

1978 WL 207597 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 22, 1978

*1 Honorable William T. Putnam
State Auditor
Wade Hampton Building
Columbia, S.C.

Dear Mr. Putnam:

This will respond to your recent request for an opinion concerning the propriety of receipt by presidents of State institutions of higher education of salary supplements or expense allowances which are in excess of compensation and expenses provided by the State.

First, it is our understanding that those additional funds are not from State or other public fund sources; but are provided by school foundations or other private eleemosynary organizations. If they were State or other public funds, it appears obvious that the provisions of the 1977-78 Appropriations Act (and previous Appropriations Act provisions on the same subject) would make receipt of such additional compensation or expense allowances unlawful.

Sections 127 and 128 of the 1977-78 Act contain several repeated provisions which make clear the legislative intent that the maximum full compensation for state positions, including presidents of institutions of higher learning, shall be as fixed in the Act (or by the State Budget and Control Board under provisions of the Act). e.g.:

Provided, Further, That the appropriated salaries for specified positions shall mean the maximum compensation for such position..

Provided, Further, That salary appropriations for employees fixed in this Act shall be in full for all services rendered, and no supplements from other sources shall be permitted or approved by the State Budget and Control Board.

The words "other sources" in the Act clearly refer to State or Federal funds, and other funds coming into the State treasury. At no place in the Act are private funds referred to, and the authority of the Budget and Control Board does not extend to private funds.

Additional fees and other "perquisites" of office, such as residences provided for college presidents, are prohibited except as specifically provided by the Act. It is axiomatic that the legislature may fix and limit the compensation of public employees and: "He is generally obliged to look solely to it (the fixed compensation) for his reward, and cannot seek additional remunerations for doing what the law requires him to do." [Dunwoody v. United States](#), 143 U.S. 578; and see 63 Am. Jur.2d, [Public Offices and Employees](#), Sec. 382, et.seq. The second quotation above from Section 129 of the Appropriation Act, only reiterates this rule.

The problem arises, however, in attempting to apply this rule to additional compensation from private as distinguished from public funds. The rule above cited clearly upholds the legislative power to limit absolutely the compensation of public employees from public funds; and it may be reasonably assumed that the General Assembly, or the Budget and Control Board, might require a college president before he assumes office to enter into an agreement to accept no additional compensation from any private as well as public source.

*2 In absence of such agreement, however, there would appear to be no legal basis on which the State could prevent a college president from receiving extra compensation from private sources such as a foundation or an endowment. Indeed, the endowing of professorial “chairs” is the customary means of providing extra compensation, above the salary set by the Appropriations Act or the Budget and Control Board, to reward distinguished teachers or attract them to an institution of higher learning.

It may be that the current question concerning the propriety of college presidents receiving extra compensation has arisen principally because, we are informed, several of them received such in the past as special “expense” accounts from public funds. This is now clearly prohibited by law.

It is the opinion of this Office that, in absence of a contractual agreement made between the State and the president or faculty members of its institutions of higher learning before they assume office that they will not accept any extra compensation from any private source, the presidents as well as faculty members may lawfully receive extra compensation granted or given to them from private sources as a further reward or inducement for the performance of their duties.

Very truly yours,

Frank K. Sloan
Deputy Attorney General

Approved:

(Illegible Signature)
Attorney General

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