

1979 WL 43490 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 30, 1979

*1 Edgar A. Vaughn, Jr.
State Auditor
Office of the State Auditor
Post Office Box 11333
Columbia, South Carolina 29211

Dear Mr. Vaughn:

You have requested an opinion of this Office concerning the use of institutional funds by South Carolina State College to finance medical treatment for students. Specifically, you ask if institutional funds may be used to pay for hospitalization of students when they require treatment beyond the capacity and scope of service of the college infirmary, and funds utilized are charged against student accounts and billed to parents. It is clear under applicable statutory and constitutional provisions that South Carolina State College may make no such use of institutional funds.

[Art. X, § 11 of the South Carolina Constitution \(1895\)](#) in part states ‘the credit of neither the State nor of any of its political subdivisions shall be pledged or loaned for the benefit of any individual.’ ‘Loan’ has been defined simply as ‘the payment of money by one to another to be repaid some future day.’ [In Re Asbuckles' Estate, 324 Pa. 501, 188 A. 758, 761 \(1910\)](#). Clearly, the payment of private medical expenses, with expectation of future repayment, is a loan of public funds for the benefit of private individuals.

Even absent the existence and applicability of [art. X, § 11](#), South Carolina State College still could not use institutional funds to pay student medical expenses. ‘Unless a valid statute authorizes it, no public agency has a right to loan public funds.’ 63 Am.Jur. 2d [Public Funds](#) § 3 (1972). Presently, there are no statutes which authorize South Carolina State College to loan institutional funds to pay student medical expenses.

There are, however, statutes prohibiting such use of institutional funds. [Section 11-9-10, Code of Laws of South Carolina \(1976\)](#) states:

‘It shall be unlawful for any moneys to be expended for any purpose or activity except that for which it is specifically appropriated, and no transfer from one appropriation account to another shall be made unless such transfer be provided for in the annual appropriation act.’

No funds were specifically appropriated by the General Assembly to be used by South Carolina State College to pay student medical expenses in 1979 (or in any other year). See [Acts and Joint Resolutions](#) of 1978, Act No. 644, Item 30. ‘The power of the Legislature with respect to public funds raised by general taxation is supreme, and no state official, not even the highest, has any power to create an obligation of the State, legal or moral, unless there has been specific appropriation of funds to meet the obligation.’ 63 Am.Jur. 2d [Public Funds](#) § 45 (1972).

Use of public funds in a manner for which they were not specifically appropriated is a penal offense. [Section 11-9-20, Code of Laws of South Carolina \(1976\)](#) provides:

‘It shall be unlawful for any officer . . . charged with disbursements of State funds . . . to exceed the . . . purposes stated in such appropriations . . . Any officer . . . violating the provisions of this section shall be guilty of malfeasance in office . . .

the Governor may suspend such officer¹ . . . shall be guilty of a misdemeanor and, upon conviction . . . shall be fined or imprisoned within the discretion of the court.’ (emphasis added).

***2** In light of the fact that the use of institutional funds for the payment of students hospitalized is proscribed both by the South Carolina Constitution and statutes cited, your second question on uncollectible accounts need not be reached. Very truly yours,

Raymond G. Halfond
Deputy Attorney General

Footnotes

¹ If found guilty, shall be suspended from office.

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