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The State of South Carolina



Office of the Attorney General

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March 17, 1986

Steven A. Gantt, Executive Director
Irmo-Chapin Parks and
Recreation Commission
Post Office Drawer B
Irmo, South Carolina 29063

Dear Mr. Gantt:

You have asked for the opinion of this Office as to a policy adopted recently about a tuition reimbursement program for the employees of the Irmo-Chapin Recreation Commission. The policy states that the Commission will reimburse any full-time employee, who has been in the Commission's employ for one year or longer, for seventy-five (75%) percent of tuition costs if he makes a "C" or better and if this course is related to his position with the Commission. You have asked whether tax dollars may be utilized in this manner.

The Irmo-Chapin Recreation District is a special purpose district created by the legislature by Act No. 329, 1969 Acts and Joint Resolutions, amending an act earlier creating the Lexington County Rural Recreation District. The governing body has the authority to levy taxes for maintenance and operation of parks and recreation, as well as the authority to issue bonds for capital improvements. Further, by Section 5(12) of Act No. 329, the Commission is empowered to

appoint agents, employees and servants, to prescribe their duties, to fix their compensation, to determine if and to what extent they shall be bonded for the faithful performance of their duties; ...

Any expenditure of funds must be authorized by the above-cited enabling legislation and must be for both a corporate and a public purpose. See Article X, Section 14 of the State

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Constitution. These issues must be addressed to answer your question. Article III, Section 30 of the Constitution must also be considered.

Expenditure of public funds for a public purpose, particularly in the context of tuition assistance, was discussed in detail in an opinion of this Office dated March 19, 1985, a copy of which is enclosed. As you will see from that opinion, expenditure of public funds for tuition assistance generally meets the public purpose test.

A corporate purpose is "'some purpose which is germane to the general scope of the object for which the corporation was created' or such as has a legitimate connection with that object, and a manifest relation thereto." Wetherell v. Devine, 116 Ill. 631, 6 N.E. 24, 26 (1886), quoting from Weightman v. Clark, 103 U.S. 256. The governing body of the District should thus determine whether expenditure of funds for staff members' tuition assistance for courses related to their employment with the commission would have a legitimate connection or a manifest relation to the object of providing recreation and operating and maintaining parks and similar facilities.

Assuming the expenditure is deemed to meet both the public purpose and the corporate purpose tests, I would also call your attention to Article III, Section 30 of the State Constitution. That section provides in part that

[t]he 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

This provision has been construed to have applicability to special purpose districts and school districts, as well. See Ops. Atty. Gen. dated August 23, 1979; July 19, 1979; and September 29, 1981. Because tuition assistance would be paid in addition and subsequent to compensation for services rendered, such payment could conceivably not be permissible under this constitutional provision. On the other hand, tuition assistance could be deemed a fringe benefit, much like optional insurance which an employee may elect to have. If such is a term of employment, and not paid as an afterthought, such tuition assistance may well be permissible.

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In conclusion, the expenditure of public funds to provide tuition assistance to employees of the Irmo-Chapin Recreation District under specified circumstances may be able to satisfy the public purpose and corporate purpose tests; the governing body should make these determinations. You should also be aware of Article III, Section 30 of the Constitution, as to whether tuition assistance would be extra compensation for services rendered, as opposed to a fringe benefit.

Sincerely,

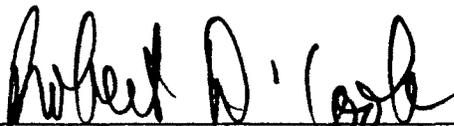
Patricia D. Petway

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PDP/an

Enclosures

REVIEWED AND APPROVED BY:



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