

1976 S.C. Op. Atty. Gen. 303 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4444, 1976 WL 23061

Office of the Attorney General

State of South Carolina

Opinion No. 4444

September 13, 1976

\*1 The State Treasurer has the responsibility to invest funds granted or contributed to an institution of higher learning for scholarship purposes.

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

QUESTION PRESENTED:

Whether scholarship funds contributed or granted to an institution of higher learning 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 the institutions.

STATUTES, CASES AND OTHER AUTHORITIES:

[Garey v. City of Myrtle Beach](#), 263 S.C. 247, 209 S.E.2d 893 (1974);

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

1962 South Carolina Code, Sections 1-742.1, 22-205, 22-105(11), 22-614(10), and 22-407;

Opinion of the Attorney General, July 6, 1959;

Opinion of the Attorney General, August 10, 1973.

DISCUSSION OF THE ISSUE:

Since Section 1-747.1 authorizes the State Treasurer to invest public funds, if the Treasurer is to be charged with the responsibility of investing scholarship funds contributed or granted to an institution of higher learning, the scholarship money must be deemed public. A definition of 'public funds' which should be applicable to this section of the Code may be found in the case [Droste v. Kerner](#), 34 Ill.2d 495, 217 N.E.2d 73 (1966). [Droste](#) cites with approval the definition of 'public funds' as contained in [Webster's New International Dictionary](#), 2d ed. p. 2005, and notes that a similar meaning of the term is given in [Black's Law Dictionary](#). According to this edition of [Webster's](#), 'public funds' are 'moneys belonging to a government, or any department of it, in the hands of a public official.' This definition should encompass scholarship funds whether contributed or granted because this money, once given to an institution of higher learning, belongs to that institution although the disposition of those funds may be determined by the terms of the grant or contribution; moreover, that Section 1-742.1 refers to funds from any source further indicates that public funds are not limited to those appropriated by the legislature but may include gifts made to the State.

This authority given to the State Treasurer prevails over conflicting authority given to the Clemson University Board of Trustees under Section 22-205 of the 1962 South Carolina Code which, in part, authorizes the Board ' . . . to securely

invest all funds and keep all property which may come into its possession . . .’ The more recently passed Section 1–742.1 broadly states that no board, commission, agency or officer within the State government, except the State Treasurer . . . ‘shall be authorized to invest funds,’ which would seem to exclude investment under Section 22–205 by the Clemson Board of Trustees. Since the rule of this State is that the last act of the legislature is the law and has the effect of repealing all prior, inconsistent laws, [Garey v. City of Myrtle Beach](#), 263 S.C. 247, 209 S.E.2d 893 (1974), those portions of Section 22–205 inconsistent with Section 1–742.1 must not be allowed to control. Although as stated in a July 6, 1957 opinion of the Attorney General, statutes concerning a particular and special subject should not be considered repealed by any general statutes on the same subject except where the legislature was very clear and definite that such repeal was intended, it appears to be clear that the legislature intended Section 1–742.1 to prevail over Section 22–205. Since every officer of agency except for the State Treasurer is excluded from making investments by Section 1–742.1, it is evident that the State Treasurer was intended to have sole investment authority and that inconsistent provisions of Section 22–205 are no longer of force.

\*2 Another potential conflict with Section 1–742.1 is Section 22–105(11), of the 1962 South Carolina Code which authorizes the Board of Trustees of the University of South Carolina to ‘. . . receive and hold all moneys or other properties, real and personal, that may be given, conveyed, bequeathed, or devised . . .’ The section would seem to encompass scholarship money but does not appear to authorize the Board to invest those funds. An August 10, 1973, Opinion of the Attorney General, indicates that Section 22–105(11) is somewhat limited in scope. In that opinion, it was determined that Section 22–105(11) did not authorize the University of South Carolina to loan funds derived from the operation of several of its activities and interests and that ‘if the University has idle funds which it wishes to invest, the provisions of Section 1–741 . . . designates the State Treasurer as the sole official authorized to invest and deposit (public) funds from any source.’ This interpretation of Section 22–105(11) should be applicable to an identical section for the State College Trustees, Section 22–614(10) of the 1962 South Carolina Code, as amended, and a similar provision for Winthrop, Section 22–407 of the 1962 South Carolina Code.

#### CONCLUSION:

The State Treasurer has the responsibility to invest funds granted or contributed to institutions of higher learning for scholarship purposes.

A. Camden Lewis  
Assistant Attorney General

1976 S.C. Op. Atty. Gen. 303 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 4444, 1976 WL 23061