

1976 WL 30906 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 17, 1976

*1 The Old Exchange Building Commission may invest capital improvement monies into the Old Exchange Building in Charleston, which building shall be leased by the State on a long-term basis, for the purpose of restoring said building as a historical landmark for public use.

The Old Exchange Building Commission

QUESTION PRESENTED:

Whether public funds may be invested by the State for the capital improvement of the Old Exchange Building, which building shall be leased by the State on a long-term basis, for the purpose of restoring the Old Exchange Building as a historical building for public use?

CITATION OF AUTHORTIES:

Article X, Section 6, South Carolina Constitution; [Gould v. Barton, 256 S. C. 175, 181 S. E. 2d 662 \(1971\)](#); Attorney General Opinion, dated January 7, 1976.

DISCUSSION:

The Old Exchange Building in Charleston, South Carolina was conveyed on April 20, 1917, by the United States of America pursuant to an Act of Congress of 1913 (37 Stat. 889) ‘to the Order of the Daughters of the American Revolution in and of the State of South Carolina, to be held by it as a historical memorial in trust for such use, care, and occupation thereof by the Rebecca Motte Chapter of said order, resident in the City of Charleston, South Carolina, State aforesaid, as the said chapter shall in its judgment deem to best subserve the preservation of said colonial building and promote the honorable and patriotic purpose for which the grant is requested. . .’ The State of South Carolina, through its Old Exchange Commission, now proposes to enter into a twenty-five years lease, renewable for three consecutive twenty-five year terms, to make said building available to the public. The State also desires to restore the Building to its original design during the American Revolution. The question has arisen as to whether public monies can be expended to improve this leased property?

Article X. Section 6 provides that:

‘The credit of the State shall not be pledged or loaned for the benefit of any individual, company, association, or corporation . . .

In [Gould v. Barton, 256 S. C. 175, 181 S. E. 2d 662 \(1971\)](#), the plaintiffs in that action argued:

The present contention is, basically, that the public improvements to be placed upon the leased premises may possibly become the property of the lessor upon the termination of the lease, prior to the expiration of the useful life of such improvements, and, therefore public funds derived from the pledge of the credit of the district will have been spent for the benefit of the lessor, a corporation, in violation of the prohibition of Article X, Section 6. [Id. at 188](#), 181 S. E. at 667.

In Gould, the Richland-Lexington Riverbanks Parks District built a zoological park on leased property. In the present case, as in Gould, the improvements are for the benefit of the public. While the title to the subject property is presently in litigation, it is assumed for the purposes of this opinion that the Rebecca Motte chapter of the State DAR, would hold title to the Old Exchange Building as a public trust under the terms of the 1917 conveyance from the United States. Therefore, expenditure of public monies would be for the benefit of the public through the public trust. The lease or agreement, as in Gould, will be for a period of 100 years. While capital improvements made in restoring this historic building could not be removed, as was the case in Gould, such improvements will continue to inure to the benefit of the public under the terms of the trust. Therefore, such transaction would not violate the South Carolina Constitution since it will continue to benefit the public and not any private individual, company, association, or corporation.

CONCLUSION:

*2 The expenditure of public monies to restore the Old Exchange Building in Charleston, South Carolina, does not violate Article X, Section 6, South Carolina Constitution.

Richard B. Kale, Jr.
Assistant Attorney General

1976 WL 30906 (S.C.A.G.)