

## The State of South Carolina



## Office of the Attorney General

T. TRAVIS MEDLOCK  
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING  
POST OFFICE BOX 11549  
COLUMBIA, S.C. 29211  
TELEPHONE: 803-734-3970  
FACSIMILE: 803-253-6283

May 24, 1991

The Honorable James C. Johnson  
Member, House of Representatives  
333-B Blatt Building  
Columbia, South Carolina 29211

Dear Representative Johnson:

Your recent letter to this Office has been referred to me for response. You are concerned regarding reports of abuse, misuse and misappropriation of public money at the University of South Carolina. You wish to know what legal recourse there may be concerning these public funds.

At the outset, let me stress that the reports of such alleged abuses are indeed greatly disturbing. Certainly, one general option would be the creation by the General Assembly of a legislative investigating committee to look into these problems, and to propose remedies for their alleviation. I note that the Legislature has taken similar action with respect to the recent troubles at the Highway Department and has, over the years, frequently used the mechanism of a legislative investigating committee to deal with large scale problems in State government. Such a committee may be the best means for dealing with the general problems outlined in your letter.

As you know, certain of these matters referenced in your letter are presently pending in the criminal courts of South Carolina. Accordingly, prudence dictates that these proceedings not be jeopardized or interfered with in any manner. In addition, I would note that oftentimes as part of a criminal proceeding, the court orders restitution to particular individuals such as the victims of the crime. See, Section 16-3-1530(D)(3) ["A victim has the right to receive restitution for expenses or property loss incurred as the result of the crime. The judge shall order restitution at every sentencing for a crime against person or property or as a condition of probation or parole, unless the court finds a substantial and compelling reason not to order restitution."]

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Turning now to your specific question, I would refer you to several provisions in the State Ethics Act. For example, Section 8-13-530(1) provides as follows:

(1) The value of anything transferred or received in breach of the ethical standards of this chapter or regulations promulgated hereunder by a public employee, public official, or a nonpublic employee or official may be recovered from the public employee, public official, or nonpublic employee or official.

Ordinarily, such an action for recoupment or recovery is preceded by a finding or determination, following investigation and adjudication of the matter by either the State Ethics Commission, or in the case of a legislator by either the House or the Senate Ethics Committee. Oftentimes, ethics complaints are entirely resolved by the appropriate ethics panel and such action by that body renders resort to the courts for recoupment unnecessary.

While this statutory remedy is the most prominent, it is not exclusive. See, Section 8-13-520(1). ["The provisions of this Section and §§ 8-13-510 and 8-13-530 shall be in addition to all other civil and administrative remedies against nonpublic employees or officials which are provided by law."] Depending upon the particular circumstances, there may be other statutory and common law remedies premised upon equitable and legal theories. Of course, there would be necessary a determination of the specific facts before it could be said which other remedies might be available.

In addition, many public officers or employees who maintain control of public funds are required either by law or their governing authorities to secure performance bonds. The conditions of these bonds would normally provide for payment to the affected public entity in the event of loss of such funds by the secured official. Of course, we are not aware whether in any specific instance involved here, the General Assembly or the University of South Carolina required such a bond.

With best wishes, I am

Very truly yours,



Charles H. Richardson  
Assistant Attorney General

CHR/an

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REVIEWED AND APPROVED BY:



Robert D. Cook

Executive Assistant for Opinions