

1976 S.C. Op. Atty. Gen. 305 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4445, 1976 WL 23062

Office of the Attorney General

State of South Carolina

Opinion No. 4445

September 13, 1976

*1 The State Treasurer is not responsible for the investment of funds of persons or patients at State Institutions such as Mental Health, Mental Retardation, etc.

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

QUESTION PRESENTED:

Whether the funds of persons or patients at State Institutions such as Mental Health, Mental Retardation, etc., 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, CASES, AND OTHER AUTHORITIES:

[Droste v. Kerner](#), 34 Ill.2d 495, 217 N.E.2d 73 (1966);

1962 South Carolina Code, as amended, §§ 1-742.1, 32-1042, 32-967, 32-927.29:1 and 32-1039.

DISCUSSION OF THE ISSUE:

Since Section 1-742.1 authorizes the State Treasurer to invest public funds, if he is to be charged with the responsibility of investing the funds of persons or patients at State institutions, the money of those people must be deemed public. These funds, however, do not appear to fit the definition of 'public funds' cited in the opinion concerning scholarship funds also issued today. [Droste v. Kerner](#), 34 Ill.2d 495, 217 N.E.2d 73 approved of a definition of public funds as being 'moneys belonging to a government or any department of it, in the hands of a public official.' The funds of patients and persons at institutions do not 'belong' to the State in the sense of ownership so as to make them public under [Droste](#).

Those Code sections which do make provision for the administration of funds of mentally ill or mentally retarded persons do not indicate that the State has any degree of ownership over such funds. Section 32-1042 of the 1962 South Carolina Code, as amended, authorizes the State Commissioner of Mental Health, or his designee, to act as a committee for a patient under certain circumstances. A committee, according to Section 32-911(23), is a ' . . . person who legally has the care and management of the estate of one who is incapable of managing his own estate, whether or not he has been declared legally incompetent.' Whatever degree of 'care and management' for the 'use and benefit' of a patient under Section 32-1042, as amended, is vested in the Mental Health Commissioner, nowhere is any kind of ownership on the part of the Mental Health Commissioner indicated which could invoke the provisions of Section 1-742.1. In addition, Sections 32-967 and 32-927.29:1, which refer to the appointment of a committee for certain mentally retarded or mentally ill persons do not indicate that a patient ever relinquishes ownership of his funds although he may relinquish some control. Thus, unless the State Treasurer were designated a committee under Section 32-1039 of the 1962 South Carolina Code, as amended, he would have no responsibility for the administration of a patient's funds since those funds are not public for the purposes of Section 1-742.1.

CONCLUSION:

*2 The State Treasurer has no responsibility for the investment of the funds of a patient or person in a State institution since those funds are not public.

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