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August 11, 1987

Paul Jerald Ward, Esquire
System Vice President
and General Counsel
System Legal Department
University of South Carolina
Columbia, South Carolina 29208

RE: Retention of Proceeds of Sale of USC Real Estate

Dear Mr. Ward:

You have asked for an opinion from this Office regarding the University's right and authority to retain the proceeds from the sale of its real estate.

Your request specifically refers to the proceeds of sale of Aiken County real estate donated to USC by deed of C. C. Royal in 1961 and that part of Bell Camp separated from the main parcel, the facility in use, by Interstate 20. Although Alonzo L. Jacobs had conveyed the Bell Camp real estate to the YMCA of USC Trustees with restrictions to recreational use for students and faculty, the deed gave the Trustees sole discretion to convey the property "discharged" of the trust limitations, and they conveyed fee simple title without use restrictions to USC's Board of Trustees in 1961. Fee simple title to both parcels remains in the University, and never vested in the State, itself.

Although it appears USC has followed all proper and necessary procedures prior to selling and conveying these parcels, this opinion is limited to analysis of its right to retain the proceeds

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of these sales. The relevant authorities, statutes, common law principles and policy considerations all support the conclusion that it should do so.

This analysis is very similar to that of this Office's Opinion No. 4406, July 28, 1976, which determined that USC's power to receive the proceeds of sale of a boat donated to it was expressly enumerated or clearly implied by statute, and that the Budget and Control Board should not retain the proceeds of such personal property, title to which had vested in USC, and never in the State itself. Since title to the real estate in question here never vested in the State either, the same analysis would apply herein, and Section 11-9-630, Code of Laws of South Carolina, 1976, would not apply. cf. Trustees of University v. Columbia, 108 S.C. 244, 93 S.E. 934, cited in Case Notes to Section 11-9-630 (Section does not apply "to lands held by the State for the use of the State University"). None of the distinctions between personal and real property would relate to this principle, nor to the principle that the right to make contracts, expressly granted by Section 59-117-40 (4), Code, as amended, "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". Op. No. 4406, supra, p. 251.

By the same analysis, a determination that "an institution of higher learning supported in whole or in part by the state", such as USC, did not have the right to receive benefits from the sale of real estate would be such a non-prescribed limitation on "the power to sell and dispose of any of its real estate other than buildings" expressly granted such institutions by Section 59-101-180 of the Code, 1976.

Further support for, and a corollary and positive expression of, this principle is the common law doctrine that "property [the power to have and hold real estate granted by Section 59-117-40 (4) of the Code, as amended] consists not merely in its ownership and possession but an unrestricted right of use, enjoyment and disposal. Anything which destroys one or more of these elements to that extent destroys the property itself". Painter v. Town of Forest Acres, 231 S.C. 56, 97 S.E.2d 71 (1957), citing Henderson v. City of Greenwood, 172 S.C. 16, 172 S.E. 689 (1934); Gasque v. Town of Conway, 194 S.C. 15, 8 S.E.2d 871 (1940). Specifically, an incident of ownership is the right to sell the property according to the will of the owner. Avant v. Johnson, 231 S.C. 119, 97 S.E.2d 396 (1957); 73 C.J.S. Property §27. Incidents of Ownership.

In actuality, as a practical matter, denying USC the right or authority to receive the proceeds of sale of its real estate would destroy its statutory powers to contract to sell and dispose of the real estate by removing the incentive, reason and consideration for doing so. Thus denying USC the benefits of sale would destroy this element of the real property, and, to that extent, destroy the property itself.

Another common law principle may, in effect, prohibit USC from conveying or disposing of its real estate if it is not to receive the proceeds of sale. It is almost tautological that, if USC does not receive these proceeds, another entity, such as the Budget and Control Board or General Fund, will, and there can then be no assurance that they will be expended for USC's corporate purpose. However, generally, an university cannot convey property for any other than its corporate purpose--the establishment and maintenance of an educational institution. 15A Am.Jur.2d Colleges and Universities, VI. Property and Funds §32. 14 C.J.S. Colleges and Universities, §11. Right to Acquire, Hold, and Convey Property. See also Furman University v. McLeod, 238 S.C. 475, 120 S.E.2d 865, 871 (1961), and Furman University v. Glover, 226 S.C. 1, 83 S.E.2d 559 (1954).

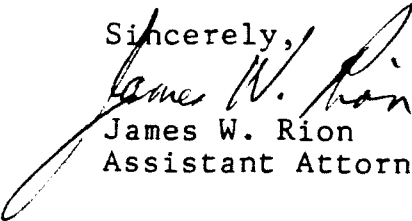
Statutes are to be read in the light of the common law and a statute affirming a common law rule is to be construed in accordance with the common law. Bandfield v. Bandfield, 117 Mich. 80, 75 N.W. 287 (1898); 25 R.C.L., Statutes §280 (1919). Thus the right or authority to receive the proceeds of sale of real estate is necessarily included or implied in the statutory powers expressly granted USC: the power to have and to hold real estate includes the common law right to enjoy, and dispose of, it; the power to make contracts includes the right to receive the benefits of said contracts necessarily and by definition, as does the power to convey and dispose of real estate, which power is also generally limited to USC's corporate purpose by the common law.

There being no statutory language restricting, limiting or destroying these powers by expressly denying USC the authority or right to receive the proceeds of sale of such real estate, it has such necessarily included or implied authority, by operation of these common law definitions and principles. Any other conclusion would not only effectively destroy the legislature's expressly granted powers, but would lead to the anomalous, if not absurd result of practically forcing the State supported colleges and universities to retain and continue using unwanted real estate. The

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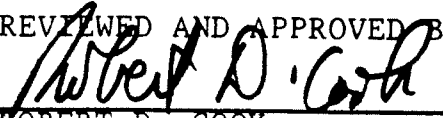
courts, in construing statutes, eschew such absurd results. St. Bd. of Dental Examiners v. Breeland, 208 S.C. 469, 38 S.E.2d 644 (1946). If the sale of the property you described is authorized, it is practically axiomatic that USC has the statutory authority to receive the proceeds of sale of the real estate, as long as it expends those proceeds for its corporate purposes.

Sincerely,


James W. Rion
Assistant Attorney General

JWR:ppw

REVIEWED AND APPROVED BY:



ROBERT D. COOK
Executive Assistant for Opinions