

1982 WL 189511 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 17, 1982

*1 Honorable Richard W. Riley
Chairman
State Budget and Control Board
The State House
Columbia, South Carolina

Dear Governor Riley:

The State Budget and Control Board (the Board) has requested the opinion of this Office as to the legal propriety of a proposed tuition change and fund transfer by Clemson University, and whether the Board is authorized to approve such actions.

At its meeting on June 9, 1982, the Clemson University Board of Trustees (the Trustees) adopted a proposed reclassification of student fees which would result in that portion of fees denominated 'tuition fees' being reduced and the reduced amounts transferred to a special account for maintenance and renovations of capital facilities. In addition the Trustees have requested the Board's approval for the use of some \$2 million of surplus in its debt service accounts with the State Treasurer to apply along with other authorized funds toward construction of the new chemistry building, which building was authorized by Section 4, of Act 179 of 1981 (The Capital Improvement Bond Act). Approval of the tuition change by the Board is required by [Section 59-107-20, Code](#) of Laws, 1976, as amended. Likewise, prior approval by the Board of reallocation of surplus debt service funds is required by Section 59-107-180.

As hereinafter discussed, it is the opinion of this Office that the proposed reallocation of tuition fees is legally permissible, with the Board's approval. It is likewise our opinion that it is legally permissible for the surplus in the debt service account to be applied to other capital improvement, with Board approval.

I. Although it has been the former practice of the Clemson Trustees to maintain tuition fees (as that term is defined in Code Section 59-107-30) at a rate designed to produce 150% of the aggregate principal and interest requirements of all outstanding State Institution Bonds issued for Clemson, the Trustees now propose a schedule which would produce only that sum required to pay the annual principal and interest requirements on all outstanding State Institution Bonds issued for Clemson, and have requested Board approval.

At the time the State Institution Bond Act was enacted at urging of the late Governor Byrnes, the so-called 'Special Fund' Doctrine prevailed in South Carolina. Because of the burden imposed by the Constitution of 1895 upon the issuance of State General Obligation Bonds, our Supreme Court had held that the constitutional provisions relating to the issuance of bonds need not be observed if there was created a special fund judicially found to be sufficient to provide for the payment of debt service of State General Obligation Bonds then sought to be issued. [Mims v. McNair](#), 252 S.C. 64, 165 S.E.2d 355 (1969), and cases cited.

The 'Special Fund' Doctrine and Special Fund Bonds were essentially abolished by the adoption of new Article X of the Constitution which went into effect in November of 1977. Section 13 of new article X prescribes the restrictions and limitations imposed upon the State relating to the issuance of General Obligation (and other) debts. A special category of General Obligations Bonds for State institutions of higher learning are permitted by Section 13(6)(b). That provision reads:

*2 (b) General Obligation bonds for any state institution of higher learning designated by the General Assembly (state institution bonds) may be issued, if such bonds shall be additionally secured by a pledge of the revenues derived from the tuition fees received by the particular institution of higher learning for which such state institution bonds are issued, provided, that the

maximum annual debt service on all state institution bonds so additionally secured issued for such state institution thereafter to be outstanding shall not exceed ninety percent of the sums received by such state institution of higher learning from tuition fees for the fiscal year next preceding.

Thus, there is no longer a 'Special Fund' but rather a condition precedent relating to the amount of revenues derived in the fiscal year preceding the fiscal year in which bonds are issued.

This fact, coupled with the statutory language imposing upon the Trustees a recurring duty to fix the schedule of tuition fees in such manner that it will produce not less than the sum needed to pay the annual principal and interest requirements of all outstanding bonds, (Section 59-107-40) leads to the conclusion that no additional margin or 'surplus' in the debt service account is legally required to be maintained.

A different result would exist under the Special Fund Doctrine because there a pledge of an entire fund was created and while heavily margined, it was nonetheless absolutely pledged. Here a pledge of tuition fees is required but it is not required that a margin be maintained other than as set out in Section 59-107-180, since the 90% margin referred to in [Article X, Section 13](#), clearly relates to the fiscal year preceding the fiscal year in which the bonds are issued. Despite this result, permission of the Board to the establishment of a rate schedule that is projected only to meet principal and interest requirements of outstanding State Institution Bonds should be given only when the margin or reserve in the special fund established by Section 59-107-180 has a surplus equal to the maximum annual debt service requirements for any succeeding fiscal year.

Not only does Clemson have such a surplus, but it has in addition more than \$2 million which it proposes to withdraw pursuant to Section 59-107-180 to meet part of the cost of construction of the new chemistry building, a proper purpose under Section 59-107-40.

II. The further question has been raised whether Clemson University must in part finance the new chemistry building by issuing the \$2 million of State Institution Bond proceeds authorized by Section 4 of Act 179 of 1981 before resorting to use of any part of the \$7.4 million of General Obligation Bond proceeds authorized by that act for the building. If such institution bonds must first be issued, it is immediately obvious that the proposed new 'tuition schedule' would be insufficient to provide debt service for both Clemson's present outstanding institution bonds plus \$2 million more.

*3 It is the opinion of this Office that such additional \$2 million issue of State Institution Bonds is not required. The first 'proviso' to Section 4 of Act 179 merely 'authorizes' the issuance of \$2 million of such institution bonds; but the two following provisos 'direct' that the university use funds therein concerned for the new chemistry building. Indeed, the trustees' proposal to utilize surplus debt service funds rather than General Obligation Bond funds, insofar as possible, appears to respond to the explicit directions of the General Assembly contained in the third proviso to Section 4 of Act 179.

III. To sum up: (1) we think it legally proper under the law for the Trustees to impose and the Board to approve tuition fees based upon a schedule producing only funds to meet principal and interest requirements, but only when the Board determines that an appropriate safety margin or reserve exists in the Special Fund created by Section 59-107-180; (2), that the surplus in the debt service account for Clemson's institution bonds may properly be transferred to other capital improvement uses, such as construction of the new chemistry building; and (3), Clemson is not required to issue the \$2 million in State Institution Bonds authorized by the proviso to Section 4 of Act 179 of 1981, before applying said surplus debt services funds as well as General Obligation Bond funds to construction of the chemistry building.

Sincerely,

Frank K. Sloan
Deputy Attorney General

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