



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

February 3, 1997

The Honorable Sheryl Patrick
Member, Santee Town Council
460 Chapel Creek Drive
Santee, South Carolina 29142

Re: Informal Opinion

Dear Ms. Patrick:

Your recent opinion request has been referred to me for reply. In your request, you state that for the past 15 years, the Town of Santee has paid the Mayor and four Council members an annual Christmas gift of approximately \$400.00 to \$500.00. You also state that the Town Clerk has been unable to find any Town Ordinance covering the Christmas gift, but she recollects that the policy of giving Christmas gifts was approved in a Town Council meeting around 1980. Further, you state that the Town budget has a "Christmas Gift" projected expenditure for each department, but there is no such projection for elected officials.

Article III, Section 30 of the State Constitution provides:

The General Assembly shall never grant extra compensation, fee or allowance to any public officer, agent, servant or contractor after service rendered, or contract made, nor authorize payment or part payment of any claim under any contract not authorized by law

"Extra Compensation" as used in Article III, Section 30 has been defined as "any compensation over and above that fixed by law or contract at the time the service was rendered." State ex rel. McLeod v. McLeod, 270 S.C. 557, 243 S.E.2d 446 (1978). Use of public funds to provide any form of compensation (extra compensation, insurance

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payments, pension payments, etc.) for public employees is unconstitutional if it is greater than that which the State has a contractual or legal obligation to provide. Op. Atty. Gen. dated July 19, 1979. Further, it is a general rule that a municipal corporation cannot legally bestow a gratuity on an officer or an employee. Op. Atty. Gen. dated July 14, 1958; 64 C.J.S. Municipal Corp. § 1837 (1950). Even though Article III, Section 30 by its terms prohibits only action by the General Assembly, this Office has concluded that this constitutional provision also serves to limit political subdivisions, such as municipalities, at least in the powers delegated to them by the General Assembly. Op. Atty. Gen. dated July 14, 1958.

In addition, it is well recognized that every expenditure of public funds must be for a public purpose. A public purpose has

for its objective the promotion of 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.

Anderson v. Baehr, 265 S.C. 153, 217 S.E.2d 43 (1975). A payment to an individual with no assurance of more than a negligible advantage to the general public does not serve a public purpose within the meaning of the Constitution. Id. In the instant situation, it would appear that no one other than the individual will benefit from this expenditure of public funds. Assuming, as stated earlier, that there is no contractual provision authorizing such a payment, that no further services to the municipality are to be rendered, and that the purchase of a contract is not involved, it would appear that the public purpose test would not be met by such an expenditure of public funds.

Based upon the foregoing provisions of law, this Office has repeatedly concluded that bonus payments (or such pay that amounts to bonus pay) are prohibited as being made after services have been rendered or a contract fulfilled. Ops. Atty. Gen. dated October 10, 1985; July 19, 1979; August 23, 1979; July 14, 1958; and February 25, 1955. Accordingly, if the Town of Santee is not under any legal or contractual obligation to pay the Mayor and Council members Christmas bonuses, the payment of these bonuses would be prohibited.

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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 questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I remain

Very truly yours,



Paul M. Koch

Assistant Attorney General