



ALAN WILSON
ATTORNEY GENERAL

May 3, 2016

James F. Walsh, Jr., Esquire
City Attorney for Orangeburg
P.O. Box 627
Orangeburg, SC 29116-0627

Dear Mr. Walsh:

You have asked our opinion regarding a contribution by the City of Orangeburg to South Carolina State University. By way of background, you state the following:

At the regular scheduled City Council meeting on March 15, 2016, Mr. Charles Way, Chairman of the Board of Trustees for South Carolina State University appeared before City Council requesting monetary assistance from the City. He advised City Council the University was on probation status and would be on the campus of the University in April to address its accreditation. He advised Council the University was placed on probation for two (2) years by the Southern Association of Colleges and Schools. The probation cannot be extended and without accreditation the University will have to close because of the inability to obtain financial aid for students because of lack of accreditation. He advised Council the University was on probation status because of nine (9) deficiencies; four (4) of which are academic and five (5) financial. He requested a monetary contribution from the City for the purpose of repairing the streets and sidewalks of the campus. Total deferred maintenance on the campus totaled approximately \$30,000,000. The City was previously provided a request for funds for street and sidewalk repair in the total amount of \$1,286,323 (see attached).

Enclosed is a Resolution adopted by City Council at its regularly scheduled meeting on April 5, 2016 in which the City Administrator was directed to contribute a sum not exceeding \$1,000,000 to the University for the purpose of road and street improvements. It should be noted that the University is a closed campus and the streets and sidewalks are not under the jurisdiction of the South Carolina Department of Transportation and are not public streets because of safety and security concerns.

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The economic impact of the University on the economy of the City and the County as reflected in the Resolution was obtained from an Economic Impact Study prepared by the University's economics and accounting departments.

As City Attorney, I am requesting your opinion on the ability of a South Carolina municipal corporation to contribute monetary funds to another governmental entity of the state and, if permitted, if the subject contribution to South Carolina State University constitutes a "public purpose" of the City because of the economic impact of the University.

Law/Analysis

We have recognized on numerous occasions that

‘All legislative action must serve a public rather than a private purpose.’ [Elliott v. McNair], 250 S.C. [75] at 86, 156 S.E.2d [421] at 427 [(1967)]. ‘In general, a public purpose has for its objective the promotion of the public health, morals, general welfare, security, property, and contentment of all the inhabitants or residents within a given political division. . . .’ Caldwell v. McMillan, 224 S.C. 150, 172 S.E.2d 798, 801 (1953). . . . It is a fluid concept which changes with time, place, population, economy and countless other circumstances. Id. It is a reflection of the changing needs of society.

Op. S.C. Att’y Gen., 1985 WL 259146 (March 19, 1985). Further, we advised in Op. S.C. Att’y Gen., 2012 WL 2484919 (June 19, 2012) as follows:

[a]s the Court suggested in Elliott, the Due Process Clause of the Constitution (federal and state) requires that public funds must be expended for a public purpose. An opinion of this Office dated December 18, 2000, commented that the constitutional requirement of “public purpose” “. . . was intended to prevent governmental bodies from depleting the public treasury by giving advantages to special interests or by engaging in non-public enterprises.”

Moreover, Article X, § 5 of the South Carolina Constitution requires that taxes (public funds) be spent for public purposes. Such provision proscribes the expenditure of public funds “for the primary benefit of private parties.” Op. S.C. Att’y Gen., October 8, 2003.

However, it should also be remembered that:

‘ . . . the mere fact that benefits will accrue to private individuals or entities does not destroy public purpose.’

Bauer [v. S.C. Housing Authority, 271 S.C. 219] . . . at 229 [(1978)]. Quoting the Wisconsin court, our Court in Bauer stated that where ‘whatever benefit is derived by private individuals and specific localities is necessary and incidental to the promotion of public health, safety, education, morals, welfare and comfort of the people of the State, public purpose is maintained.’ The Court has recognized that ‘merely because an individual or private corporation makes a profit as a result of legislation does not change the public purpose.’ South Carolina Farm Marketing Bureau v. S.C. Ports Authority, 293 S.E.2d 857 (S.C. 1982), March 19, 1985 Op. Att’y Gen.

As the foregoing authorities discuss, the promotion of education is generally deemed to be a public purpose. As was stated in the March 19, 1985 opinion,

[t]here is little quarrel with the fact that education, including higher education, generally serves an important public purpose. Indeed, as our Supreme Court stated in Hunt v. McNair, 255 S.C. 71, 78, 177 S.E.2d 362 (1970):

It is too late to question whether or not the promotion of secular education is a public purpose as it is universally acceptable as a proper public purpose.

This principle is reflected in South Carolina cases. In Grey v. Vaigneur, 243 S.C. 604, 135 S.E.2d 229 (1964), our Supreme Court upheld the authority of Jasper County to issue bonds to assist the school districts in its school improvement program. There, the Court reviewed the various decisions in which it has upheld a local subdivision’s power in similar circumstances, emphasizing the need for such contribution to fall within the corporate purpose of the entity, as well as supporting a public purpose:

[c]ertainly, the county has an interest in promoting and providing the education of its citizens. Since both governmental units may issue bonds for educational purposes, and both have a common interest in doing so, the legislature has simply provided for the results to be accomplished, in effect, through a joint project. We agree with the defendants that there is no basic distinction in point of law in the contribution of the county here from that sustained in the case of Allen v. Adams, 66 S.C. 344, 44 S.E. 938, in which the Town of Edgefield built a school building; or in the case of Smith v. Robertson, 210 S.C. 99, 41 S.E.2d 631 where Charleston County was permitted to issue bonds to buy the site of a present State

Medical College Hospital; or in the case of Cothran v. Malloy, 211 S.C. 387, 45 S.O.2d 599 where Spartanburg and the City of Spartanburg jointly built a public auditorium; or in Shelor v. Pace, 151 S.C. 99, 148 S.E. 726, where Oconee County was permitted to issue bonds for school district purposes. As stated in the Smith case, '[W]e have nothing in our Constitution which prohibits cooperation between two governmental entities, created under it, in doing what each of them might do alone.'

Our own opinions are similar to the foregoing decisions. Pursuant to this same reasoning, we concluded in Op. S.C. Att'y Gen., 1985 WL 165976 (No. 85-5) (January 21, 1985) that Richland County could assist in the construction of a performing arts center owned by the University of South Carolina even though the County owned no interest in the building. We noted that, in our opinion, such an expenditure would further both a public purpose as well as a corporate purpose. We also referenced Art. X, § 13 of the State Constitution which provides:

[a]ny county, incorporated municipality, or other political subdivision for the joint administration of any function and exercise of powers and the sharing of costs thereof.

Likewise, we recently concluded that the City of Florence could use sales tax monies to assist in funding the construction of a facility for teaching third and fourth year medical students. We found that such expenditure met both a public purpose (serving economic development for "the Florence downtown area by attracting significant numbers of students, faculty and staff and revitalizing it.") as well as a corporate purpose. With respect to "corporate purpose," we stated as follows:

[t]axation or expenditure of public funds for a corporate purpose has been explained in County of Livingston v. Darlington, 101 U.S. 407, 25 L.Ed. 1015 (1880):

a tax for a corporate purpose is a "tax to be experienced in a manner which shall promote the general prosperity and welfare of the community which levies it; that every individual tax payer shall have a direct interest in the object for which the tax is levied, or be directly benefited by the expenditure, is unattainable in the very nature of things. General results are all that can be expected. . . ."

Id. 25 L.Ed. at 1018. Discussing whether a particular expenditure in another situation was for a corporate purpose, the Court continued:

If it was for a public purpose, for the benefit of the inhabitants of the municipality, then it would be for a corporate purpose. The latter cannot be distinguished from the former; and all that we have

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said in relation to the public purpose of the tax will apply with equal force to a corporate purpose. . . .

Id.

Op. S.C. Att’y Gen., No. 91-49, August 7, 1991 (1991 WL 494779).

See also 2012 WL 1036301 (March 20, 2012) [County has a legitimate interest in promoting higher education in the County].

Moreover, “our courts recognize economic development as a legitimate public purpose.” Op. S.C. Att’y Gen., 2008 WL 4829833 (October 28, 2003).” In 2003 WL 2121456 (May 8, 2003), we stated that “. . . there is no doubt at this late date that the expenditure of public funds for economic development promotes a public purpose.”

Conclusion

Based upon the foregoing authorities, it is our opinion that the expenditure by the City of Orangeburg for the repair of streets and sidewalks on the South Carolina State University campus serves both a public and corporate purpose. South Carolina State is a public, state-supported educational institution. As the City Council’s Resolution finds,

. . . the survival of South Carolina State University will promote the economy of the City and the public health, safety, morals, general welfare, security, prosperity, and contentment of the inhabitants and residents of the City and those of the County of Orangeburg and wishes to support the University in its effort to obtain full accreditation which is vital to its survival.

Our Supreme Court concluded in Nichols v. S.C. Research Authority, 290 S.C. 415, 351 S.E.2d 155 (1986) that economic development promotes a public purpose. Our own opinions reinforce Nichols’ conclusion. Likewise, the enhancement of education serves a public purpose. Op. No. 85-5, supra.

Moreover, the protection of the well-being and accreditation of South Carolina State University falls within the corporate purpose of the City of Orangeburg. A municipality clearly has an important stake in the economic development of the Town. See § 5-7-30.

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Thus, it is our conclusion that the City of Orangeburg may provide financial assistance to another governmental entity, such as South Carolina State University, for the repair of streets and sidewalks on the South Carolina State campus and that such assistance constitutes a public purpose and falls within the corporate purpose of the City. South Carolina State University is vital to the City of Orangeburg and Orangeburg County and the surrounding community. Our conclusion herein is consistent with decisions of the South Carolina Supreme Court as well as our own prior opinions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Robert D. Cook". The signature is fluid and cursive, with a large initial "R" and "C".

Robert D. Cook
Solicitor General