

1973 S.C. Op. Att. Gen. 264 (S.C.A.G.), 1973 S.C. Op. Att. Gen. No. 3597, 1973 WL 21052

Office of the Attorney General

State of South Carolina

Opinion No. 3597

August 10, 1973

*1 Mr. Narold Brunton

Vice President-Business Affairs

University of South Carolina

Columbia, South Carolina 29208

Dear Mr. Brunton:

You have inquired as to whether the University may loan funds derived from the operation of the Athletic Department, the Campus Shop and Canteens to the Carolina Research and Development Foundation, an eleemosynary corporation chartered by the State of South Carolina. Your inquiry has been prompted by the report of the State Auditor, following an audit of the University's fiscal affairs, reciting:

‘Since we were unable to determine the authority granted the University to make unsecured loans, this practice should cease until Legislative approval is obtained.

The practice which has been followed by the University in making such loans is apparently based upon a portion of Section 84 of the General Appropriations Act of the State for the current year, which provision has been carried forward in annual Appropriations Acts for a number of years. The provision reads:

‘PROVIDED, FURTHER, That money derived wholly from athletic or other student contests, and any other funds derived wholly from the activities of student organizations, including income from the operation of canteens (at all State institutions) and book stores, may be retained at the institutions and shall not be considered as State funds, but may be subjected to annual audit by the State.’

It is my opinion that this proviso has for its purpose the exclusion of the funds referred to from the mandate of Section 1 of the General Appropriations Act, which provides, in pertinent part:

‘—all general state revenues derived from taxation, licenses, fees, or from any other source whatsoever, and all institutional and departmental revenues or collections,—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.

Language of similar import has likewise been contained in annual Appropriations Acts for a number of years. Language of similar import is also found in the forepart of Section 84 of the Appropriations Act.

The net effect of these provisions, in my opinion, is to exempt funds derived from athletic contests, student organizations, and the operation of canteens and book stores from the requirement that they be remitted to the State Treasurer, either for inclusion in the General Funds of the State or to be retained by him to the credit of the University. That such funds shall not be considered as State funds serves only to establish that they need not be remitted to the State Treasurer to become a part of the General Fund but, on the contrary, remain in the custody of the University and subject to utilization by it in accordance with governing law. Although not ‘State funds’, the monies are public monies and are subject to such legislative directives as the General Assembly may provide. See [State ex rel. Board of Governors of West Virginia University v. Sims, Auditor, 59 S.E.2d 705](#).

*2 If the funds then remain in the custody of the University, does the University have the authority to loan these monies to the Carolina Research and Development Foundation or to nay other entity?

In my opinion, the authority to loan public monies must be found in an authorizing statute and, in my opinion, there is no such statute with respect to the University. 63 Am. Jur. 2d Public Funds ¶2. I do not feel that the prohibitions of Article X, Section 6, of the Constitution of South Carolina, prohibiting the pledging or loaning of the credit of the State for the benefit of a corporation is violated by such a procedure, in that the funds are not derived by taxation. [Hunt v. McNair](#), 225 S.C. 71, 177 S.E.2d 362. But I am convinced that no statutory authority exist permitting the University to loan monies under its control. Section 22-105(11) Code of Laws for South Carolina, 1962, vests in the University the power to ‘accept, receive and hold all monies, that may be given, conveyed, bequeathed or devised to the University and to use them for the benefit of the University—.’ This section, even if applicable, in my opinion, does not authorize the University to make loans of such monies. This power must be derived from statute, which I find lacking. If the University has idle funds which it wishes to invest, the provisions of Section 1-741.1, Code of Laws, 1962, as amended, designate the State Treasurer as the sole official authorized to invest and deposit (public) funds from any source. I express no opinion at this time as to whether it is mandatory that the surplus funds with which you are concerned be deposited with the State Treasurer, but will do so upon your request.

The fact that I conclude that the University may not loan the funds in the manner which has been followed is reached in full recognition of the extremely valuable services which the Carolina Research and Development Foundation has rendered to the University. The Foundation, as shown upon its charter, was organized to promote the educational purposes of the University of South Carolina' and it has fulfilled its stated reason for being to the incalculable advantage of the University. A loan of funds to it stands, however, on the same footing as a loan to a private individual, a business corporation or any other borrower.

Very truly yours,

Daniel R. McLeod
Attorney General

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