

1984 S.C. Op. Atty. Gen. 79 (S.C.A.G.), 1984 S.C. Op. Atty. Gen. No. 84-36, 1984 WL 159843

Office of the Attorney General

State of South Carolina

Opinion No. 84-36

April 3, 1984

*1 Honorable Richard W. Riley

Governor

State of South Carolina

Post Office Box 11450

Columbia, South Carolina 29211

Dear Governor Riley:

You have requested an opinion from this office as to whether your office can administer federal funds made available to the State through the Federal Disaster Relief Act of 1974, for the purpose of providing assistance to low and moderate income persons who were victims of the tornadoes of last week. Although the question is extremely close, it is our opinion that the State may receive and expend those federal funds, along with the appropriate state match as necessary, so long as the recipients of the funds are persons of low and moderate income, and the funds are made available for the purpose of providing housing for those persons who could not otherwise obtain it.

This office issued an opinion dated January 16, 1976, advising that the State cannot legally participate in the § 408 individual and family grant programs provided for in the Federal Disaster Relief Act of 1974. That opinion relied substantially on the case of Feldman and Company v. City Council of Charleston, 26 S.C. 57 (1885), which held that the General Assembly had no authority to approve a municipal bond issue designed to provide loans to private individuals to aid in rebuilding dwellings, stores, warehouses and other structures destroyed by a major fire, reasoning that such loans were for a private rather than a public purpose. Supra at 64. Since that Attorney General's opinion was issued however the South Carolina Supreme Court decided the case of Bauer v. South Carolina State Housing Authority, 271 S.C. 219, 246 S.E.2d 869 (1978), which held that 'providing safe and sanitary housing for those persons who could not otherwise obtain such housing [i.e., families of low and moderate income] is a valid public purpose.' Supra at 227, 246 S.E.2d at 873. Therefore it would appear that the Feldman and Company case would not be applicable to this program insofar as the relief would be provided to 'families of low and moderate income.' Bauer, supra.¹ Of course, any expenditure of these funds must be made in accordance with all applicable procedures set out in state law. The conclusion of this opinion is simply that the expenditure of either federal or state monies to provide relief to disaster victims of low and moderate income to restore their homes is not prohibited by the South Carolina Constitution. (Article 10, Section 11)

Sincerely yours,

T. Travis Medlock

Attorney General

Footnotes

¹ We are aware that the General Assembly has passed a Joint Resolution proposing a constitutional amendment that would expressly permit state participation in the individual and family grant programs provided for in the Federal Disaster Relief Act of 1974. Jt. Res. R-278 of 1983. Insofar as the Joint Resolution is the initial proposal of this constitutional amendment, we do not construe it as relevant to a determination that such expenditures under the Federal Act are prohibited now by the State Constitution. Moffett v. Traxler, 247 S.C. 298, 147 S.E.2d 255 (1966); 16 C.J.S. 'Constitutional Law' § 9. It is our opinion that this use of state monies to restore housing for families of low and moderate income would be permitted under the Bauer case which held that the requirements

of public purpose are a 'fluid concept which changes with time . . . [and] is a reflection of the changing needs of society.' [Supra at 227, 246 S.E.2d at 873.](#)

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