

1976 S.C. Op. Atty. Gen. 334 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4472, 1976 WL 23089

Office of the Attorney General

State of South Carolina

Opinion No. 4472

October 4, 1976

*1 The State Treasurer is responsible for the investment of funds that are being held by the State Commissioner of Mental Health as committee for patients of State Mental Health facilities.

TO: Honorable Grady L. Patterson, Jr.
State Treasurer

QUESTION PRESENTED:

Whether the funds of patients at State Mental Health institutions held by the Mental Health Commissioner fall within the scope of public funds in Section 1-742.1 of the 1962 South Carolina Code so as to authorize the State Treasurer to invest those funds for those persons.

STATUTES AND CASES:

[Spratley v. Board of County Commissioners of Leavenworth County, 43 P232, 56 Kan. 272 \(1896\)](#); 1962 South Carolina Code, as amended, §§ 1-742.1, 32-1042.

DISCUSSION OF THE CASE:

Although the funds of patients at State Mental Health institutions held by the State Mental Health Commissioner as committee for those patients pursuant to Section 32-1042 of the 1962 South Carolina Code, as amended, do not come from State revenues, they do appear to be 'public funds' under Section 1-742.1 of the 1962 South Carolina Code, as amended, so as to give the State Treasurer the responsibility for their investment. 'Public funds' should not be defined so as to limit the scope of that term to only those funds belonging to the State.

That the public funds do not have to be owned by the State in order to be deemed public is indicated by 63 [Am. Jur.2d Public Funds](#) § .1 which states that 'the fact that the State has taken possession of moneys pursuant to law is sufficient to constitute them State funds, even though they are held for a special purpose.' One of the cases cited for support of this statement, [Spratley v. Board of County Commissioners of Leavenworth County, 43 P. 232, 56 Kan. 272 \(1896\)](#) found money to be public even though the funds did not belong to the public. That case was concerned with condemnation award money deposited by a railroad company with a county treasurer to be held by the treasurer until such time as the right of way passes to the railroad company. At that time, the money would be paid to the landowner. Although [Spratley](#) emphasized that securing the right of way for the building of a railroad was a public purpose, managing the funds of an incompetent patient in the present situation is not outside the scope of such purpose. The patient is located at a public institution being maintained at the public expense. Providing that the Mental Health Commissioner may act as a committee for such a patient furthers the public interest in caring for persons unable to manage their own affairs. Thus, even though the patient retains ownership of his funds, when the Mental Health Commissioner holds those funds for the patient, they are public for the purposes of Section 1-742.1. The State Treasurer, then, has the authority to invest the patient's funds under that section.

CONCLUSION:

The State Treasurer is responsible for the investment of funds that are being held by the State Commissioner of Mental Health as committee for patients at State Mental Health facilities.

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