

1977 WL 37407 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 26, 1977

*1 Upon compliance with the provisions of § 59-117-80 of the 1976 South Carolina Code, as amended, the University of South Carolina may sell real property donated to the University and, under § 59-117-40 and 59-117-80, retain the proceeds from the sale thereof.

Office of the President
University of South Carolina
Attention: Legal Affairs and Legislation

QUESTION PRESENTED:

Whether the University of South Carolina may retain proceeds of the sale of real property owned by the University.

STATUTES AND OTHER AUTHORITY:

§§ 59-101-80, 59-117-40 and 59-117-80 of the 1976 South Carolina Code and amendments thereto. 1955-56 Opinion Attorney General 57. Opinion of the Attorney General, July 18, 1976.

DISCUSSION:

While § 59-117-40 of the 1976 South Carolina Code, which incorporates the University of South Carolina and designates the powers of its Board of Trustees, authorizes the Board to hold real estate, it makes no provision for the sale of such property; however, Sections 59-101-80 and 59-117-80 of the 1976 South Carolina Code, as amended, do authorize the Board of Trustees to sell real property belonging to the University under certain circumstances. Section 59-117-80, the earlier of the two provisions, is especially directed to the sale of real property donated to the University of South Carolina in the course of various fund campaigns. Such property may be sold by the Board of Trustees upon approval of the Budget and Control Board and upon compliance with conditions for the sale set by that body. Although the more recent Section 59-101-180 authorizes state institutions of higher learning to sell and dispose of their real estate other than buildings without any requirements of approval by the Budget and Control Board, the provisions of 59-117-80 should continue to prevail as to donated property. Section 59-11-180 is an act covering a special subject and the rule is that special acts are never abrogated by general law unless the intention of the legislation is very clear. 1955-56 Opinion Attorney General 57. Since the legislation does not appear to have intended to limit the application of § 59-117-80 by the passage of § 59-101-180 the former Section should control; however, when § 59-101-180 would be applicable as to non-donated property, it should be noted that this section authorizes only the sale of real estate other than buildings.

As for the University's power to retain the proceeds of the property that it sells, an opinion of this office dated July 28, 1976, found that, in the case of personal property, this right was derived from institution's power to make contracts under § 59-117-40 which necessarily implies the right to receive the benefits which would result from the performance of such contracts. This reasoning should be applicable to the sale of real property with the right to retain these proceeds being subject to the instruction of § 59-117-80 that the proceeds be applied ' . . . to the original purpose of the donation of the property . . . sold'.

*2 Thus while the Budget and Control Board must approve the sale of real property, the University may retain the proceeds and apply them as directed by § 59-117-80. CONCLUSION:

Upon compliance with the provisions of Section 59-117-80 of the 1976 South Carolina Code, as amended, the University of South Carolina may sell real property donated to the University and, under Sections 59-117-40 and 59-117-80, retain the proceeds from the sale thereof.

A. Camden Lewis
Assistant Attorney General

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