

1980 WL 120984 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

November 28, 1980

\*1 Thomas M. Boulware, Esquire  
Attorney at Law  
Post Office Box 248  
Barnwell, South Carolina 29812

Dear Mr. Boulware:

In response to your request for an opinion from this Office as to whether or not the Barnwell City Council is authorized to assist private developers who provide water and sewerage for residential subdivision lots by partially reimbursing those developers as the lots are so improved, my opinion is that such a practice may very well be unauthorized. Unless the Council can show that the public benefit is primary and the private benefit is secondary at best, the practice most probably violates [Article X, Section 11 of the South Carolina Constitution](#) which prohibits, *inter alia*, the pledging of the credit of the State and its political subdivisions for the benefit of any individual, company, association or corporation. As construed by the South Carolina Supreme Court, this provision means that public funds cannot be used to benefit a private entity primarily and the public funds cannot be used to [See, e.g., Jacobs v. McClain, 262 S.C. 425, 205 S.E.2d 172 \(1974\)](#). Consequently, the burden is upon a public body to show that an expenditure of public funds to a private entity benefits the public primarily. If upon partially reimbursing the private developers, the City becomes the owner of the sewers then I think that such a procedure could be deemed a bona fide purchase by the City. [See generally, 11 McQUILLIN MUNICIPAL CORPORATIONS § 31.09 \(3rd ed. revised\)](#); [see also, Stegall v. Jackson, \(Miss.\) 141 So.2d 236](#) (realty developer who constructed sewer system in area not entitled, on city's annexation of area, to compensation for system or anticipated profits therefore); [Cline v. Red Bank Utility District, \(Tenn.\) 250 S.W.2d 362](#) (sewer district not liable for costs of sewer line voluntarily constructed and connected to its system, notwithstanding it took over lines and collected rents for use thereof); [cf., Jackson v. Gastonia, \(N.C.\) 98 S.E.2d 444](#) (annexation of territory serviced by private sewer and water lines, as imposing quantum meruit liability on city for value of lines).

With kind regards,

Karen LeCraft Henderson  
Senior Assistant Attorney General

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