

7127 Liberty



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

May 2, 2001

Bradley T. Farrar, Deputy County Attorney
County of Richland
P.O. Box 192
Columbia, South Carolina 29202

RE: Informal Opinion

Dear Mr. Farrar:

By your letter of March 19, 2001, you have requested an opinion from this Office concerning the receipt of donated funds by the Blythewood Fire Department. By way of background, you have informed us of the following information: The Fire Department is funded by Richland County and operated by the City of Columbia. While the funding for the Department is adequate for the most part, there are a few items needed by the Department that are not covered by the budget. A local business owner has offered to host a 5K run as a fund raiser, donating the proceeds to the Department. Specifically you have three questions in which you seek clarification about the receipt and use of the funds:

- 1) Are there any State laws prohibiting the Blythewood Fire Department from receiving proceeds from a charity fund raising event?
- 2) Are there any restrictions on the use of donated funds?
- 3) Are there any tax consequences from its receipt of donated funds?

It may be helpful to answer the first two of your three questions together. Our Supreme Court recognized long ago:

Municipal and public corporations may be objects of public and private bounty. This is reasonable and just. They are in law clothed with the power of individuality. They are placed by law under various obligations and duties. Legacies of personal property, devises of real property, and gifts of either species of property, directly to the corporation and for its own use and benefit, intended to, and which have the effect to, ease them of their obligations,

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or lighten the burdens of their citizens, are valid in law, in the absence of disabling or restraining statutes.

McIntosh v. Charleston, 45 S.C. 584, 587, 23 S.E. 943 (1895). In South Carolina, no state law expressly prohibits the donation of private funds to public entities. Other jurisdictions have also recognized that the State has the right to acquire personal property by purchase, gift, or otherwise. See Silvette v. Art Comm. of Commonwealth of Va., 413 F.Supp. 1342 (E.D. Va. 1976); Adkins v. Kalter, 287 S.W. 388 (Ark. 1926).

In an advisory opinion to the Governor of Florida, the Florida Supreme Court advised that the Governor could validly solicit and receive contributions from citizens of the State to assist in financing the Governor's "War on Crime." See 200 So.2d 534 (Fla. 1967). Specifically, the funds raised were to be used to fund investigative positions under the Office of the Governor. The Court stated:

[w]e find nothing in the State Constitution that precludes the receipt and use by the state or its officials of contributions from citizens provided the same are received and used for a public purpose in the manner authorized by the Legislature.

Id. at 536. In a subsequent opinion, the Court stressed, however, that such funds became "public funds" immediately upon receipt and, therefore, all the restrictions placed by law upon the expenditure of such funds became applicable. See Ad. Op. to Gov. 201 So.2d 206 (1967).

Recently, in an Opinion of this Office, we approved with certain caveats, the acceptance by Union County of contributions from members of the general public to be used in helping to defray the costs of a highly-publicized prosecution. See OP. ATTY. GEN. Jan. 25, 1995. There, we stated:

[b]ased upon these authorities, citizens may [contribute] and validly require that use of a contribution to the County be conditioned upon its use in the [particular criminal] ... case It should also be remembered that once such funds are donated to the County, they become public funds just as though they had originated as county revenues. See OP. ATTY. GEN. Nov. 15, 1985 (in order to be public money, "it does not matter whether the money is derived by ad valorem taxes, by gift or otherwise," citing Elliott v. McNair, 250 S.C. 75, 156 S.E.2d 421 (1967)). While such funds are designated for use in the [criminal] ... case by the private citizens who donate them, they are still subject to the same limitations and restrictions as any other public monies belonging to the County.

Based on these authorities, the Fire Department would not be prohibited from receiving the donated funds from the private citizen, but, of course, the funds must be used for a public purpose. While each case must be decided on its own merits, the notion of what constitutes a public purpose has been described in Anderson v. Baehr, 265 S.C. 153, 217 S.E.2d 43, 47(1975): "[a]s a general

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rule, a public purpose has for its objective the promotion of the public health, safety, morals, general welfare, security, prosperity, and contentment of all inhabitants or residents, or at least a substantial part thereof." Although you have not specified exactly what items the Fire Department intends to purchase with the funds, any items that would aid the Department's fire protection services would likely constitute a legitimate public purpose under South Carolina law.

Your final question concerns the tax consequences of the receipt of the funds. You are not concerned with the tax consequences for the person donating the funds, only for the Fire Department. Internal Revenue Code Section 115 (26 U.S.C.A. §115) excludes the States and its political subdivisions from paying income tax. Thus, because the Blythewood Fire Department is a public entity funded by Richland County and operated by the City of Columbia, the Department is exempt from paying income tax on revenue received. Thus, the Fire Department's receipt of donated funds would not create a tax liability for the Department. As an aside, however, an attorney for the Department of Revenue has advised that as a matter of practice the Department should issue a receipt to the donor acknowledging the gift and stating that the Department has given nothing of value in return.

I trust this information has provided you with the clarification you are seeking. This letter is an informal opinion only. It has been written by a designated Assistant Attorney General and represents the position of the undersigned attorney as to the specific question asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I remain

Very truly yours,



Susannah Cole
Assistant Attorney General