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SPRINGFIELD

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FILE NO. S-1320

UNIVERSITIES AND COLLEGES:  
Authority of Board of  
Regents to Grant Sangamon  
State University Foundation  
an Interest in Rental Income  
from University Property

Robert G. Cronson  
Auditor General  
State of Illinois  
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524 South Second Street  
Springfield, Illinois 62706

Dear Mr. Cronson:

I have your letter wherein you ask whether the Board of Regents has the authority to grant the Sangamon State University Foundation an interest in the rental income from a parcel of Sangamon State University property. It is my opinion that the Board of Regents does not have such authority.

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On December 16, 1970, in the Circuit Court of Sangamon County, the Board of Regents, acting for Sangamon State University, received a condemnation judgment for 121 acres in Sangamon County; this property is known as the Shepherd tract. The condemnation award was \$295,800. The award was paid and the Board of Regents took title to the property in fee simple. The award was discharged by an appropriation of the General Assembly of \$43,608.22 and by \$252,191.78 which was provided by Sangamon State University Foundation.

This sum of \$252,191.78 represented funds borrowed by the Foundation from a Springfield bank. The Foundation's loan was secured by pledges made to the Foundation by citizens of the Springfield community. These pledges were intended for the purchase of an additional tract of 200 acres, known as the Lubin tract, which the Foundation had, on January 10, 1969, agreed to purchase. Since the pledges were used for the purchase of the Shepherd tract, the Foundation found it necessary to borrow an additional \$350,000 in March 1974, for the purchase of the Lubin tract; this loan was secured with a mortgage constituting a first lien on the Lubin property.

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Complementary resolutions were passed by the Foundation in August and by the Board of Regents in September of 1974. These resolutions purportedly recognized the existence of a resulting trust whereby the Board of Regents was said to hold the Shepherd tract in trust for the Foundation since the Foundation had provided the Board with funds for the purchase price of the tract. Pursuant to this "resulting trust" Sangamon State University would pay 85% of the rental income from the Shepherd tract to the Foundation, rather than to the Board of Regents Income Fund, for the discharge of the Foundation's mortgage on the Lubin tract.

Section 6a-4 of "AN ACT in relation to State finance" (Ill. Rev. Stat. 1975, ch. 127, par. 142a4) provides that universities under the jurisdiction of the Board of Regents must, with specific exceptions, pay all income into the State treasury. Paragraph (1) of section 6a-4 reads as follows:

"(1) The following items of income received by the Universities under the jurisdiction of the Board of Regents of the Regency Universities System for general operational and educational purposes shall be paid into the state treasury

without delay not later than 10 days after the receipt of the same, without any deduction whatever and shall be covered into a special fund to be known as the Board of Regents Income Fund: tuition, laboratory and library fees, excess income from auxiliary enterprises and activities as provided in paragraph (2) of this Section, and all other income arising out of any activity or purpose not specified in paragraphs (2) and (3). The General Assembly shall from time to time make appropriations payable from the Board of Regents Income Fund for the support and improvement of such State Colleges and Universities." (Emphasis added.)

Paragraph (2) of section 6a-4 relates to gifts, research funds and funds a university receives from certain auxiliary enterprises; paragraph (3) concerns rent payments which are pledged to discharge obligations created in order to complete university buildings or pledged to the payment of revenue bonds. Neither paragraph relates to the type of rent payments that Sangamon State University receives from the lease of the Shepherd tract.

Without an applicable exception, it must be concluded that the phrase "all other income arising out of any activity or purpose not specified in paragraphs (2) and (3)" includes the rent payments Sangamon State University receives from the lease of the Shepherd tract. It is thus my opinion

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that Sangamon State University must pay all the rental income from the Shepherd tract into the State treasury. Furthermore, because the University is required by statute to pay this rental income into the State treasury, it is my opinion that the Board of Regents has no authority to grant the Sangamon State Foundation an interest in the rental income from the Shepherd tract.

The Foundation contends that the University is obliged to pay part of the income from the Shepherd tract to the Foundation because the Foundation is the beneficiary of a resulting trust. The doctrine of resulting trusts was established by courts of equity. According to this doctrine, the payor of the purchase price of property is entitled to be decreed the beneficiary of a trust, if the conveyance is absolute and runs to another with the consent of the payor. (G. Bogert, Trusts and Trustees section 454 at 624 (2d ed. 1964).) Hence, it is the Foundation's contention that since it provided the Board of Regents with the purchase price for the Shepherd tract, the Board holds this property as trustee for the Foundation.

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I make no decision regarding the Foundation's claim of resulting trust. It is for the courts to determine whether the principles of equity support such a claim. However, absent any court decision on this matter or any specific statutory authority for the payment of rental income to Sangamon State University Foundation, it is my opinion that the Board of Regents may not declare itself to be trustee of the Shepherd tract for the benefit of the Foundation.

In describing the powers of the University of Illinois, the Supreme Court in People v. Barrett (1943), 382 Ill. 321 at 341 stated:

"\* \* \* It was also given power to acquire, hold and convey real and personal property. This power, however, is limited by statute. It can only acquire and hold property as the trustee and agent for the State. Because it holds all of its property merely for the State, obviously it cannot convey such property without being expressly authorized to do so by the State through its legislature. This is so, because the State is the beneficial owner of all property, the title to which may be held by the corporation.  
\* \* \*"

The description of the University of Illinois' powers in the Barrett case is equally applicable to the Board of Regents.

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The Board has title to the Shepherd tract, however, the State is the beneficial owner of the property. Because the Board of Regents holds the Shepherd tract for the benefit of the State, the Board may not grant an interest in the income from this property to the Foundation or any other entity without being expressly authorized to do so by the State through its legislature. As a result of its fiduciary duty to the State, the Board must direct Sangamon State University to pay the rental income from the Shepherd tract to the State treasury according to the provisions of section 6a-4 of "AN ACT in relation to State finance".

Very truly yours,

A T T O R N E Y   G E N E R A L