

The State of South Carolina



C. Travis Medlock
Attorney General

803-734-3978
Columbia 29211

Attorney General

June 23, 1993

The Honorable Jesse E. Hines
Member, House of Representatives
Post Office Box 105
Lamar, South Carolina 29069

Dear Representative Hines:

You have requested the opinion of this Office as to whether it would be constitutionally permissible for the State of South Carolina to provide state-owned vans to a private, for-profit corporation, for the purpose of providing transportation services for a portion of the state's indigent population, at a cost of eighteen (18) cents per mile and providing insurance on the vans through the state's Insurance Reserve Fund at a greatly-reduced premium. The transportation services are contracted to various entities which have been or will be selected on the basis of proposals submitted, each entity serving the indigent population in a specific geographic area.

Article X, § 11 of the State Constitution provides in relevant part that

The credit of neither the State nor 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. ...

This constitutional provision has been interpreted as being applicable to federal funds coming into the State under various federal grants, as have other constitutional provisions and statutes concerning the expenditure of public funds. Op. Atty. Gen. dated March 25, 1985 and others.

While the courts of this State have looked favorably at the use of public funds with respect to nonprofit (eleemosynary) corporations serving public purposes or providing public benefits, the courts have not gone so far as to subsidize for-profit corporations in this respect. As to use of public funds for public purposes or services provided by

The Honorable Jesse E. Hines

Page 2

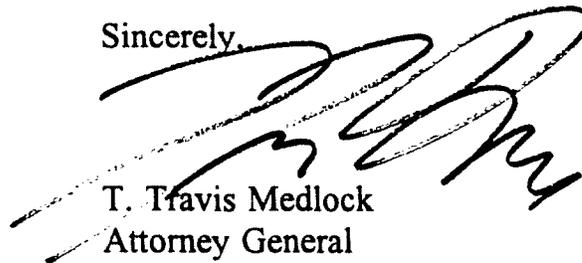
June 23, 1993

nonprofit corporations, see Bolt v. Cobb, 225 S.C. 408, 82 S.E.2d 789 (1954); Gilbert v. Bath, 267 S.C. 171, 227 S.E.2d 177 (1976); and others. In Bolt, for example, the court approved the issuance of general obligation bonds by Anderson County to add to the hospital facilities operated by the Anderson County Hospital Association, an eleemosynary corporation. In addition, this Office has repeatedly recognized the difference between nonprofit and for-profit corporations or private individuals, groups, or the like in the use of public funds, considering Article X, § 11. See, as examples, Ops. Atty. Gen. dated January 16, 1978; August 2, 1985; April 20, 1982; July 12, 1984 (particularly citing Feldman & Co. v. City Council, 23 S.C. 57 (1886)); March 1, 1991, and many others.

Based on the foregoing and considering the reasoning of Bolt v. Cobb and other cases and opinions, supra, we are of the opinion that Article X, § 11 of the State Constitution would likely be violated if the State were to provide vans at a rate of eighteen (18) cents per mile and insurance premiums on the vans as described above, to a for-profit vendor for provision of public transportation services to a portion of the state's indigent population.

With kindest regards, I am

Sincerely,



T. Travis Medlock
Attorney General

TTM/an