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The State of South Carolina



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Office of the Attorney General

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August 16, 1988

The Honorable Grady L. Patterson, Jr.
Treasurer of the State of
South Carolina
Post Office Drawer 11778
Columbia, South Carolina 29211

Dear Mr. Patterson:

By your letter of August 4, 1988, you have inquired as to the authority and responsibility of the State Treasurer to invest and deposit funds for which you, as State Treasurer, are custodian and also to employ investment advisory services for such investments and deposits.

Section 11-13-30 of the Code of Laws of South Carolina (1976) provides that only the State Treasurer may invest and deposit funds:

To facilitate the management, investment, and disbursement of public funds, no board, commission, agency or officer within the State government, except the State Treasurer shall be authorized to invest and deposit funds from any source, including, but not limited to, funds for which he is custodian, such funds to draw the best rate of interest obtainable.

The plain and literal language of this statute, which must be applied in the absence of ambiguity, provides for the authority of the State Treasurer to invest and deposit funds from any source. (Worthington v. Belcher, 274 S.C. 366, 264 S.E.2d 148 (1980); State v. Goolsby, 278 S.C. 52, 292 S.E.2d 180 (1982)). In several opinions, this Office has previously concluded that deposit and investment of funds were within the authority and responsibility of the State Treasurer. For examples, see Ops. Atty. Gen., dated November 28, 1978 (State Treasurer had authority to invest public funds in U. S. Treasury Notes); July 23, 1979 (funds of the Opportunity School may be invested by the State Treasurer); October 8, 1979 (reiterating

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conclusion of opinion of July 23, 1979); June 20, 1980; and January 7, 1982 (deposits of regional mental health clinics). Neither the statute nor these opinions differentiate between funds of which the State Treasurer is custodian and funds of which he does not have custody.

We further advise that the authority and responsibility to invest funds would implicitly include the authority to employ an investment advisory service. The Supreme Court of Montana, in In Re Montana Trust and Legacy Fund, 388 P.2d 366 (Mont. 1964), noted that investment and administration of funds should include the "authority to administer investments in a manner consistent with the realities of the securities market." Id., 388 P.2d at 370. The court further stated that it was "most reluctant to announce a rule which would preclude the appropriate state authorities from being able to take advantage of a 'better deal,' so long as it may likewise be classed as a safe and conservative investment." Id. To enable that State of South Carolina to locate and invest in the investments which would allow the State to draw the best rate of interest obtainable, taking into account the realities of today's financial market, it would be appropriate for the State Treasurer to employ an investment advisory service. Apparently the General Assembly agrees, since the annual appropriation for the Treasurer's office includes funds to pay for investment advisory services. If an investment advisory service is used, of course the final authority to determine the most appropriate or advantageous investment would remain with the Treasurer.

To summarize the foregoing, it is the opinion of this Office that the State Treasurer is authorized to invest and deposit funds as provided in Section 11-13-30 of the Code and is further authorized to employ an investment advisory service.

With kindest regards, I am

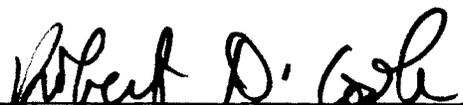
Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

PDP/an

REVIEWED AND APPROVED BY:



Robert D. Cook
Executive Assistant for Opinions