

1979 WL 43518 (S.C.A.G.)
Office of the Attorney General
State of South Carolina
August 13, 1979

*1 Roger E. Stroup
Curator of History
South Carolina Museum Commission
Post Office Box 11296
Columbia, South Carolina 29211

Dear Mr. Stroup:

This is to acknowledge receipt of and thank you for your letter of July 13, 1979, in regard to the gift to the Museum of a 1931 Marmon automobile. It appears from your letter that two questions are posed:

1. If Mr. Bray makes an inter vivos gift of the automobile to the Museum, but retains possession until some future time, can he take an immediate income tax reduction for this gift?
2. Can the State lend the vehicle back to Mr. Bray while paying for license fees, insurance, etc.?

In regard to the first question, I am enclosing an opinion I received from a member of our office assigned to the South Carolina Tax Commission. As indicated in his letter, if Mr. Bray retains possession of the gift, he will not be able to take a tax deduction in that year for the charitable contribution. Furthermore, I believe there are some constitutional problems in lending this vehicle back to Mr. Bray. [Article X, Section 6, of the South Carolina Constitution](#) provides, inter alia, that: The credit of the State shall not be pledged or loaned for the benefit of any individual, company, association or corporation . . .

The leading case in this area is [Gould v. Barton, 256 S.C. 175, 181 S.E.2d 662 \(1971\)](#). In that case, tax payers challenged the legality of a proposed lease agreement between the Riverbanks Zoo Commission and South Carolina Electric and Gas, by which the Commission would build the new zoo on property leased from South Carolina Electric and Gas. The Court found no violation of [Article X, Section 6](#), in that case, because the improvements made upon the property would be removed. South Carolina Electric and Gas had no financial interest in the zoo and would receive no benefit from it. However, in the present transaction, I think it can be argued that Mr. Bray will receive substantial benefit from the continued possession of this vehicle. Therefore, while the matter is not completely free from doubt, it would be my opinion that this proposed transaction would violate [Article X, Section 6, of the South Carolina Constitution](#).

I hope this information will be of some assistance to you. If you should have any further questions in this regard, please do not hesitate to contact me.

With kind personal regards, I am
Very truly yours,

Richard B. Kale, Jr.
Senior Assistant Attorney General

1979 WL 43518 (S.C.A.G.)

End of Document

© 2017 Thomson Reuters. No claim to original U.S. Government Works.