

The State of South Carolina



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April 5, 1990

Gwendolyn L. Fuller, College Attorney
South Carolina State College
300 College Street Northeast
Orangeburg, SC 29117

Dear Gwen:

You have requested an Opinion as to South Carolina State College's authority to contract for provision of public mass transportation services for its students and citizens of Orangeburg County. You indicate that the college proposes to apply for federal mass transit authority grant funds made available through the South Carolina Department of Highways and Public Transportation and then in turn contract with the Orangeburg Metro Transit Company, a private transit company for the provision of public mass transportation services in the Orangeburg area. These services would be for South Carolina State College students but would also be available to the Orangeburg community at large. As the college describes the venture it will not be a commercial enterprise for the college but is limited to a two (2) year demonstration project.

This Opinion is limited to your request and does not address other issues that you may wish to advise the college on to include liability exposure, procurement issues, and whether the proposed arrangement meets the terms and conditions of the Department of Transportation grant. This Opinion speaks solely to the question of South Carolina State College's authority.

The powers of a college or university are in general such as may be conferred by charter, statutory or constitutional provisions and those powers exercised should be reasonably incidental to their main purpose of maintaining such institution. 14 C.J.S. Colleges and Universities § 6. Therefore a brief review of the college's history is warranted.

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South Carolina State College has evolved out of the Colored Normal Industrial Agricultural and Mechanical College of South Carolina, first established in 1872 as the South Carolina Agricultural and Mechanical Institute and existing within Claflin College. In 1890 the college existed as a branch and was under the control and management of the University of South Carolina (then South Carolina College) when the General Assembly required the separation of South Carolina Agricultural and Mechanical Institute from Claflin College and the reorganization of the branches after July, 1891. Consequently, the Colored Normal Industrial Agricultural and Mechanical College of South Carolina was formed with a Land Grant Mission and the name of the institution was subsequently changed to South Carolina State College.

The enabling legislation for the institution is found at § 59-127-10, et seq. Code of Laws of South Carolina, as amended, which in conferring specific powers in § 59-127-60 provides:

[i]n the management of affairs of said college whenever it is found necessary to protect or promote the interests of the State or whenever the trustees deem it right and proper or expedient for any reason, the trustees may sell, purchase or exchange real estate. And the trustees shall fix the time and duration of all vacations to be given the students of the institution. South Carolina State College shall have all the rights and privileges possessed prior to March 3, 1896, by Claflin College.

Those rights and privileges possessed by Claflin College prior to March 3, 1896, and reserved under § 59-127-60 are found in the South Carolina Statutes at Large of 1890.

Section 59-127-70 Code of Laws of South Carolina, 1976, as amended, lists additional powers by providing that

[t]he board of trustees of South Carolina State College may provide all necessary suitable buildings upon a proper site for the purpose, establish a course of study covering the normal industrial, agricultural and mechanical sciences, provide the necessary appliances for proper instruction in the same and select a proper core of professors and instructors and fix their salaries.

Whether a university or college may engage in ventures that are not directly related to its mission turns upon the facts of each case. Consideration must be given to the powers granted by the college charter either expressly or by implication. A college or university has not only powers expressly delegated to it but also such powers as may be reasonably implied for purposes of effec-

tuating its purposes. Arizona Board of Regents v. Harper 108 Ariz. 223, 495 P. 2d 453 (1972).

A review of some of the cases allowing colleges and universities to maintain other enterprises include maintaining bookstore for the purpose of supplying books at cost to students (Long v. Board of Trustees 24 Ohio App. 261, 157 N.E. 395, error dismissed Long v. Mack 116 Ohio St 738, 158 N.E. 7 (1926)); maintenance of an infirmary for students (Davie v. Board of Regents 66 Cal. App. 693, 227 P. 243 later app. 66 Cal. App. 689, 227 P. 247 (1924)); operating laundry and dry cleaning service at reduced prices for students, faculty and others connected with the college (Villyard v. Regents of University System 204 Ga. 517, 50 S.E. 2d 313 (1948)). Universities with medical colleges have been held to properly maintain clinics and hospitals where clinical instruction is being taught, and universities with colleges of agriculture to properly maintain experimental stations in connection therewith. (See 15A Am Jur 2d Colleges and Universities § 5)

The project the college proposes does not seem to be explicitly conferred upon the college in its creation. However, case law suggests that projects closely connected or related to the mission of the institution are within the power of its governing board. It has been held that colleges and universities, absent express limitations, have the authority to carry on activities incidental to or closely connected with other legitimate functions of the institution. Batcheller v. Commonwealth, 176 Va. 109, 10 S.E. 2d 529, (1940) (maintaining an airport for use of aeronautical engineering program), Long v. Board of Trustees supra. While case law substantiates that a college or university might engage in other necessary incidental enterprises, which might be termed commercial they must be closely related to the mission of the institution. Batcheller supra.

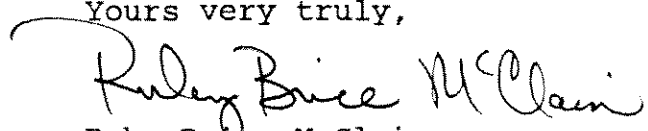
In Turkovich v. Board of Trustees of the University of Illinois 11 Ill. 2d 460, 43 N.E.2d 229 (1957) the Supreme Court of Illinois held that the University had the implied power to construct and maintain a television station in support of the University's School of Journalism and Communications. The factors the court considered in determining the university's authority included that the university television station would be "used to train students to enter the field of communications and broadcasting, to give instruction for university credit, to carry on research in mass communications, to disseminate the results of research in all fields of learning at the university, to experiment in program planning and technique and to employ the medium for the education of the public at all levels." The court noted that the television station was an experiment in program operations for a year or two with expansion after the experiment desired.

Therefore the Board of Trustees in deciding whether to proceed with the proposed project should consider the connection with the mission of the college. The cases cited herein should provide some

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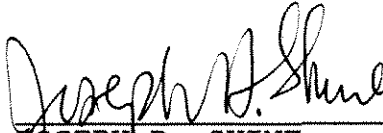
guidance as to the factors the courts consider in determining whether the project is a valid exercise of a college's implied powers.

Yours very truly,

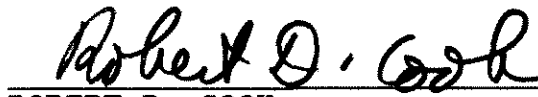

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