established and maintained for the public interest and welfare.'

256 S.C. at 190. Citing Powell v. Thomas, *supra*, the Gould Court further explained:

[i]n the Powell case, the right of a county to issue bonds to construct a cattle barn and show ring was upheld because the undertaking was educational in nature. In disposing of the issue, the Court stated:

'We think it may be reasonably inferred that the proposed undertaking

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is of an educational nature designed to disseminate among farmers, for practical purposes, scientific knowledge for the improvement of the cattle and milk business. Courses of study in agriculture are being taught in many of the public schools and colleges of this State and such courses are recognized as an important part of the curriculum.'

Id. at 991.

Cases elsewhere confirm the Gould Court's analysis. In Morales v. N. J. Academy of Aquatic Sciences, 694 A.2d 600 (N. J. 1997), for example, the Court likened the State Aquarium to a zoo, designed primarily to educate its visitors. Moreover, in Guzzi v. New York Zoological Society, 192 App. Div. 263, 182 N.Y.S. 257, (1920), affd., 233 N.Y. 511, 135 N.E. 897 (1922), it was held that the Zoological Society, which maintained the Bronx Zoo, was not absolutely liable for the injury of someone who intentionally came too close to the cage of a bear, and that such did not constitute negligence per se. In the Court's view, the Zoo was maintained "as a public enterprise under legislative authority for educational purposes and to entertain the public." 192 App. Div. at 263, 182 N.Y.S. at 259.

With respect to Riverbanks Zoo specifically, you note that the Zoo and Garden serve a clear educational purpose. You state that

[f]rom its very creation Riverbanks has been dedicated to both informal and formal education efforts

Informal education occurs through they many interpretative graphics and labels, as well as the mere presentation of animals and plants that would not otherwise be know to many of the general public. Formal educational efforts began very soon after Riverbanks opened to the public. The very first facility constructed after the initial animal and staff facilities was the ten thousand square foot Riverbanks Education Building. This facility houses classrooms; a reference library with three thousand volumes, a two hundred-seat auditorium, and offices for Riverbanks full time staff of teachers.

The Education function that been addressed in the construction of many subsequent facilities, such as the classroom building at Riverbanks Farm, the classroom located in the Aquarium/Reptile Complex, the botanical library in the Growing Center, the workroom in the Growing Center that's used for horticulture classes, and other multi-use spaces that have been building into most new facilities.

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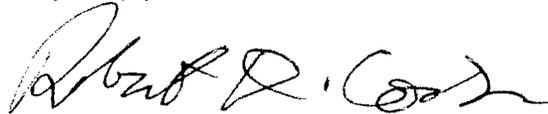
Riverbanks has aggressive educational programs for all of its audiences – on-site visitors, members of its support society (comprised of 35,000 households), programs for organized schools from kindergarten through college, home-schooled children, non-school groups such as scouts, youths in at-risk programs and special needs children. Riverbanks' "Helping Hand-Teens In Action in the Community Program" won the highest education award given by the American Zoo and Aquarium Association in 2004.

Riverbanks formal school (and home school) programs are designed and maintained to complement and support the school curriculum. All programs were recently reworked to reflect the emphasis put on inquiry-based teaching techniques that was adopted by the South Carolina Department of Education in its new sciences standards. Please refer to the attachment that provides more detail on the many formal education efforts along with an organizational chart of the education staff, and information on their professional affiliations.

Conclusion

Based upon all of the foregoing authorities, it is our opinion that Riverbanks Zoo and Botanical Gardens is primarily an educational institution. As our Supreme Court found in Gould v. Barton, supra, the purpose of Riverbanks is "primarily educational." Other case law supports the Gould Court's conclusion, in that it is generally held that a zoological park primarily serves an educational purpose. Thus, we conclude that Riverbanks Zoo and Botanical Gardens principally serves an "educational" purpose and thus is an "educational" agency and institution.

Very truly yours,



Robert D. Cook

Assistant Deputy Attorney General

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