



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

July 23, 1996

Joseph D. Shine, General Counsel
State Budget and Control Board
Post Office Box 11608
Columbia, South Carolina 29211

RE: Informal Opinion

Dear Mr. Shine:

You had written to Attorney General Condon to request an opinion on the permissibility, under the 1995-96 appropriations act, for the South Carolina Budget and Control Board to use funds (as set aside under that act for economic and cultural exchange with South Carolina's sister state in Germany) through the publicly supported, tax exempt corporation, Enterprise Development, Inc. (EDI).

You have advised that EDI is a publicly supported, charitable corporation qualified under I.R.C. §§501(c)(3) and 509(a)(2). The objectives of EDI, stated in detail at page 2 of its corporate bylaws, are to advance educational and economic opportunities within the State of South Carolina. The Corporation was created to carry out certain actions authorized by specific provisions of appropriations acts. The 1995-96 proviso addressing the authority of the Department of Commerce to contract with EDI is found at 1995 Acts No. 145, Part I, Section 50.2, page 425.

You have further advised that under this proviso, the Commerce Division of State Development may contract with EDI to provide and perform services related to: (1) state Enterprise Development Strategy; (2) comprehensive approach to technology transfer; (3) educational environment for entrepreneurial development; and (4) a statewide business information center. Currently, EDI generates significant private revenue for every dollar of public funds it receives under its contract with the South Carolina Department of Commerce, all of which is utilized for the public benefit.

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Additionally, you have advised that this successful partnership between the public and private sector for the benefit of the State is one which the South Carolina Budget and Control Board would like to duplicate, particularly in the area of German educational and business exchange. The State of South Carolina has entered into a sister-state agreement with the German state of Brandenburg; and it has entered into a Memorandum of Understanding regarding cooperation in the fields of education, research and science, culture, health, sports, and tourism with the German state of Rhineland-Palatinate. The Budget and Control Board has independent funding and authority under the 1995-96 Appropriations Act to develop educational and economic ties with these German states (see 1995 Acts No. 145, Part I, §17A).

Rather than duplicating efforts through formation of a separate nonprofit corporation to achieve the goals of those agreements and appropriation authorities, you have advised that the Budget and Control Board would like to utilize the services of EDI, primarily because that corporation is already in place and operating successfully for the benefit of the State. You have observed that under the Appropriations Act and under the bylaws of EDI, the Chairmen of the House Ways and Means Committee and the Senate Finance Committee are required to be ex officio members of the corporate board of EDI. The exact terms of EDI's involvement with the Board would be defined by contract between the Board and EDI, and you advised that appropriate safeguards would be put in place to ensure that all public funds were utilized for public purposes.

Discussion

The purposes for which EDI is established and shall operate are detailed in Article IV of the "By-laws of Enterprise Development, Incorporated, of South Carolina." Of particular consideration is section 2 of that article, which provides in relevant part:

Enterprise Development is organized and shall operate: (1) to enhance the economic, social, community and educational development of urban and rural areas of South Carolina; and (2) to operate exclusively for the benefit and support of South Carolina state agencies engaged in economic and social development and related activities. Also, the purposes of the Corporation shall be in keeping with the 1989 legislative proviso enacted by the State of South Carolina, to-wit:

The South Carolina Department of Commerce may contract with a 501(c)(3) corporation or a corporation expected to receive the 501(c)(3) status to provide and perform the following functions:

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1. State Enterprise Development Strategy.
2. Comprehensive approach to technology transfer.
3. Educational environment for entrepreneurial development.
4. Statewide One-Stop Business Information Center.

These contractual services may be funded through the transfer of up to \$750,000 of budgetary monies from the South Carolina Department of Commerce. The corporation, as a condition of receiving the contract, must provide in its charter that the Chairman of the House Ways and Means Committee and the Senate Finance Committee, or their designees, are ex-officio members of the corporate board.

[Emphasis added.] The objectives of EDI are then enumerated; these objectives focus on encouraging the development and implementation of a comprehensive approach to interrelated problems in education, employment, and economic development, among others. Section 3 of that article states that "Enterprise Development is organized and shall operate exclusively for the aforesaid purposes... ."

A proposed contract between EDI and the Office of the Executive Director, South Carolina State Budget and Control Board, has also been examined. The recitals of the contract include references to the memoranda of understanding relative to the sister-state partnerships with the various lands in Germany and the objectives of each memorandum. EDI would be expected to conduct fundraising from the public and private sectors in South Carolina and internationally; to administer programs as the Office of the Executive Director might request; to furnish analysis and financial services; and other services. The contract also contains arrangements relative to affirmative action, compensation, expenses, and other relevant matters. It appears that the matters encompassed by the proposed contract would be permissible under the bylaws of EDI.

I am of the opinion that EDI as presently established and operating would most probably be deemed to be operating within its bylaws and stated objectives if it should be asked to take on activities on behalf of the State of South Carolina relative to the German sister-state exchange. While the bylaws until recent amendment mandated that EDI be operated exclusively for the benefit of and to carry out the purposes of the South Carolina Department of Commerce, the arenas of activities or undertakings envisioned by the memoranda of understanding seem to be within the scope of activities contemplated by the bylaws of EDI as recently amended, in my opinion.

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This letter is an informal opinion only. It has been written by a designated Senior 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 am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Senior Assistant Attorney General