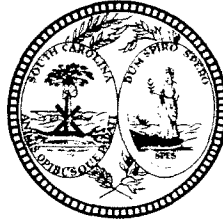


6131 Lebray



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

January 23, 1997

Thomas A. Mims, Esquire  
Edgefield County Attorney  
118 Courthouse Square  
Post Office Box 150  
Edgefield, South Carolina 29824-0150

Re: Informal Opinion

Dear Mr. Mims:

You have informed this Office that there are drink and other vending machines located within the Edgefield County Jail which are used by the prisoners and visitors to the County Jail. Coins removed from these machines have been placed in an account designated by the Sheriff, who is also the Chief Jail Keeper, as a recreation fund. The fund is to be used for recreation of the inmates. You ask whether it is proper for the Sheriff to use the fund for this purpose. Further, you ask whether the Sheriff must have an accounting of the use of the money in this fund.

In previous opinions, this Office has addressed the handling of money generated by vending machines and canteens housed within jails. Ops. Atty. Gen. dated August 14, 1995; April 14, 1993; and June 1, 1992. The June 1, 1992 opinion cites another opinion of this Office dated November 15, 1985 which recognized that:

"public funds" are those monies belonging to a government, be it state, county, municipal or other political subdivision in the hands of a public official ... . Such funds are not necessarily limited to tax moneys ... .

The 1985 Opinion determined that athletic, bookstore or canteen funds generated by State colleges or universities should be considered "public funds" and, therefore, must

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be spent in a manner consistent with State law. That opinion determined that while these funds were not "State funds," thereby requiring transfer to the State Treasurer, they were "public funds" and were subject to such legislative directives and restrictions "as the General Assembly may provide." We have also previously concluded that "... there is no Constitutional or statutory power for a State agency to give public funds to a private foundation or other corporation or individual except in payment for goods and services." Op. Atty. Gen. dated April 26, 1983.

Specifically, with respect to jail canteen funds, the June 1, 1992 opinion further states:

I am unaware of any State statute or regulation which provides for the manner of use of jail canteen profits. Consistent with the prior opinions cited above [referenced herein], it appears that such profits could be considered "public funds" and accordingly should not be used for individual inmates. Inasmuch as such profits may be considered public funds, utilization of such profits for the entire inmate population could probably be authorized. A program benefiting the welfare of the general inmate population could be construed as meeting a public purpose test. Of course, in evaluating the use of such profits, consideration must be given to relevant county ordinances or policies which may control.

Consistent with these previous opinions, the funds generated by the vending machines housed within the Edgefield County Jail could be considered public funds. A program such as the one described in your request would seemingly benefit the general inmate population. Therefore, such a program would appear to be permissible.

In regards to your question concerning whether the Sheriff must have an accounting of the monies generated by the drink and vending machines, I am unaware of any state statute or regulation concerning the accounting of these types of funds. Further, you have informed this Office that there are no local ordinances covering the use of these funds. Therefore, since these funds may be considered "public funds," I would recommend that the Sheriff treat these funds for accounting purposes as he treats all other "public funds."

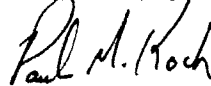
This letter is an informal opinion only. It has been written by a designated assistant attorney general and represents the position of the undersigned attorney as to the

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specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I remain

Very truly yours,



Paul M. Koch  
Assistant Attorney General