

1980 WL 120743 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 25, 1980

*1 Mr. George H. Young, Jr.
Business Manager
John de la Howe School
McCormick, South Carolina 29835

Mr. John C. Shiflet
Superintendent
John de la Howe School
McCormick, South Carolina 29835

Dear Messrs. Young and Shiflet:

You have recently asked the opinion of this office as to whether you may change the tuition policy of the John de la Howe School.

You say that at present, by 'standing policy', all tuition collected is deposited in the State Treasurer's general fund. You ask whether you can retain the money in a special account and use it to pay medical and other bills for the students. You further ask whether, if you cannot retain the money, you could do so if an appropriate law were passed.

To answer your first question we must ask whether the deposit of your tuition in the general fund is required by law or whether it is merely a matter of policy. It is apparently required by law, by §1 of the 1979-80 and 1980-81 General Appropriations Acts (1979 Act 199, 1980 Act ____) and by §§ 11-13-30, 11-13-40 and 11-13-125, [Code of Laws of South Carolina](#), 1976, as amended.

Section 1 of the Appropriations Act provides, in part:

[A]ll institutional and departmental revenues or collections, including income from taxes, licenses, fees, the sale of commodities and services, and income derived from any other departmental or institutional source or activity, shall be remitted to the State Treasurer as collected . . . and shall be credited, unless otherwise directed by law, to the General Fund of the State. (emphasis added).

This section would presumably apply to tuition money. Note the emphasized phrase, if no other legal directive exists, you may not retain the tuition.

[Sections 11-13-30, 11-13-40 and 11-13-125](#) all relate to the authority of the State Treasurer over state funds. [Section 11-13-30](#) gives the State Treasurer authority, exclusive to all other agencies, to deposit and invest public funds. [Section 11-13-40](#) concerns the Treasurer's authority to keep state funds in a 'general deposit account' [Section 11-13-125](#) provides, in part:

All funds received by any department or institution of the State Government shall be deposited and maintained in appropriate accounts in the State Treasury except such funds as may be authorized by the State Budget and Control Board to be maintained in departmental or institutional bank accounts for regular operating purposes or for other justifiable circumstances, such accounts to be maintained in such banks or banking institutions as shall be designated by the State Treasurer.

These sections, along with the General Appropriations Acts, show an intent that funds are to be kept in a general account by the State Treasurer unless there is some contrary directive either by the legislature or the Budget and Control Board.

I can find no such contrary directive. The state colleges and the Wil Lou Gray Opportunity School are exempted from putting certain revenues in the general fund by § 126 of the 1979-80 Appropriations Act and § 162 of the 1980-81 Appropriations Act. The John de la Howe School is not however on the list of exempted schools.

*2 You have cited one statute regarding tuition for the school, [§ 59-49-150, Code of Laws of South Carolina](#), 1976. I do not however find this statute relevant.

Therefore, to answer your first question, it is the opinion of this office that you may not retain your tuition in a special account but must continue to remit it to the general fund.

To answer your second question, it is the opinion of this office that you certainly may retain the tuition in a special account, if an appropriate law were passed by the General Assembly. Your question, however, also seems to be whether such a law must be 'permanent' or whether it may merely be part of the 'temporary' sections of the annual general appropriations acts. The 'temporary' sections of the appropriations acts are effective only during the fiscal years for which they are enacted. However, many sections in the temporary parts of the appropriations acts address the use and deposit of revenues by agencies. See § 44 of the 1980-81 General Appropriations Act, supra, on the John de la Howe School; see also § 126 of 1979-80 Act and § 162 of 1980-81 Act, supra. Thus it is the opinion of this office that a law authorizing the school to retain its tuition in a special account could be made a part of the 'temporary' provisions in the annual general appropriations act; provided, however, that such a law would have to be re-enacted each year to remain effective.

Sincerely,

Eugene W. Yates, III
Assistant Attorney General

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