

1984 WL 249896 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 24, 1984

*1 Ms. Ellen M. Still
Principal Auditor
Legislative Audit Council
620 Bankers Trust Tower
Columbia, South Carolina 29201

Dear Ms. Still:

Reference is to your letter of April 16, 1984 and to the State of Michigan's Urban Cooperation Act of 1967. Request is made whether similar legislation could be adopted in this State.

The Michigan act authorizes agreements between that State's political entities and others including other states, agencies of the United States and of Canada. You are personally concerned with the agreement of local governments for the joint development activities for economic purposes, in example, in industrial park.

Several questions relating thereto including the funding, the disbursement of revenue and ad valorem of the other taxes are presented.

The South Carolina Constitution in Article VII, § 15 confers authority upon the General Assembly to provide that counties and municipalities may:

'* * * create, participate in, and provide financial support for organizations to study and make recommendations on matters affecting the public health, safety, general welfare, education, recreation, pollution control, utilities, planning, development and such other matters as the common interest of the participating governments may dictate. * * *.'

'The legislature may authorize participating governments to provide financial support for facilities and services required to implement recommendations of such organizations * * *.'

Article VIII, § 14 provides authority for the political subdivisions of the State to jointly administer 'any function and exercise of powers and the sharing of the costs thereof'.

Under these provisions the political entities could be authorized by the General Assembly to jointly acquire and develop and industrial park, provided it meets the constitutional requirements of a public purpose.

Your attention is however directed to the April 10, 1984 decision of the South Carolina Supreme Court in the case of C. Carter Byrd, et al. versus County of Florence, et al., Opinion 22082. There, the Supreme Court declared invalid an ordinance of Florence County. The ordinance provided for the issuance of five and one-half million dollars of bonds for the acquisition and development of an industrial part. The bonds were to be repaid by a general tax levy. The bonded debt for this purpose was held by the court to be for a non-public purpose. The invalidity was upon the grounds that the bonds were to be repaid from taxes rather than revenue from the park.

It is thus doubtful that the political entitles could acquire and develop an industrial park unless the same is to be funded from the revenue of the park. If such is desired, the Constitution should be amended to provide therefor.

We have enclosed copies of the Supreme Court and the other two referred to constitutional provisions.

We would wish, however, to review any proposed legislation before issuing an opinion of its validity. It is most doubtful, however, that the part could be funded from tax revenue.

*2 You further inquire as to whether the tax from the park could be divided among the various political entities that acquire and developed the park. Assume that the park is within a county but not within a participating municipality. The municipality could not share in the tax generated by privately owned property within the park. The county and the city could however contract differently for the distribution of the revenue or earnings from the park.

Yours truly,

Joe L. Allen, Jr.
Chief Deputy Attorney General

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