

1979 S.C. Op. Atty. Gen. 131 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-94, 1979 WL 29099

Office of the Attorney General

State of South Carolina

Opinion No. 79-94

July 17, 1979

***1 SUBJECT: Municipal Corporations**

(1) The prohibition contained in the Constitution of South Carolina against the state or its political subdivisions becoming an owner of stockholder in a private corporation does not bar the City of Charleston from accepting a gift solely because the gift momentarily, until liquidation, took the form of corporate stock.

(2) The City of Charleston is not prohibited by the Constitution from purchasing and/or receiving all of the stock in a private corporation for the purpose of liquidating the corporation and acquiring its assets.

TO: William B. Regan, Esquire
Corporation Counsel
City of Charleston

QUESTIONS:

1. Is a transaction whereby the City of Charleston would acquire by gift certain stock in a private corporation, which stock would immediately be sold in order to provide funds for a public park, prohibited by [Article X, Section 11, of the Constitution of South Carolina](#)?

2. Can the City of Charleston purchase or receive all of the stock in a private corporation in order to dissolve the corporation and acquire its assets?

STATUTES AND CASES:

[Article X, Section 11, CONSTITUTION OF SOUTH CAROLINA: Lytle v. So. Ry.](#), 171 S.C. 221, 171 S.E. 42 (1933); [American Bible Society v. Noble](#), 11 Rich. Eq. 156 (1859); [People, ex rel. Murphy v. Kelly](#), 76 N. Y. 475 (1879); [State, ex rel. Johnson v. Consumers P. Pon. Dist.](#), 143 Neb. 753, 10 N.W.2d 784, 152 A.L.R. 480 (1943); 2A Sands., [Sutherland Statutory Constitution](#), § 54.06 (1973).

DISCUSSION:

You have stated two questions which the city's endeavors to acquire the property might raise under [Article X, Section 11 of the South Carolina Constitution](#). The facts and issues of both are quoted below from your letter:

'CASE I: Parklands Foundation of the City of Philadelphia, Pennsylvania, wishes to make a gift to the City of Charleston in the sum of approximately \$6000,000, in order that the City may acquire with such funds an area on the Cooper River for park purposes. In the event that this area cannot be acquired, the money must be used elsewhere in the City for park purposes. To accomplish this, Parklands wishes to transfer to the City, stocks in one or more corporations. The stocks would be delivered by Parkland to a Philadelphia brokerage house which would have sold the stocks for the City. The delivery to the broker—a few seconds later—would enable the brokerage house to deliver the stocks to the purchasers

from the brokerage house. The cash proceeds, less expenses, would then be transferred to the City. The City itself would never become the registered owner of the stocks inasmuch as it would have sold the stocks before it actually gained possession.

QUERY: Is this transaction prohibited by [Section 11 of Article X of the State Constitution](#) which, among other things, proscribes that ‘Neither the State nor any of its political subdivisions shall become a joint owner of or stockholder in any company, association or corporation.’?

*2 CASE 2: The City has had the desired land appraised at the figure of \$1,275,000. The City will receive a federal grant which will approximate the difference between the appraised value of the property and the amount of the Parklands gift. The City has approached the landowner, one William E. Murray. Mr. Murray refused to sell. Obviously, one reason for his reluctance is the income tax resulting from the profit which would be realized. This could be avoided if the City condemned or if Mr. Murray swapped his present land holdings for others. Mr. Murray approached major subdevelopers in Charleston who own all the stock of a company known as Queensborough Corporation, which owns a tract of land in Mt. Pleasant which Mr. Murray would like to own. Mr. Murray said to the City, in essence, that he would swap his holdings for the Queensborough tract.

At Mr. Murray's instigation, the owners of the stock of the Queensborough Corporation have agreed to sell to the City a portion of their stockholdings for \$1,275,000. In addition, they would agree to give to the City the remainder of their stock, upon which they place a substantial value.

They impose upon the City the conditions that the City accept the stock and proceed at once to liquidate the corporation, and thus become the owner of the land which is the sole corporate asset of Queensborough. Prior to the acquisition of the stocks, the City will have agreed to the procedure and will have agreed to convey to Mr. Murray the Mt. Pleasant tract in exchange for the desired Cooper River waterfront tract.

QUERY: Is this transaction proscribed by the provisions of [Section 11](#) above set forth?

In order to answer both questions, it is necessary to examine the rationale behind the second sentence of [Article X, Section 11](#), which provides:

Neither the State nor any of its political subdivisions shall become a joint owner of or stockholder in any company, association or corporation.

Revised [Article X](#) took effect in 1977, but the second sentence of [Section 11](#) remained the same as it had been when in 1895 it originally entered the Constitution as part of [Article X, Section 6](#). According to an [Annotation, 152 A.L.R. 495, 496](#), provisions such as this came to exist in the middle and late nineteenth century after a number of states purchased stock in or otherwise gave assistance to railroads which ultimately became insolvent, thereby leaving the investing states heavily in debt, or occasionally, insolvent. According to the Annotation, by the 1940's 38 states had some form of constitutional prohibition of government co-ownership of or aid to private business.

In neither of the two situations here presented is there any attempt to have the City of Charleston act as a stockholder of otherwise participate in the affairs of a private corporation. The complexity of the two transactions is mandated by the effect of income tax laws rather than by any desire to have the City circumvent [Article X, Section 11](#). (It is assumed that each transaction involves prices or valuations which come within fair market value). Accordingly, the only question presented by each case is whether a transaction not within the class of transactions intended to be prohibited by a constitutional provision may be consummated despite the literal language of the provision.

*3 With respect to the first case, the Supreme Court of South Carolina has previously adopted a principle of statutory construction which appears to be fully applicable here. As stated by the Court, this principle is as follows:

There is, however, a fundamental principle of statutory construction that ‘it is the duty of the Court to ascertain the meaning of the legislature from the words used and the subject-matter to which the statute relates, and to restrain its operation within narrower limits than its words import if the Court is satisfied that the literal meaning of its language would extend to cases which the legislature never intended to include in it.

‘If it be true that it is the duty of the Court to ascertain the meaning of the legislature from the words used in the statute and the subject-matter to which it relates, there is an equal duty to restrict the meaning of general words, whenever it is found necessary to do so, in order to carry out the legislative intention.’ [Emphasis by the Court; citations omitted.] [Lytle v. So. Ry.](#), 171 S.C. 221, 224–5, 171 S.E. 42 (1933).

See also, 2A Sands, [Sutherland on Statutory Construction](#), § 54.06 (1973). An earlier South Carolina case, [American Bible Society v. Noble](#), 11 Rich.Eq. 156 (1859), is also analogous in its treatment of a gift of one kind (land) which was to be immediately converted into a gift of another kind.

It is the opinion of this Office that such a duty to restrict the terms of [Article X, Section 11](#) exists here and that the transaction proposed in Case 1 is not unconstitutional. It would lead to an absurd result to suppose that the framers of that section intended to bar a city from accepting a gift solely because the gift momentarily, until its liquidation, took the form of stock in private corporations.

Regarding Case 2, two cases from other states are directly in point. In [People ex rel. Murphy v. Kelly](#), 76 N.Y. 475 (1879), a New York statute provided that two cities (New York and Brooklyn) would purchase the stock of the private corporation formed to build the Brooklyn Bridge, and that when at least two-thirds of the stock had been purchased by the cities, the private corporation would be dissolved, and the bridge building effort would be continued by agents of the two cities. This statute was enacted only a few months after an amendment similar to [Article X, Section 11](#) was added to the New York Constitution.

The Court, however, held that that constitutional provision was not violated by an Act which provided for governmental purchase of stock for the purpose of dissolving the corporation and acquiring its assets:

The act of 1875, is not, as claimed by the appellant, in conflict with the constitutional provision above recited. It was not the purpose or effect of the act, to make the city of New York a stockholder in the bridge company, or to cause it to loan any money, or credit to such company. It was the purpose of the act to extinguish the company, and vest all its property in the two cities for a public purpose.

*4 All the money they paid for stock or upon the debts of the company, was simply in furtherance of the purpose to vest the property of the bridge in the two cities, and it was not paid to aid the company, or to make the cities stock holders therein. The effect was to be the dissolution of the company, and the transfer of its property. 76 N.Y. at 486–487.

Another case, [State, ex rel. Johnson v. Consumer P. Pow. Dist.](#), 143 Neb. 753, 10 N.W.2d 784, 152 A.L.R. 480 (1943) reached the same result, citing [Kelly](#) and the statutory construction principle already discussed above. In that case, a

public power district acquired all the stock of a private power company and then dissolved the corporation. The Court held:

This provision of our Constitution must be construed with reference to the evils it was intended to correct or prevent.

[Section 1, Article XI of our Constitution](#) was never intended to prohibit a purchase by a subdivision of the state of all the capital stock of a corporation solely for the purpose of lawfully acquiring the physical property of such corporation for a public use, constitutionally defined and lawfully authorized by the legislature. [152 A.L.R. at 491-492.](#)

The facts of Case 2 appear to present no substantive difference from those of the two cases listed above. Accordingly, it is the opinion of this Office that the transaction proposed in Case 2 is not unconstitutional.

In both cases, this opinion must be qualified to the extent that cases presenting the sort of situation present here simply do not appear to have arisen very often. No South Carolina case has construed the aforementioned sentence of [Article X, Section 11](#). However, the few cases which are in point permit the transaction and their reasoning appears to be both sound and directly applicable in the present cases.

CONCLUSION

1. The City of Charleston is not prohibited from accepting a gift solely because the gift momentarily took the form of corporate stock.
2. The City of Charleston is not prohibited from purchasing and/or receiving all of the stock in a private corporation for the purpose of liquidating the corporation and acquiring its assets.

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