

The State of South Carolina



G. Travis Medlock
Attorney General

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Attorney General

November 13, 1987

Dr. Max Lennon, President
Clemson University
Clemson, South Carolina 29634

Dear Dr. Lennon:

You have advised that Clemson University, using capital improvement bonds and a grant from the Belle W. Baruch Foundation, proposes to construct at Hobcaw Barony a laboratory for continuing research in the area of forested land and other related areas beneficial to the State of South Carolina. The facility will house administrative offices, technicians' area, and faculty offices in addition to the laboratory area. You have inquired as to whether such a project will be consistent with the tripartite agreement for use of Hobcaw Barony executed by Clemson University, the University of South Carolina, and the Belle W. Baruch Foundation.^{1/}

To adequately respond to your inquiry, it is necessary to review the terms of the agreement of February 22, 1975, referred to above. The last will and testament of Belle W. Baruch is quoted in the agreement; in particular, the will provides:

I specifically empower my said Trustees to keep, maintain and improve any lands or building that may be a part of the corpus of the *** TRUST, and to make such additions and permanent improvements to the property as will increase its productivity and its usefulness for the charitable purposes of this Foundation Trust ***; [.]

^{1/} It should be noted that former Attorney General McLeod was also a signatory to the agreement.

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The primary rule of construction of a will is to determine the intent of the testatrix and give effect to that intent if at all possible. Green v. Green, 210 S.C. 391, 42 S.E.2d 884 (1947). From the language of the will cited in the agreement, it appears that additions and improvements to the property being administered by the Baruch Foundation were contemplated by the testatrix.

In the preamble to the agreement on page two, the signatories recognized the interests to be observed by all parties in "the preservation and conservation in perpetuity for the benefit of the State of South Carolina and the public of the valuable resources of the FOUNDATION'S property... ." Toward this end, "special research and teaching projects in forestry, marine biology and the care and propagation of wildlife and flora and fauna in the State of South Carolina" would be conducted on the Baruch Foundation's property.

Part 4 of the agreement covers operations and activities of Clemson University and the University of South Carolina vis a vis the Foundation and reflects further the objectives specified in the preamble:

All activities of the UNIVERSITIES listed above, including all research, teaching, etc., shall be for the purpose of preserving and conserving the ecological and educational qualities of the FOREST-MARINE and MARSH-MARINE AREAS for teaching and research in forestry and the care and propagation of wildlife, flora and fauna within the FOREST-MARINE AREA and in marine biology and the care and propagation of wildlife, flora and fauna within the MARSH-MARINE AREA.

Thus, any activities undertaken by Clemson University must be for the specified purposes of preserving and conserving the qualities of the forest-marine area for teaching and research in forestry. Constructing a laboratory for teaching and research, while at the same time taking care to preserve and conserve the ecology of the forest-marine area, could be among the activities contemplated by the agreement.

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The agreement, in part 7, recognizes that "future building and expansion may be necessary to carry out effectively the purposes of the UNIVERSITIES and the FOUNDATION...." From the clear and concise language of the agreement, we note that building and expansion of facilities were contemplated by the parties to the agreement. This Office has been advised that the laboratory facility will be a 6,000-square-foot facility for teaching and research, which will be designed to blend with the existing topography and vegetation with a facade compatible with other buildings located at Hobcaw Barony.

Based upon this description and the portions of the tripartite agreement set forth above, it is the opinion of this Office that construction of such a facility would be permissible under the terms of the agreement executed February 22, 1975 by Clemson University, the University of South Carolina, and the Belle W. Baruch Foundation. It is our understanding that this opinion is consistent with legal advice given to the Foundation by its attorney, Jean H. Toal.

Sincerely,



T. Travis Medlock
Attorney General

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