



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

September 12, 1995

Leroy Davis, Interim President
South Carolina State University
300 College Street Northeast
Orangeburg, South Carolina 29117

RE: Informal Opinion

Dear President Davis:

By your letter of August 10, 1995, to Attorney General Condon, you have sought an opinion as to whether certain expenditures of public funds by South Carolina State University might meet the "public purpose" test as required by Article X, Section 5 of the Constitution of the State of South Carolina. You have indicated that a preliminary report containing a Management Review of certain expenditures by the University has been prepared for the University by the Compliance Review Committee of the State Reorganization Commission. Certain of the examined expenditures were deemed "questionable" by the Committee. The University takes exception to the questioned expenditures; you have sought an opinion as to use of the funds for bereavement acknowledgements, and further for a wardrobe for Miss SCSU. At the conclusion of your letter, you asked additional questions about the expenditure of canteen funds for a variety of purposes, as well.

You are already aware of the opinions of this Office relative to expenditure of public funds for a public purpose, as well as certain court decisions which expound on that constitutional requirement. Thus, it is not necessary to reiterate those principles at this time. You have asked that we take certain information into consideration, however, with respect to the "questionable expenditures."

As to bereavement acknowledgements, you have advised that the University acknowledges births, hospitalizations, and deaths by sending cards of acknowledgement

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or flowers. These acknowledgements are sent on behalf of the University, rather than a particular individual. Thus, you feel the entire University population benefits, because the acknowledgement has been sent on behalf of the University.

I understand that such acknowledgements create good will within the University and within the greater community. It still remains difficult to demonstrate the overall public purpose resulting to the public or the University by such an expenditure, in my view.

As to a wardrobe for Miss SCSU, you advise that Miss SCSU represents the University at various functions, both off and on campus. Further, you advise that it is important to the University's image that Miss SCSU appear in a positive light, as an unfavorable appearance by Miss SCSU will result in a negative image of Miss SCSU. According to your letter, the University concedes that Miss SCSU will benefit from the use of the wardrobe; however, you believe the benefit that the University derives from promoting Miss SCSU outweighs any benefit that Miss SCSU would obtain.

Who benefits from this expenditure would be a question of fact. I would suggest that you provide such supporting information to the Committee which is producing the Management Review in an effort to demonstrate that a public purpose is being served by this expenditure.

Finally, you have asked whether the University may expend canteen funds for a reception activity for staff, employees, and students; for a Christmas party for University staff, employees, and students; for purchasing a computer to be used in the President's office; for a scholarship to a music student who will be expected to perform consistently at college activities on behalf of the University; and for the purchase of books containing the University's history in an effort to cultivate prospective donors. I would advise that such a determination would involve a determination of questions of fact as to who is primarily benefitting from such expenditure; determination of questions of fact are outside the scope of an opinion of this Office. Op. Att'y Gen. dated December 12, 1983. I would suggest that counsel for the University be consulted, taking into account legal guidance already given by prior opinions, for guidance on these matters. If questions still remain, perhaps a declaratory judgment action in the Court of Common Pleas would be advisable to obtain definitive guidance.

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With kindest regards, I am

Sincerely,

Patricia D. Petway

Patricia D. Petway
Senior Assistant Attorney General