

1978 WL 35155 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 6, 1978

\*1 Mr. Edgar A. Vaughn, Jr.  
State Auditor  
Wade Hampton Office Bldg  
Columbia, S.C.

Dear Mr. Vaughn:

You have asked the opinion of this Office whether State personnel and compensation regulations, travel regulations, equipment and permanent improvement regulations, and purchasing regulations apply to expenditure of funds mentioned in Section 123 of the 1977-78 Appropriations Act, in the same manner as they apply to other activities of State institutions of higher learning.

Section 123 provides, in pertinent part:

Provided, Further, That notwithstanding other provisions of this act, funds at State Institutions of Higher Learning derived wholly from athletic or other student contests, from the activities of student organizations, and from the operations of canteens and bookstores, may be retained at the institution and used as determined by the respective governing boards and may be audited annually by the State. (Emphasis added)

In prior years the similar section provided:

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 bookstores, may be retained at the institutions and may be audited annually by the State, Such income shall not be considered as State Funds.

The most significant change is that the sentence: 'Such income shall not be considered as State Funds' was removed from the 1977-78 Act. The clear legislative intent therefore is that they now must be considered as State Funds. This conclusion is reinforced by the provision in the new section that such funds may be 'used as determined by the respective governing boards'. It became necessary to add this provision, otherwise the funds would have to become a part of the General Fund of the State and used as appropriated by the General Assembly.

It is, therefore, the opinion of this Office that the funds from the listed activities at State institutions of higher learning are State funds. Accordingly, when used as determined by the governing boards, that use must comply with regulations applicable to other State funds. For example, if the governing board determines that a certain sum will be used for travel, it must be expended in accordance with State travel regulations.

You have also asked how these changes affect the provision of Section 124 as to granting of scholarships. The Section reads:

That if necessary the board of trustees of State institutions of higher learning may limit the admission of students upon the basis of scholarship standing, or upon any other basis determined upon by the respective boards. Provided, Further, That no State scholarships shall be granted by State institutions of higher learning, namely: The University of South

Carolina, Clemson University, The Citadel, Winthrop College, S.C. State College, Francis Marion College, the College of Charleston and Lander College.

\*2 This same section has been included for a number of years in the Appropriations Act, and except for the phrase 'notwithstanding other provisions of this act,' in Section 123, this would prevent the governing boards of the institutions from using the funds described in Section 123 for scholarship purposes. But, as above stated, the amendments to Section 123 have converted these funds to State funds but have reserved determination of their use to the governing boards, and the saving clause 'notwithstanding other provisions of this act' was clearly intended to permit their use for scholarships, although no other State funds can be so used because of the prohibition in Section 124.

It is, therefore, the opinion of this Office that funds from the activities listed in Section 123 of the Appropriations Act may be used for scholarships as determined by the governing boards of State institutions of higher learning, notwithstanding the provisions of Section 124.

Yours very truly,

Frank K. Sloan  
Deputy Attorney General

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