

1973 WL 26735 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

May 8, 1973

*1 General A. W. Rigsby
University Counsel
Clemson University
Clemson, South Carolina 29631

Dear General:

Thank you for your letter of April 25 inquiring whether payments made pursuant to the patent policy of Clemson University may be violative of the provisions of the General Appropriations Act, which provide:

‘That salary appropriations for Employees fixed in this Act shall be in full for all services rendered, and no supplements from other sources shall be permitted or approved by the State Budget and Control Board.’

The portion of the patent policy referred to reads as follows:

‘(2) if the patent is obtained by the University through a patent attorney employed by the University, recommend that, after cost of securing the patent has been recovered by the University, an amount not to exceed 50% of the net receipts received by the University be paid by the University to the inventor or inventors.’

It is my opinion that the funds that may be derived from the use of a patent which is issued subject to the patent policy of Clemson University may be paid to the inventor without conflicting with the provision of the General Appropriations Act set forth above. That provision is designed to prevent the supplement of income of State employees by payment from public funds in excess of the amounts designated in the Appropriations Act as salary or the furnishing of items of value, such as housing, etc., without express authority therefor. The funds realized from the use of a patent procured as a result of the inventiveness of a Clemson employee utilizing Clemson funds or facilities must be shared by Clemson University and the inventor in accordance with the patent policy and are funds which are derived from a property interest in an object or idea formulated by the joint endeavors of the inventor and Clemson University. These funds are not supplements of the type proscribed by the Appropriations Act. In fact, it is most probable that the inventor and Clemson University, even in the absence of a patent policy, would be entitled to share ratably in the proceeds derived from the invention.

Very truly yours,

Daniel R. McLeod
Attorney General

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