

1976 S.C. Op. Atty. Gen. 250 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4406, 1976 WL 23024

Office of the Attorney General

State of South Carolina

Opinion No. 4406

July 28, 1976

***1 Attention: Legal Affairs & Legislation**

TO: Office of the President
University of South Carolina

QUESTION PRESENTED:

Whether the proceeds of the sale of personal property owned by the University of South Carolina should be retained by the Budget and Control Board or remitted to the University.

STATUTES INVOLVED:

Code of Laws of South Carolina, 1962, § 22–104;

Code of Laws of South Carolina, 1962, § 1–793.

DISCUSSION OF ISSUE:

A boat was donated to the University of South Carolina, a corporation existing under the Laws of South Carolina, pursuant to Section 22–104, Code of Laws of South Carolina. Authorities at the University had the Budget and Control Board sell the boat in the manner prescribed for the sale of surplus State property not in actual use. Both parties sought information as to which is entitled to the proceeds.

When the boat was donated to, and accepted by, the University, title to it vested in the University of South Carolina, a corporation. This corporation, through agents of the Board of Trustees had the State Budget and Control Board sell the property. Title to it never passed from the University of South Carolina, a corporation, to the State of South Carolina. Hence, Section 1–793, Code of Laws of South Carolina, 1962, is inapplicable insofar as placing the proceeds of the sale in the sinking fund, in that the boat was not properly surplus property of the State. The Budget and Control Board occupied no greater role than agent for the University in the sale of University property.

Code Section 22–104 expressly incorporates the University as the University of South Carolina in name with the Board of Trustees being in fact the corporation. That section expressly authorizes the University to sell personal property. Any authority needed to receive the proceeds from such a sale would derive from another enumerated power of the Board of Trustees, the power to make contracts. This right to contract necessarily implies the right to receive benefits which would result from performing such contracts. To hold otherwise would be a limitation on the contracting power not prescribed in the statute and not consonant with the ability to contract.

Section 22–104 further provides the Board power to appoint subordinates and agents, and to prescribe their duties and powers in harmony with the law. Dean O. M. Higgins was the duly appointed and authorized agent of the Board in the sale of the boat.

CONCLUSION:

Since the Board of Trustees has acted through its duly authorized subordinate in the sale of personal property of the University of South Carolina, and since the power to sell and receive the proceeds of such sale has been expressly enumerated or clearly implied by statute, the funds should be remitted to the University of South Carolina for disposition.

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