

1983 WL 181825 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 4, 1983

***1 SUBJECT: Auditor-Cost-Expenses-Public Funds**

(1) Surplus funds derived from canteen operations may be retained by State Institutions of Higher Learning once the State has been reimbursed for its expenses for the operation of the canteen.

(2) Canteen profits can be spent in accordance with policies established by the institution's Board of Trustees.

Edgar A. Vaughn, Jr.
State Auditor

DISCUSSION:

Your letter has been referred to me for reply. You have stated that during the course of recent audits you had noted that a number of canteens operated by various agencies and institutions are not self-supporting. You have stated that they are not self-supporting because they are not using the income of the canteen to reimburse the State for its outlay for salaries, utilities, rent, etc. Your basic question is if this procedure is legal.

QUESTION:

1. Is it proper for an agency to not reimburse the State for its outlay for salaries, etc., before utilizing profits derived from a canteen operation?

OPINION:

The 1982-1983 Appropriations Act No. 466, at Section 128, provides in part that:

. . . notwithstanding other provisions of this act, funds at State Institutions of Higher Learning derived wholly . . . from the operation of canteens . . . may be retained at the institution and expended by the respective institutions only in accord with policies established by the institution's Board of Trustees. Such funds shall be audited annually by the State . . .

Funds derived from the canteens therefore can be retained by Institutions of Higher Learning; but not by other agencies, unless authorized by law. It has been the consistent prior opinion of this Office that expenditures from public funds must be reimbursed before any profit or excess becomes 'available' for expenditure under such provisions as the above-quoted Section. The Office has earlier taken the position that the State must be reimbursed for its expenses before there can be any expenditure of profits. In other words the cost of the operation including amounts due the State for rent, utilities, salaries, etc., must be fully repaid before there are any funds for the institution to retain under this provision.

QUESTION:

2. May canteen profits be used to purchase items that would not be allowed to be purchased by State funds?

OPINION:

Section 128 of this Act provides that the funds from the canteen may be 'expended . . . in accord with policies established by the institution's Board of Trustees . . .' It would appear that this is the only restriction on these funds and, therefore they may be used to purchase 'flowers, watches, gifts, etc.' if that is in keeping with the policies of the institution. However, such funds may not be expended by any other State agency for such purposes, unless there is a similar provision in the laws giving the agency such authority.

Treva G. Ashworth
Senior Assistant Attorney General

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