

1980 WL 120918 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 8, 1980

\*1 Mr. William R. Spencer

Director of Finance and Administration

South Carolina School for the Deaf and Blind

Cedar Spring Station

Spartanburg, South Carolina 29302

Dear Mr. Spencer:

By your letter of September 16, 1980 you have asked the opinion of this office about the use of certain funds by the School for the Deaf and Blind.

The facts, as you set them out, are as follows. The School has a 'chapel fund' that consists of gifts designated by the donors for the building of a school chapel. To the account in which these funds are deposited have been added other funds, consisting of gifts designated for particular purposes, or gifts designated for no particular purpose at all. This account is called the 'chapel fund account'.

You propose to lend some of the funds in this account to another account, the 'federal consolidated account'. This account is periodically replenished by federal funds, but often threatens to run in the red because of the time lag between the spending of money and the receipt of funds from the government.

Your question is whether it would violate trust law to use all or part of the chapel fund account as a loan to the federal consolidated account. You say that there is very little chance of the lent funds being diminished.

Because you have not presented the circumstances of each gift to the School, this office cannot answer your question precisely. However, some general rules can be given.

In general, an unrestricted gift to a charitable corporation may be used by the corporation as it sees fit, except that it must use the gift for one or more of the purposes for which it was organized. Bogert, Trusts and Trustees § 324 at 548-49 (2nd ed. rev. 1977); Restatement (2nd) Trusts § 348, comment (f) (1959); see also Op. 's Att'y Gen. 1954-55, p. 281 (attached); Wells v. Salvation Army of Georgia, 190 S.C. 484, 3 S.E.2d 601 (1939). Courts differ somewhat in how they treat restricted gifts; some courts say that gifts restricted to certain purposes may nevertheless be used by charitable corporations for anything within their general charitable purposes. However, it would seem the better view that a charitable corporation must use a gift for the purpose for which it was designated. See Restatement (2nd) Trusts §348, comment (f) (1959); Wells v. Salvation Army of Georgia, *supra*. Furthermore, the General Appropriations Act supports this view. § 166, Act 517, 1980 Acts.

So, assuming that you can, as a matter of bookkeeping, separate designated from undesignated funds, it is the opinion of this office that the School must use funds designated for certain purposes for those purposes; the School may use undesignated funds for any purpose consistent with the School's goals. Therefore, it is the opinion of this office that trust law is not violated by the loan of undesignated funds from the chapel fund account to the federal consolidated account.

Sincerely,

\*2 Eugene W. Yates, III

Assistant Attorney General

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