

March 20, 2007

Brian E. Hulbert, Esquire  
Staff Attorney, Town of Hilton Head Island  
One Town Center Court  
Hilton Head Island, South Carolina 29928

Dear Mr. Hulbert:

We received your letter requesting an opinion of this Office as to the ability of the Town of Hilton Head Island (the "Town") to budget for and expend money for certain civic events and activities. Specifically, you made the following inquiries:

Does Article X of the South Carolina Constitution prohibit a municipality from budgeting money for and expending money on entities such as a youth sports team to travel to another municipality or state to participate in a sporting event or tournament.

For example, may the Town pay the expenses for a little league baseball team traveling to a little league playoff location for a little league tournament. Would it make a difference if the expenditures were for a civic organization or nonprofit organization?

Does Article X of the South Carolina Constitution prohibit a municipality from budgeting money for and expending money on civic events or nonprofit entities performing functions for civic events?

For example may the Town fund a civic event such as a holiday parade, or pay a nonprofit organization to manage and put on such an event?

#### **Law/Analysis**

The South Carolina Constitution imposes the requirement that expenditures of public funds must be for a public purpose. Article X, section 5 of the South Carolina Constitution (Supp. 2006) mandates: "Any tax which shall be levied shall distinctly state the public purpose to which the

proceeds of the tax shall be applied.” In addition, Article X, section 11 of the South Carolina Constitution (Supp. 2006) provides, in pertinent part: “The credit of neither the State nor of 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 education institution except as permitted by Section 3, Article XI of this Constitution.” In State ex rel. McLeod v. Riley, 276 S.C. 323, 329, 278 S.E.2d 612, 615 (1981), the South Carolina Supreme Court interpreted this provision to prohibit the expenditure of public funds for the primary benefit of private parties.

Thus, in order to address your questions, we must consider whether the expenditures you mention satisfy the public purpose requirement. Generally, South Carolina courts give deference to a legislative body in its determination of a public purpose. WDW Prop. v. City of Sumter, 342 S.C. 6, 12-13, 535 S.E.2d 631, 634 (2000). “[T]he courts will not interfere unless it appears that the legislative body was clearly wrong.” Caldwell v. McMillan, 224 S.C. 150, 158, 77 S.E.2d 798, 801 (1953). In Nichols v. South Carolina Research Authority, 290 S.C. 415, 429, 351 S.E.2d 155, 163 (1986), our Supreme Court affirmed the test for the determination of a public purpose, as set forth in a prior opinion. “The Court should first determine the ultimate goal or benefit to the public intended by the project. Second, the Court should analyze whether public or private parties will be the primary beneficiaries. Third, the speculative nature of the project must be considered. Fourth, the Court must analyze and balance the probability that the public interest will be ultimately served and to what degree.” Id. (quoting Byrd v. Florence County, 281 S.C. 402, 407, 315 S.E.2d 804, 806 (1984)).

In prior opinions, this Office recognized the promotion of recreation as public purpose. In an opinion issued in 1997, we considered whether the City of Newberry could contract with Newberry Family YMCA to provide recreation programs for its residents. Op. S.C. Atty. Gen., January 8, 1997. We determined that recreation is an appropriate function of the state or a political subdivision, citing to section 5-7-30 of the South Carolina Code. Id. Section 5-7-30 of the South Carolina Code (2004), setting for the powers conferred upon municipalities, specifically gives municipalities the authority to “engage in the recreation function.” Furthermore, we concluded that the City of Newberry may enter into a contract with the YMCA to perform recreational functions because “the mere contracting for goods or services for a public purpose with a sectarian institution is appropriate state action.” Op. S.C. Atty. Gen., January 8, 1997.

In another opinion issued in 1987, we addressed whether Aiken County could allocate public funds to civic organizations for recreational purposes. Op. S.C. Atty. Gen., April 2, 1987. Quoting a 1977 opinion, we stated:

“[I]f the ‘specified recreational program and activities’ . . . are designed primarily for the benefit of the individual organizations and their members, and will provide only a negligible and speculative benefit to the public, any contributions or expenditures by the City of Dillon for such recreational programs would be made for a private,

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rather than public, purpose and would be unlawful. On the other hand, if the objective of these programs is to provide recreational services for the direct and immediate benefit for all or a substantial portion of the residents of the City, the expenditures by the City for these recreational programs would be for a public purpose, and would not be illegal.”

Id. (quoting Op. S.C. Atty. Gen., August 23, 1977). We advised Aiken County to determine whether a public purpose is served by appropriating public funds to a civic organization based on this guidance. Id.

As we stated in numerous opinions, this Office does not have the jurisdiction of a court to investigate and determine facts. Op. S.C. Atty. Gen., October 9, 2006. Thus, while we believe recreation to be an appropriate public purpose, the determination of whether or not appropriations to youth sports teams serve a public purpose involves a question of fact, which is best left to a court to decide. Nonetheless, in our opinion, whether an appropriation to a sports team meets the public purpose requirement hinges on whether the public will benefit from the appropriation or whether only the members of a private sports team will benefit. Thus, we urge the Town to bear this principle in mind when deciding to appropriate funds.

Next, you ask whether a municipality may appropriate funds for civic events, such as holiday parades, and whether it may contract with a nonprofit organization to manage such events. First, the Town must determine whether the civic event is in furtherance of a public purpose. Presumably, an event such as a holiday parade benefits the community as a whole, rather than a specific group. Thus, a court would likely a city’s funding of a holiday parade satisfies the public purpose requirements under article X of the South Carolina Constitution. As to whether or not other civic events serve public purposes, we suggest the Town look to the analysis above to determine whether such events meet the public purpose requirement.

If the Town finds the civic event serves a public purpose, we believe the Town may contract with a nonprofit organization to perform such events. In addition to our 1997 opinion reference above, several court decisions recognize a political subdivision’s ability to contract with private entities to carry out a public purpose. For example, in Bolt v. Cobb, 225 S.C. 408, 82 S.E.2d 789 (1954), our Supreme Court recognized Anderson County’s ability to issue bonds to fund construction of a hospital to be leased to a private nonprofit organization. The Court concluded Anderson County’s actions were appropriate as “Anderson County is providing for the performance of a public, corporate function . . . .” Id. at 415, 82 S.E.2d at 793. In addition, we recognized the ability of political subdivisions to contract with private entities to perform public functions in several opinions. See Ops. S.C. Atty. Gen., June 27, 1988 (finding a county may contribute funds to a nonprofit organization for the construction of a home for abused children); June 16, 1997 (determining the Department of Parks, Recreation and Tourism has the authority to create a foundation because the promotion of tourism and historical development are valid public purposes); August 8, 1985

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(concluding the Department of Corrections would not be prohibited from contracting with a private corporation to assist in the management of a State corrections facility).

These cases and opinions demonstrate so long as the private entity is carrying out a public purpose, a political subdivision may contract with and expend funds to that entity for such services. Accordingly, assuming the civic event, such as a holiday parade, serves a public purpose, we believe the Town may pay a nonprofit entity for performing functions related to such events.

### **Conclusion**

Although the determination as to whether the Town satisfies the public purpose requirement in expending funds for the travel of youth sports teams is a factual determination best left to a court, we recognize that recreational programs and activities generally satisfy the public purpose requirement of article X of the South Carolina Constitution so long as they benefit the Town's residents as a whole rather than a private group. Furthermore, we are of the opinion that civic events, such as a parade, may satisfy the public purpose requirement assuming they also provide a general benefit to the public at large. Upon finding the civic event satisfies this requirement, we also believe the Town may contract with private entities to facilitate such activities.

Very truly yours,

Henry McMaster  
Attorney General

By: Cydney M. Milling  
Assistant Attorney General

REVIEWED AND APPROVED BY:

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Robert D. Cook  
Assistant Deputy Attorney General