

1975 WL 29727 (S.C.A.G.)  
Office of the Attorney General  
State of South Carolina  
April 17, 1975

\*1 Mr. Lachlan L. Hyatt  
Chairman  
State Board of Health  
South Carolina Department of Health and Environmental Control  
Post Office Box 4088  
Spartanburg, South Carolina 29303

Dear Mr. Hyatt:

Your letter of April 12, 1975, requests my opinion on the following problems:

- I. May our Board legally allocate funds to McLeod Memorial Hospital for the purpose of (A) construction of a new Regional Hospital; (B) Architects' charges for such a facility; (C) Furniture or equipment for such a facility?
  
- II. May our Board legally allocate funds to The Pee Dee Regional Health Services District for use, within guidelines prescribed by our Board, for assistance in establishing a Regional Hospital facility which would be, in their Board's opinion, in the best interest of the District in providing health care?

My answer to these two questions is 'no', in the absence of a decision of the Supreme Court of South Carolina declaring otherwise. See comments set forth below.

III. In the absence of an affirmative opinion in either case above, will you please advise us of any action our Board might legally be permitted to take, in the allocation of these funds, which could be of financial assistance in carrying out the construction of and/or equipping a proposed new McLeod Memorial Hospital as a REGIONAL Hospital, with REGIONAL Board Membership?

At the present time, I am unable to unequivocally state that a contribution may be made for the construction of a hospital where title remains in a private, non-profit, non-sectarian entity, such as McLeod Memorial, unless and until the Supreme Court confirms an extension of Bolt v. Cobb, a decision of the Supreme Court of South Carolina, in such circumstances.

The constitutional issue which permeates consideration of this entire problem was stated in that case. It was there held that a county could construct a public hospital and lease the same for a nominal rental to a private, eleemosynary, non-sectarian corporation under such terms and conditions as they might mutually agree upon to permit the greatest possible amount of free service to the residents of the county who were unable to pay for such services. In that case, however, title to the hospital was vested in the county which, I understand, is not the case in the present circumstances with respect to McLeod Memorial. The doubt which exists in my mind as to the probability of the Court sustaining the extension of this holding where title to the property is not vested in a governmental entity prompts me to advise your Board that the legal risks of granting funds in the manner about which you inquire to a private organization are not warranted.

If your Board is desirous of undertaking the risks involved in making such a grant, it may assume that McLeod Memorial is a non-religious, private, and non-profit corporation. The charter document submitted by you in your letter demonstrates to my satisfaction that none of its assets will inure to the benefit of any individual and demonstrates further

that it has all other of such characteristics. Should such an undertaking be made, your Board should make a factual determination upon such issues as the need for hospital care for the public which McLeod Memorial may be willing to undertake to furnish; the types of services that can be rendered; and other similar pertinent factual findings made in accordance with Policies and Guidelines established by your Board. I do not advise such a procedure in view of the conclusions set forth above.

\*2 What is said with respect to McLeod Memorial Hospital is not limited to it, but to any other similar organization of the same type.

Very truly yours,

Daniel R. McLeod  
Attorney General

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