

1976 WL 30542 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 9, 1976

\*1 Mr. Ernest Nunnery

#### QUESTIONS PRESENTED

Is it proper for a municipality to transfer title to municipal property, in the form of automobiles, to retired municipal employees as gratuity? If not, is there any basis for a criminal prosecution?

#### DISCUSSION

There appears to be neither statutory nor case law in South Carolina on this point. The only related Constitutional provision is Article 10, § 6 and that provision has been held inapplicable to municipalities.

The general rule appears in 64 Corpus Juris Secundum, Municipal Corporations, Section 1835(G):

It is generally held that public funds can be appropriated and expended by a municipal corporation only for public purposes . . . A municipal corporation cannot expend or be authorized by the legislature to expend its public funds for private purposes or pledge its credit to pay a private indebtedness or make appropriations for donations or gratuities.

From the foregoing it appears that the gifts involved in your inquiry are improper.

Under the circumstances related in your inquiry it appears that criminal action would be inappropriate since, apparently, no criminal intent is involved. The property, of course, should be returned to the municipality.

If criminal intent were present, a prosecution for grand larceny, among other crimes, would lie.

#### CONCLUSION

The gratuitous transfer of the automobiles was improper but, under the circumstances, criminal prosecution would be inappropriate unless criminal intent is involved.

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