

The State of South Carolina

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Office of the Attorney General

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September 10, 1990

The Honorable Grady L. Patterson, Jr.
State Treasurer
Post Office Box 11778
Columbia, South Carolina 29211

Re: South Carolina Uniform Management of
Institutional Funds Act

Dear Mr. Patterson:

Attorney General Medlock has referred to me your inquiry of June 11, 1990. Attached to your letter was a letter to Mr. Chuck Sanders at your office, dated June 1, 1990, from Attorney Harriet E. Wilmeth in Hartsville, and I have also been provided a copy of a letter from Senator Edward E. Saleeby to the Attorney General, dated May 25, 1990, and a copy of the Uniform Act, now found at Sections 34-6-10 et seq. of the South Carolina Code of Laws.

The question presented is whether or not the Uniform Act creates an exception or exemption to the authority of the State Treasurer, presently found at Section 11-13-30 of the South Carolina Code of Laws. Inquiry was made as to whether or not the Uniform Act was applicable to public institutions or public endowment funds.

Section 11-13-30 of the South Carolina Code of Laws addresses the authority of the State Treasurer to invest and deposit funds, and states as follows:

To facilitate the management, investment, and disbursement of public funds, no board, commission, agency or officer within the State Government, except the State Treasurer, shall be authorized to invest and deposit funds from

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any source, including, but not limited to, funds for which he is custodian, such funds to draw the best rate of interest obtainable.

Apparently a question has been raised with your office by a public institution of higher learning in this State, as to whether or not this new Uniform Act takes the Treasurer out of his former position of authority for investing public institution funds.

I have reviewed the Act in question, together with the appropriate statutes in Title 11. I have also discussed this matter with Mr. Sanders of your staff, and Attorney Harriet Wilmeth of Hartsville, who was apparently representing the interest of Coker College when the legislative hearings on the Uniform Act occurred. All of them concur that the purpose of the Act was to allow Coker College some latitude to invest and otherwise dispose of the principal and income increases in its endowment funds.

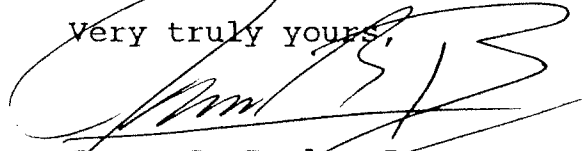
The statute makes no specific reference to Section 11-13-30, so it must be concluded that the legislature did not intend to repeal, or otherwise amend that section. In addition, at Section 34-6-50 of the Uniform Act, where certain powers of the governing board of an institution are delineated, there is an exception to restrictions contained in the gift instrument (such as restrictions by a donor on how his or her donated funds may be spent) and regarding applicable law relating to governmental institutions or funds. This latter reference would appear to bring in Section 11-13-30, and any other statutes relating to the expenditure of governmental funds, which has historically (or at least since 1971) lay with the State Treasurer.

Since the clear and ordinary language of the statute appears to take into account the authority of the Treasurer regarding public funds, found at Section 11-13-30, it would in all likelihood not be appropriate to try to interpret the Uniform Act beyond that. Our advice to you would be, therefore, that your authority in Section 11-13-30 of the Code of Laws has remained unchanged, while private institutions, such as Coker College, now have some discretion and latitude, all subject to the new Uniform Act, in the expenditure net appreciation and principal and income of securities and other items held in their endowments.

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Should you have any questions, please advise. If further information is needed, we will be happy to provide it.

Very truly yours,




James G. Bogle, Jr.
Assistant Attorney General

JGB, JR:ypj

APPROVED BY:



Robert D. Cook, Executive Assistant Opinions



Edwin E. Evans, Chief Deputy Attorney General