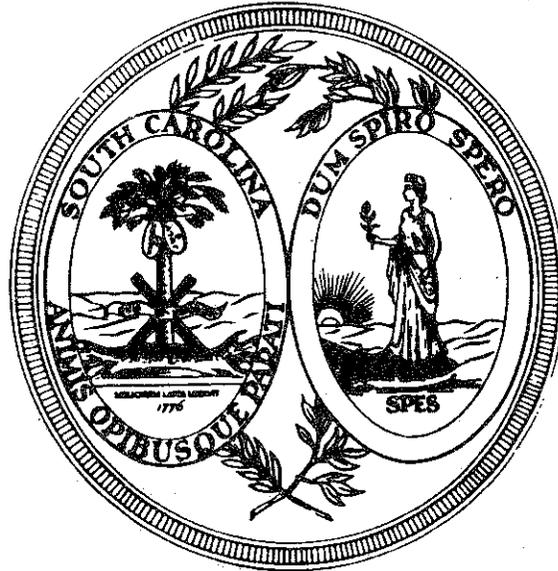
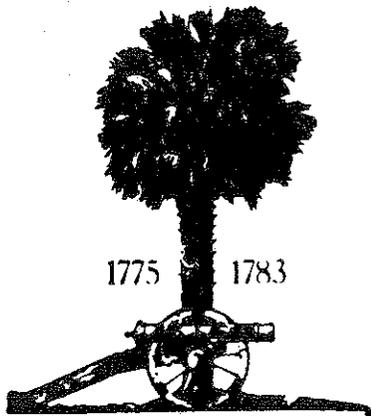


South Carolina General Assembly



Legislative Audit Council



The State of South Carolina
General Assembly
Legislative Audit Council
A Review of the Relationship
Between State Agencies and
Associated Endowments
March 2, 1983

THE STATE OF SOUTH CAROLINA

GENERAL ASSEMBLY

LEGISLATIVE AUDIT COUNCIL

A REVIEW OF THE RELATIONSHIP

BETWEEN STATE AGENCIES AND

ASSOCIATED ENDOWMENTS

TABLE OF CONTENTS

	<u>Page</u>
I. <u>INTRODUCTION AND BACKGROUND</u>	1
Summary and Overview	1
Scope and Methods	3
Description of Endowment Activity Associated with State Agencies	4
II. <u>COMPLIANCE WITH STATE REPORTING REQUIRE- MENTS FOR AGENCY-ASSOCIATED ENDOWMENTS NEEDS REVIEW</u>	7
III. <u>PRIVATE ENDOWMENTS NOT HELD "AT ARM'S LENGTH" FROM ASSOCIATED AGENCIES</u>	9
IV. <u>INTERMINGLING OF STATE RESOURCES AND PRIVATE ENDOWMENT FUNDS</u>	12
State Resources Used to Support Private Endowments	12
Questionable Financial Transactions Between Endowments and State Employees	14
V. <u>DIVERSION OF FUNDS AND RESOURCES TO PRIVATE ENDOWMENTS</u>	17
VI. <u>AGENCY ADMINISTRATORS AND EMPLOYEES SERVE ON THE BOARDS OF ASSOCIATED ENDOWMENT ORGANIZATIONS</u>	20
Private Compensation for University Employment	22
Economic Disclosure Requirements	23
 <u>APPENDIX</u>	
State Agency Statements of Support Received from Affiliated Organizations During FY 79-80	27

I. INTRODUCTION AND BACKGROUND

Summary and Overview

The Audit Council was requested to examine private endowment activities associated with State agencies in South Carolina. The investigation focused on potential or actual abuses relative to accounting practices and use of funds in the relationship between endowments and associated State agencies.

As of July 1981, approximately 26 of the 115 State agencies surveyed by the Audit Council¹ had associated private endowment-type organizations. Of the 26, 13 agencies received over \$5,000 support in FY 79-80. These organizations provide various types of support to the agency and its employees, and/or students. Support ranges from student scholarships and research grants, to funding for capital construction and property acquisition. The State institutions of higher learning receive the greatest amount of private support.

The types of eleemosynary organizations discussed in this audit are widespread nationally, and have a long history. They are an important part of the long-range growth and development plans of the higher education institutions and of several other State agencies. Private endowment organizations provide two basic types of advantage to associated State agencies, in support of agency goals and purposes. The first is use as a financing vehicle for the agency to carry on activities under terms and conditions which may not be available to the agency directly. Secondly, private endowments may attract gifts,

¹This survey did not include University of South Carolina branch campuses, or the technical college system.

contributions and donations which might not otherwise be given directly to the agency. (Donations either to a State agency or to its related endowment are tax-deductible, so there is no tax advantage in donating to an endowment rather than to an agency.)

Despite the fact that private endowments, legally and in charter, are separate from associated agencies, it has been a matter of concern that operations often are not independent. The adequacy of controls has been brought into question, ensuring that legislative intent is not circumvented through resources made available to agencies outside State oversight. For this reason, the Audit Council was requested to examine accounting practices and use of funds and resources in the relationship between State agencies and associated endowments.

In its review, the Audit Council found that some agencies are supporting associated private endowments, contrary to State laws. Examples are provided illustrating that (1) State resources are used to support private endowments, (2) questionable financial transactions have occurred between endowments and State employees, (3) State funds and resources (such as grants) have been diverted to endowments, and (4) checks made out to an agency have been deposited (directly and indirectly) into endowment accounts. The Council also reviewed South Carolina statutes relative to State registration and economic reporting requirements, and the receipt of additional compensation by State employees from endowments. The latter issue was examined in light of the finding that agency administrators and personnel serve on endowment boards.

To summarize Audit Council recommendations, State agencies should strictly adhere to statutes and regulations governing their relationship

to privately chartered endowments, by operating "at arm's length." Furthermore, all financial transactions should be defined contractually, and financial support or reimbursements to individuals should be disbursed through agency accounting systems. If part of a State employee's working day is devoted to endowment business, "dual compensation" should be arranged. Agency administrators should avoid the appearance of conflict of interest by not serving on endowment boards as voting members. This is particularly important in the case of University personnel, since the Attorney General ruled that endowments may lawfully supplement their salaries. Regarding such supplementation, the General Assembly should consider a review and clarification of its intent. Compliance with filing requirements (Section 33-55-10) has been inconsistent. The Attorney General should review endowments on a case-by-case basis for filing and exemption entitlements with the Secretary of State. Implementation of these recommendations will allow legislative and public oversight of those endowment-related accounting practices involving State employees and agencies which have been questionable in the past.

Scope and Methods

State statutes and regulations were reviewed which define the relationship between State agencies and associated endowment organizations. State management personnel, as well as officers of several eleemosynary (charitable) organizations, were interviewed. The examples used throughout this report to illustrate potential problem areas were drawn from Audit Council fieldwork, reports and surveys, State Auditor Management Letters, and information provided by the offices of the

Secretary of State and Attorney General. The Audit Council has avoided reference to specific agencies and associated endowments by name throughout the report. The examples are seen as illustrative of problem areas which are widespread, and which require statewide solutions.

In 1981, the Audit Council surveyed all State agencies (with the exception of the technical colleges and University of South Carolina branch campuses) in order to assess the amount and nature of support provided in FY 79-80 by private eleemosynary organizations to State agencies. In July 1982, a survey of agency-associated endowment organizations was conducted, requesting financial statements, information on personnel, location of offices, and material used in soliciting donors.

Description of Endowment Activity Associated With State Agencies

State agencies may receive contributions directly or through private, endowment-type organizations. Contributions made directly to State agencies for specific purposes, such as scholarships or research grants, are placed in earmarked or restricted accounts on the State Comptroller General's and State Treasurer's books. All agency financial transactions, including such restricted accounts, are subject to legislative oversight and are audited by the State Auditor.

An important difference between providing support to an agency versus an associated private organization is that of legislative oversight and public accountability. Since associated private organizations are legally independent and separately chartered, contributions do not appear in State accounting systems, nor are they subject to State audit. Such nongovernmental organizations generally are closely related

to the State agency, support agency goals, and take the form of endowments, foundations, associations, booster clubs, and eleemosynary corporations. For the purposes of this report, the term "endowment" will refer to this group of organizations. An endowment organization is considered to be "agency-associated" if it is organized to support agency goals and provides gifts, donations, bequests, cash contributions, property, services, or other items of value to State agencies or their employees.

Approximately 26 of the 115 State agencies in South Carolina responding to the 1981 Audit Council survey received support from non-governmental organizations in FY 79-80. Agencies, associated endowments and amounts and types of support received in FY 79-80 are reported in Appendix 1. The State institutions of higher education receive the greatest amount of external support, both in support from private endowment organizations, and in direct contributions. In 1982, the Audit Council surveyed the 24 private endowment organizations identified in the 1981 survey which provided over \$5,000 worth of support to State agencies in FY 79-80, and which were organized in the State primarily to support agency goals and purposes. Table 1 provides financial information on these agency-associated endowment organizations including recent fund balances (reflecting organizational "net worth") and revenues.

TABLE 1

STATEMENT OF AGENCY-ASSOCIATED ENDOWMENT ACTIVITY:

REVENUES, FUND BALANCES, AND APPROXIMATE AGENCY BUDGETS

State Agency	Agency Budget Averaged Over FY 80-81/FY 81-82 (Rounded to Nearest Million) c		Associated Endowment Organization	Fund Balance a/ "As Of" Date	Fiscal Year Revenue a/ for the Year Ended
	State Funds	Total Funds			
The Citadel	\$ 9	\$ 20	Citadel Dev. Fdn. The Brigadier Club, Inc.	declined to provide information f d \$ 351,639 ^d - 12/31/81	
Clemson Univ.	40	79	Clemson Univ. Fdn. Clemson Alumni Ass'n. Clemson IPTAY Club	\$6,486,768 - 12/31/80 496,075 - 12/31/81 4,929,349 - 06/30/80	1,797,813 - 12/31/80 638,050 - 12/31/81 2,600,070 - 06/30/80
College of Chas.	11	18	Coll. of Chas. Fdn.	2,807,405 - 06/30/81	456,300 - 06/30/81
Dept. of Health & Envir. Control	48	118	S.C. Health Svcs. Fdn.	8,988 - 03/31/81	9,652 - (01/01/78- 03/31/81)
Dept. of Mental Health	79	103	Health Resources Fdn.	116,025 - 06/30/82	904 - 06/30/82
Educ. Television Comm.	12	16	Educ. Television Endow.	533,165 - 06/30/81	884,190 - 06/30/81
Francis Marion College	6	8	Francis Marion Coll. Fdn. Friends of F.M. Coll. Fdn.	587,226 - 06/30/81 68,227 ^e - 06/30/81	101,576 - 06/30/81 68,227 ^g - 06/30/81
Lander College	4	7	Lander Fdn. Senators Club	1,002,118 - 06/30/81 e	313,230 - 06/30/81 24,376 - 06/30/81
Med. Univ. of S.C.	69	145	Drug Science Fdn. Health Sciences Fdn. Research, Dev. & Educ. Fdn.	918,640 - 06/30/81 5,102,749 ^f - 06/30/81 67,664 ^f - 09/30/81	486,927 - 06/30/81 1,601,960 ^f - 06/30/81 12,410 ^f - 09/30/81
Patriot's Point Dev. Authority	.4	1.4	Patriot's Point Naval and Maritime Museum Fdn.	19,374 ^f - 06/30/82	d
S.C. State College	11	21	S.C.S.C. Educ. Fdn. S.C.S.C. Nat'l. Alumni Fdn.	.285,602 ^f - 10/31/81 d	240,142 ^g - 06/30/78 724,500 - 06/30/81
Univ. of S.C. (Cola.)	77	140	Coll. of Bus./Partnership Fdn. Greater U.S.C. Alumni Fdn. U.S.C. Educ. Fdn. Carolina Res. & Dev. Fdn.	1,696,400 - 06/30/81 331,050 - 06/30/81 8,104,697 - 06/30/81 2,584,724 - 12/31/80	195,597 - 06/30/81 1,954,70 ^h - 06/30/81 800,410 ^h - 12/31/80
Winthrop College	11	20	Winthrop Coll. Fdn. Winthrop Alumni Ass'n.	309,827 - 06/30/81 363,234 - 06/30/81	118,937 - 06/30/81 132,218 - 06/30/81

a Rounded to nearest dollar; includes investment income.
b Excludes net transfers to and from general and temporary endowment funds.
c Includes State, Federal and other sources.
d Information not present on financial statement.
e Annually divests all previous year's ending fund balance.
f Not an independently audited financial statement.
g Includes "Friends of FMC" and "Patriot's Brigade."
h Includes operating revenue from Senate Plaza Apt's.

Source: S.C. State Budget for FY 81-82. and July 1982 LAC Survey of Endowment Organizations.

II. COMPLIANCE WITH STATE REPORTING REQUIREMENTS FOR AGENCY-ASSOCIATED ENDOWMENTS NEEDS REVIEW

All eleemosynary corporations in the State which solicit funds from the public are required by "The Solicitation of Charitable Funds Act," South Carolina Code of Laws, Section 33-55-10, to register annually with the Secretary of State. Registration requirements include provision of annual financial reports, as well as organizational and descriptive information which attests to the fact that the activities carried out are generally consonant with their stated purpose(s). Although Section 33-55-10 was enacted in 1972, only one of the agency-associated private endowments identified by the Audit Council survey had filed with the Secretary of State as of June 21, 1982. Subsequent requests from the Secretary of State, Public Charities Division for these organizations to register have met with a mixed response. Approximately 46% of these organizations responded, registered and filed a financial statement; 14% responded but did not file (some claimed an exemption); and the final 39% did not reply.

Organizations which "solicit only within the membership of the organization by the members thereof" are exempt from filing requirements. Exemption entitlements are also provided for religious organizations, non-profit/charitable hospitals, and State Department of Education-approved educational institutions. The Attorney General's Office has indicated that there are questions about whether these State agency-associated endowment organizations solicit from the public, rather than solely from a membership. Exemption entitlements would need to be examined on a case-by-case basis by the Attorney General's Office, and the steps taken to require organizations to file, in necessary cases.

Aside from filing requirements with the Secretary of State's office¹, financial records of private endowment organizations associated with State agencies are available to the public at the discretion of the organization. Such financial records, however, are most often in the form of financial statements prepared by Certified Public Accountant (CPA) firms. The objectives of CPA statements are to account for funds (revenues, expenditures and changes in financial position), and to evaluate conformity with "generally accepted accounting principles." Sources of income and subjects of expenditure typically are noted very generally, in categories such as "donations" and "investment income," and "rent" and "salaries," respectively. Itemization seldom provides enough detail to evaluate whether transactions between State agencies and their associated endowments are in compliance with State statutes and regulations.

RECOMMENDATION

IN ORDER TO ENSURE COMPLIANCE WITH SECTION 33-55-10, THE ATTORNEY GENERAL'S OFFICE SHOULD REVIEW ALL AGENCY-ASSOCIATED ENDOWMENT ORGANIZATIONS WHICH HAVE NOT FILED WITH THE SECRETARY OF STATE FOR EXEMPTION ENTITLEMENTS.

¹The Tax Commission maintains confidential records on all such endowment organizations which are not available to the public, or to State audit agencies.

III. PRIVATE ENDOWMENTS NOT HELD
"AT ARMS LENGTH" FROM ASSOCIATED AGENCIES

The problems addressed in this audit are largely a function of the close relationship between State agencies and their associated endowments. Most endowments originated informally after the Second World War, often housed in the State agency and supported by staff and resources of the agency. Such endowments have not historically been held "at arm's length," by related agencies in either a legal or practical sense.

Endowments associated with State agencies can be separately chartered, private legal entities. As such, they are outside the purview of State Government audit, legislative oversight and the appropriation process. Endowment organizations may refuse State audit agencies access to records. As a part of this study, financial statements and descriptive information were requested from the major agency-associated endowments. One University-associated Foundation refused to comply with the Council's request. Another agency-associated organization sent a financial statement, but did not provide other information, stating: "In light of the fact that the Foundation is an independent Foundation, it is the judgment of the Board of Trustees that the information supplied in the inclosed audit is sufficient."

Exemption from State audit and oversight requires that endowments operate independently from associated agencies - legally and financially "at arm's length." This frequently has not been and is not the case. The Audit Council has identified cases in which State agencies and associated private endowments have represented close interdependency despite legal independence, when such a claim was advantageous.

- (1) A State University Development Foundation sought tax-exempt status for a tract of land in 1980. Tax-exempt status was denied, and the Foundation appealed the case. In its appellate argument, the Foundation made the following assertions relative to its relationship to the university:

The management of the Foundation is conducted by University employees, none of whom is paid by the Foundation and all of whom are State employees... It is undisputed that the University controls the Foundation and its actions... The officers of the Foundation and its employees are all housed in University facilities."

Relative to University responsibility for the corporation's liabilities, the Foundation stated:

In this regard, the University has traditionally and by implication agreed that properties purchased by the Foundation (which are at the direction of the University) will ultimately be acquired by the University. In this sense, the University bears the responsibility or liability for the debts incurred by the Foundation... [Emphasis Added]

- (2) In a similar case, another University's Development Foundation appealed the ruling denying tax-exempt status for a Foundation-owned property in 1981. In its petition to the appellate court, the Foundation argued (in part):

That the Tax Commission erred in finding that the Petitioner and the (University) are separate, the error being that the record discloses that the two are not separate and that the petitioner has and can have no existence of its own apart from the (University).

- (3) The intermingled relationship between a State agency and its associated private endowment was illustrated in a letter written by a State agency Director of Development in 1980. On State agency letterhead and for the purpose of an endowment contribution, this

State employee informed a donor as follows: "As I mentioned, our correct legal name is the (Agency) Endowment." [Emphasis Added]

In its review, the Audit Council focused on identifying problems characteristic of the existing system. Three major problem areas found include (1) the intermingling of State resources and private endowment funds, (2) the diversion of State funds and resources to private endowments, and (3) the fact that agency personnel serve on endowment boards. A discussion and examples of each of these problems follow.

IV. INTERMINGLING OF STATE RESOURCES
AND PRIVATE ENDOWMENT FUNDS

State Resources Used to Support Private Endowment Organizations

Although private endowments may provide useful and unique service and funding to State agencies; agencies, in turn, may not legally support private endowments. Practices not in compliance with State law include the provision of office space, supplies, equipment or personnel support services by the State agency to the private endowment. There is no authority in State law which allows a State institution to use its resources to support a separate legal entity. The South Carolina Code of Laws, Section 11-9-10 states:

It shall be unlawful for any moneys to be expended for any purpose or activity except that for which it is specifically appropriated...

Furthermore, State employees may not work for the private endowment in any capacity during that employee's working hours (i.e., as partial or total fulfillment of his job duties). Employees receiving State salaries and benefits while performing duties for a non-State entity violate Section 8-11-30 which states:

It shall be unlawful for anyone to receive any salary from the State or any of its departments which is not due, and it shall be unlawful for anyone in the employ of the State to issue vouchers, checks, or otherwise pay salaries or monies that are not due to State employees of any department of the State...

The following examples of the use of State resources used to support private endowment activities were identified by the Audit Council and the State Auditor:

- (1) University support of associated Foundations: State Auditor's Management Letters released in 1979 and 1982 cited two State universities which were paying a substantial amount of Foundation overhead costs - including salaries, related fringe benefits, computer support and space occupancy costs. A substantial portion of these expenditures was charged to Appropriated Funds and was not reimbursed by the separately chartered Foundations.
- (2) Agency support of an associated Endowment:
 - (a) A State agency paid a private attorney's fees for legal services for its private Endowment organization. The Audit Council identified three payments for legal services in 1979, most or all involving contract drafting and negotiation in connection with an Endowment activity.
 - (b) The agency also provided its Endowment with fund raising support during 1978, 1979 and 1980 which was not fully reimbursed. For example, the agency charged the Endowment \$2,691 for one fund-raising project, which was approximately \$18,000 less than the agency's own estimates of the actual cost.
- (3) College support of a Development Foundation: In arguing its case in 1981 for tax-exempt status for a Foundation-owned building, the Foundation's Executive Director explained: (a) the college furnishes offices to the Foundation at no charge, and (b) the Foundation employees are paid by the college, receive the same benefit package, and participate in the same review procedure as all other college employees.

- (4) Audit Council survey: Twenty-four agency-associated endowment organizations were surveyed by the Audit Council in June 1982. (The 24 endowments are associated with 13 agencies, including the larger State colleges and universities). According to the replies, at least 12 of the 24 endowments are not reimbursing the agency for office space, and at least nine endowments receive personnel support from the agency.

Questionable Financial Transactions Between Endowments and State Employees

The potential for mishandling of funds, and for the circumvention of legislative intent, is much greater in the situation where State employees draw on both State funds and associated endowment resources. Agency support of private endowment organizations has also led to instances where agency and endowment funds have become commingled.

- (1) The Audit Council reviewed reimbursement claims made by an agency's personnel to an associated endowment organization during a two-year period. A comparison of claims to travel voucher claims submitted to the State showed that half were duplicate reimbursements.
- (2) An agency-associated endowment provided three trips to Europe for two State employees. These employees traveled on State time, without approval from the Budget and Control Board.
- (3) An agency-associated endowment budgeted \$15,000 for two State agency administrators; the agency did not explain the disposition of the allocation to the Audit Council.

The South Carolina Appropriation Acts (FY 77-78 to FY 82-83)

state:

...the expenditure of funds by agencies of the State Government from sources other than General Fund Appropriations shall be subject to the same limitations and provisions of law applicable to the expenditure of appropriated funds with respect to salaries, wages, or other compensation, travel expenses, and other allowances or benefits for employees...

"salaries paid to officers and employees of the State... shall be in full for all services rendered, and no perquisites of office or of employment shall be allowed in addition thereto..."

Duplicate reimbursement of claims and questionable payments to State employees are possible because employees are able to apply for payment separately to endowment organizations and to the State, without claims being reviewed and approved by the same authority. The lack of controls that allow such questionable financial practices may occur in other State agencies where endowment organizations reimburse State employees directly. Since the existence and extent of such reimbursements cannot be ascertained, State resources are vulnerable to abuse and legislative intent can be circumvented.

RECOMMENDATIONS

AGENCY BUDGETING AND ACCOUNTING PROCEDURES SHOULD IDENTIFY ALL SERVICES, FUNDS, PROPERTY, FACILITIES OR OTHER ITEMS OF MONETARY VALUE PROVIDED TO RELATED PRIVATE ORGANIZATIONS. ALL SUCH ITEMS SHOULD BE REIMBURSED BY THE ORGANIZATION (AT FULL VALUE) AND SHOULD BE REFLECTED IN AGENCY ACCOUNTING.

AGENCY DIRECTORS SHOULD ENSURE THAT
FORMAL CONTRACTUAL ARRANGEMENTS DEFINE
ALL TRANSACTIONS INVOLVING RESOURCES
BETWEEN STATE AGENCIES AND ASSOCIATED
PRIVATE ENDOWMENT ORGANIZATIONS.

TO ENSURE COMPLIANCE WITH STATE LAWS, THE
GENERAL ASSEMBLY SHOULD CONSIDER ENACTING
LEGISLATION TO REQUIRE THAT EXPENSE REIM-
BURSEMENTS TO STATE EMPLOYEES FROM AGENCY-
ASSOCIATED ENDOWMENTS ARE DISBURSED THROUGH,
AND ACCOUNTED FOR BY, THE STATE AGENCY.

V. DIVERSION OF FUNDS AND RESOURCES
TO PRIVATE ENDOWMENTS

Grants and other resources generated by State employees working on State time are public funds. State agencies are without authority to transfer such grants, donations or other resources to private endowments. Funds obtained by a State agency should be deposited into special State Treasury accounts designated for such purposes, allowing the funds to be audited and ensuring that expenditures are made in accordance with State statutes, regulations, and with the intent of the donor.

The South Carolina Appropriation Acts (FY 77-78 to FY 82-83) state:

...donations or contributions from sources other than the Federal Government, for use by any State agency, shall be deposited in the State Treasury, but in special accounts, and shall be withdrawn from the Treasury as needed to fulfill the purposes and conditions of the said donations...

...the expenditure of funds by agencies of the State Government from sources other than General Fund appropriations shall be subject to the same limitations and provisions of law applicable to the expenditure of appropriated funds with respect to salaries... and other allowances or benefits for employees.

In addition, State regulations require that agencies notify the Governor's Office of Grants Services of their intent to seek grants. Grants awarded to agencies must be placed in special accounts in the State Treasury; agencies should not expend or receive funds without approval from the Governor.

Examples have been identified where not only have grants and other funds been diverted to associated endowments, but also checks made out to an agency have been directly deposited into endowment accounts.

- (1) Of 12 grants procured by a State agency in 1979, only two were deposited in the State Treasury. Seven of the 12 grants were diverted to an associated endowment and three were directly contracted out. Agency records show that personnel time and travel expenses were used to procure grants for the endowment. The personnel cost to the State for the department which procured these grants was \$55,216.
- (2) A State college began an associated endowment organization in 1978 with over \$18,000 from the college's food services, vending machines and cafeteria. A recent (June 30, 1981) financial statement notes that "Funds received from the food service (are) contributed directly to the (College) Foundation."
- (3) Of \$700,000 received by a State University in a contractual arrangement, over \$200,000 was deposited to the accounts of an associated University Foundation. Three checks made out to the University were deposited directly into Foundation accounts, and the remaining money was transferred from University into Foundation accounts. The State Auditor documented this transfer in a Management Letter, noting that he was unable to ascertain the authority under which this transfer was made.

These examples illustrate the potential for abuse arising from the close relationship between agencies and associated endowments in the handling of grants and other resources.

RECOMMENDATIONS

STATE AGENCY DIRECTORS SHOULD STRICTLY
ADHERE TO STATE STATUTES AND PROCEDURES

GOVERNING THE HANDLING OF GRANTS AND
OTHER NONGOVERNMENTAL RESOURCES.

EFFORTS BY STATE EMPLOYEES TO OBTAIN
GRANTS, CONTRIBUTIONS OR OTHER FUNDS FOR
PRIVATE ENDOWMENTS, SHOULD BE PURSUED
DURING THE EMPLOYEES' PERSONAL TIME, AND
NOT WITH STATE RESOURCES.

IF PART OF A STATE EMPLOYEE'S WORKING DAY
IS DEVOTED TO ENDOWMENT BUSINESS, "DUAL
COMPENSATION" SHOULD BE ARRANGED SUCH
THAT STATE REMUNERATION IS COMMENSURATE
WITH ACTUAL TIME WORKED ON AGENCY BUSINESS.

VI. AGENCY ADMINISTRATORS AND EMPLOYEES SERVE
ON THE BOARDS OF ASSOCIATED ENDOWMENT ORGANIZATIONS

The absence of an "at arm's length" relationship between agencies and associated endowments is further exemplified by the fact that State employees serve on associated endowment boards. In the previously cited 1981 survey of State agencies, the Audit Council found that 26 of 115 State agencies had received some type of nongovernmental support in FY 79-80. In 19 of the 26 agencies, state employees were serving on the boards of associated endowment organizations; in 18 of the 26, these personnel included agency administrators. In most cases, agency administrators had voting rights. In this situation, it may be difficult for agency administrators to be satisfactorily accountable to all concerned parties. As discussed, financial records of separately chartered eleemosynary organizations are not subject to State audit or oversight.

The problem that is raised by lack of audit access, and with State agency officials serving on the governing boards of private organizations, is one of proper checks and balances. State agency administrators serving on associated endowment boards are involved in the private organizations' decisions relating to the amount and purpose of funds given to their agency or to be used on behalf of their agency. At the same time, the agency administrators are in the position of soliciting funds on behalf of their agency, and determining the relationship of the agency to the private endowment.

The presence of agency administrators on endowment boards is particularly questionable in the case of University administrators and faculty. They may lawfully receive money or other perquisites from

private Foundations, as additional compensation for their services to the State. Supplements include, in one case, approximately \$10,000 a year, and, in another, \$15,000 a year. The State economic disclosure statute (Section 8-13-820) does not require reporting such compensation. In another example, an associated athletic endowment organization established an "appreciation fund" for University coaches: "In an effort...to do what will be most meaningful to the coaches an Appreciation Fund has been established... A cash donation will be made to the coaches and your contribution will be acknowledged," [Emphasis Added]. Statutes and rules regarding such practices include the following:

The South Carolina Appropriation Acts, (FY 77-78 to FY 82-83) state:

"...The appropriated salaries for specified positions shall mean the maximum compensation for such position...,"

"...That salaries paid to officers and employees of the State, including its several boards, commissions, and institutions shall be in full for all services rendered, and no perquisites of office or of employment shall be allowed in addition thereto, but such perquisites, commodities, services or other benefits shall be charged for at the prevailing local value and without the purpose or effect of increasing the compensation of said officer or employee...,"

"...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." [Emphasis Added]

Personnel Rules Manual, South Carolina Budget and Control Board (1980):

2.09, D.2.a. No employee can receive additional compensation for services performed during normally scheduled hours of work unless the employee takes annual leave or leave without pay.

2.09, B. (p. 11): No State employee may accept any work or remuneration that could reasonably be construed as a conflict of interest.

Federal Regulations (5 CFR 735.203 (1982)) prohibit private contributions of any sort to the salaries of Federal employees:

(6) An employee shall not receive any salary or anything of monetary value from a private source as compensation for his services to the Government (18 U.S.C. 209).

Private Compensation for University Employment

In 1978, it came to the attention of the State Auditor that a University President was receiving expense money from a University-associated endowment. Since this arrangement appeared to be counter to provisions of the Appropriation Act (cited above), a request was made for an Attorney General's opinion. The Attorney General ruled that such compensation "from private sources such as a foundation or an endowment" could not be prevented because the source of such compensation would be private rather than public. It was the Attorney General's opinion that the language of the FY 77-78 Appropriation Act referring to other sources of compensation "clearly refer to State or Federal funds, and other funds coming into the State treasury," and not to privately generated or administered funds. In May 1978, the Attorney General stated:

"in absence of a contractual arrangement made between the State and the president or faculty members of its institutions of higher learning before they assume office that they will not accept any extra compensation from any private source, the presidents as well as faculty members may lawfully receive extra compensation granted or given to them from private sources as a further reward or inducement for the performance of their duties."

Every major institution of higher learning in the State has associated private endowment organizations, and in many cases executive officers or board members are shared. The potential for conflict of interest seems clear when it is lawful for university personnel to direct, or be

involved in the direction of, budgetary commitments of private organizations which may, according to the 1978 Attorney General's opinion, provide additional compensation to the individual for performance of his State job.

Economic Disclosure Requirements

The South Carolina statutes relating to ethics and economic disclosure (Section 8-13-820) do not require disclosure of such compensation from private endowment organizations. Article 11, "Disclosure of Economic Interest," requires that certain public employees file statements (to be updated annually); public employees identified by this Act include salaried members of State boards, commissions or agencies, directors and deputy directors of agencies and departments of State Government, city and county administrators, and members of the General Assembly. Requirements of disclosure include reporting business transactions with public entities, compensation from public entities, and real estate interests which may constitute a conflict of interest. The Ethics Commission responded to an Audit Council inquiry, stating that money received from a private, nonprofit organization would not require disclosure.

The requirements of South Carolina's ethics legislation in regard to reporting of compensation from private, nonprofit groups can be compared to the reporting requirements of the Federal ethics legislation, (Executive Order No. 11222; 5/11/65; 30 F.R. 6469; Part IV - Reporting of Financial Interests). Section 401 (in part) states:

(a) Not later than ninety days after the date of this order, the head of each agency, each Presidential appointee in the Executive Office of the President who is not subordinate to the head of an agency in that Office, and each full-time member of a committee, board, or commission appointed by the President, shall submit to the Chairman of the Civil

Service Commission a statement containing the following:

(1) A list of the names of all corporations, companies, firms, or other business enterprises, partnerships, nonprofit organizations, and educational or other institutions -

(A) with which he is connected as an employee, officer, owner, director, trustee, partner, adviser, or consultant; or

(B) in which he has any continuing financial interests, through a pension or retirement plan, shared income, or otherwise, a result of any current or prior employment or business or professional association; ... [Emphasis Added]

Legislative intent seems clear that State employees' salaries shall constitute total compensation¹ for government service. However, certain State employees may accept additional compensation, and do so without public disclosure. The Legislature may be prevented from making informed and consistent salary decisions in cases where supplemental compensation is not part of the appropriation or economic disclosure process.

RECOMMENDATIONS

STATE AGENCY ADMINISTRATORS SHOULD CEASE THE PRACTICE OF SERVING ON THE BOARDS OF ASSOCIATED PRIVATE ENDOWMENTS AS VOTING MEMBERS, IN THE INTEREST OF AVOIDING THE APPEARANCE OF A CONFLICT OF INTEREST.

¹An exception is the provision of housing to Presidents of State institutions of higher learning authorized to provide student on-campus housing, and to certain other employees working for agencies identified in Section 135 of the 1982-83 Appropriation Act.

THE GENERAL ASSEMBLY SHOULD CONSIDER
AMENDING ECONOMIC DISCLOSURE REQUIREMENTS
(SECTION 8-13-820) TO REQUIRE REPORTING OF
COMPENSATION FROM PRIVATE, NONPROFIT
GROUPS.

THE GENERAL ASSEMBLY SHOULD CONSIDER A
REVIEW AND CLARIFICATION OF ITS INTENT
REGARDING SUPPLEMENTATION OF STATE EM-
PLOYEE'S SALARIES, INCLUDING THOSE OF
UNIVERSITY PRESIDENTS AND FACULTY.

APPENDIX

APPENDIX I
STATE AGENCY STATEMENTS OF SUPPORT RECEIVED
DURING FY 79-80 FROM AFFILIATED ORGANIZATIONS

As part of this study, a survey was mailed to all State agencies. Its purpose, in part, was to establish a list of all endowments, separately chartered eleemosynary corporations, foundations, booster clubs, associations, or any other organized activity based in South Carolina, which provides gifts, donations, bequests, contributions in the form of cash, property, services or other things of value to State agencies or their employees.

Of the 115 responses received, 26 agencies indicated that they received support of some kind from nongovernmental organizations located in South Carolina. Agencies and universities and colleges are listed in Tables 2 and 3, respectively. This is not a complete list of all nongovernmental organizations affiliated with State agencies. It represents only the organizations reported to the Audit Council by the State agencies responding to the survey. In addition, the State's technical colleges and the branch campuses of the University of South Carolina were not included in the survey mailing. The universities and colleges are grouped together in Table 3 because they have similar patterns of external support. Both Table 2 and Table 3 aggregate some of the data reported by the agencies.

TABLE 2
 AGENCY STATEMENTS OF EXTERNAL SUPPORT RECEIVED DURING
 FY 79-80 FROM ORGANIZATIONS WITHIN SOUTH CAROLINA

Agencies and Support Groups	Types of Support Provided					(6) Total
	(1) Scholarships or Other Student Support	(2) Employee Travel	(3) Employee Salary	(4) Acquisition of Real Property	(5) Other	
1. Archives and History: Confederation of S.C. Local Historical Societies	\$ 300 (every other year)					\$ 300
2. Children's Bureau: Advisory Council					\$ 400	\$ 400
3. Confederate Relic Room: S.C. Chapter of United Daughters of the Confederacy					Artifacts	
4. Dept. of Corrections: S.C. Correctional Assoc.		\$ 869				\$ 869
5. School for Deaf and Blind: The Foundation			\$3,572			\$ 3,572
Cedar Spring Booster Club	\$12,000					\$ 12,000
C. S. Mott Foundation		\$2,946			\$ 2,421	\$ 5,367
6. Educational Television: ETV Endowment					\$584,721 ¹	\$584,721
7. Foster Care Review Board: Duke Univ. Endowment Funds		\$3,587	\$6,057		\$ 7,097	\$ 16,741
8. Governor's Mansion: Governor's Mansion Fdn.					(Estimated value of antiques donated during 1980 = \$8,189.)	\$ 8,189
9. Health and Envir. Control: S.C. Health Services Fdn.					(Foundation support for two research projects associated with DHEC and paid to Medical Centers.)	\$ 14,672 \$ 14,672
10. John de la Howe School: Duke Univ. Endow. Funds					(Approximately \$50,000 annually is given to the school for operating expenses.)	\$ 50,000 \$ 50,000
11. Dept. of Mental Health: Health Resources Fdn.						\$ 12,394 \$ 12,394
Ensor Foundation						\$ 19,449 \$ 19,449
12. Dept. of Mental Retardation: M. R. Foundation	\$ 1,250					\$ 1,400 \$ 2,650
13. Parks Recreation and Tourism: Charles Towne Landing Fdn.					(Provides occasional financial assistance for improvements at the Landing.)	none
Keep S.C. Beautiful						\$ 100 \$ 100
14. Patriots Point Dev. Auth.: P.P. Naval and Maritime Museum Foundation					(Bulk of expenditures made for artifacts, e.g., \$100,000 for B-25 bomber.)	\$121,920
15. State Board for Technical and Comprehensive Educ.: A. Wade Martin Fdn.					(Note: Does not include the foundations associated with individual Tec schools.)	\$ 845 \$ 845
TEC President Council						\$ 600 \$ 600
16. Wildlife and Marine Resources: Wildlife Education and Training Fund, Inc.						\$ 724 \$ 724
Cantey Memorial Award Fund, Inc.						\$ 3,012 \$ 3,012
Marine Research and Conservation Fdn.	\$ 3,448					\$ 3,448
17. Dept. of Youth Services: D.Y.S.' Pendarvis Sch'ship.	\$ 2,520					\$ 2,520
D.Y.S.' Student Welfare Fd.						\$ 1,678 \$ 1,678

¹Figures from 1980 financial statement of ETV Endowment "Expenditures on Behalf of ETV." ETV did not complete the questionnaire requesting where these funds were expended.

TABLE 3
COLLEGE AND UNIVERSITY ESTIMATES OF CASH VALUE RECEIVED FROM AFFILIATED ORGANIZATIONS

FY 79-80

Agencies and Affiliates	(1) Faculty Grant	(2) Student Scholarships	(3) Employee Travel	(4) Employee Salary	(5) Acquisition of Real Property	(6) Other	(7) Total
1. The Citadel:							
Citadel Development Fdn.	\$131,171	\$ 112,992	\$52,062	\$106,881		\$ 227,286	\$ 630,391
The Brigadier Club, Inc.		376,981		36,217		3,040	416,238
2. Clemson University:							
Clemson University Fdn.	\$ 2,000	\$ 74,495		\$ 71,422		\$ 39,123	\$ 187,040
Clemson Alumni Assoc.	16,500	70,000	\$14,661	70,000		50,000	221,161
Clemson IPTAY Club		1,108,256	6,253	105,491			1,220,000
3. College of Charleston:							
College of Charleston Fdn.	\$ 25,960	\$ 208,879	\$15,168	\$ 19,123	\$122,883	\$ 226,755	\$ 618,768
4. Francis Marion College:							
FMC Foundation	\$ 2,850	\$ 13,597				\$ 4,900	\$ 21,347
Friends of FMC		57,121					57,121
Alumni Association		2,000					2,000
5. Lander College:							
Lander Foundation	\$ 6,047	\$ 42,730			\$ 41,260	\$ 6,001	\$ 96,038
Senators Club		20,467					20,467
6. Medical University:							
Health Sciences Fdn.	\$ 93,522	\$ 24,841			\$ 45,000	\$ 65,929	\$ 229,292
Alumni Association							none
Drug Sciences Fdn.						96,496	96,496
S.C. Medical Coll. Research, Dev. and Educational Fdn.						42,312	42,312
Charleston County Hospital Research and Educational Fdn.						146,488	146,488
The Professional Staff Office of the Medical Univ.						638,707	638,707
7. S.C. State College:							
S.C.S.C. Educational Fdn. (To date, the Educational Fund has not expended any funds.)							none
S.C.S.C. Nat'l. Alumni Fdn.		\$ 9,000					\$ 9,000
Quarterback Booster Club						\$ 500	500
8. University of S. C.:							
USC Educational Fdn.	\$131,960	\$ 214,444		\$ 68,250			\$ 414,654
USC Research and Dev. Fdn. (No information received.)							
USC Alumni Assoc.		44,500					44,500
College of Business Partnership Fdn.				57,706		\$ 200,488	258,194
USC Gamecock Club						1,578,990	1,578,990
9. Winthrop College:							
Winthrop Alumni Assoc.	\$ 8,750	\$ 15,000				\$ 26,250	\$ 50,000
Winthrop College Fdn.	8,600	16,780				36,661	62,041
The Eagles Club		36,895					36,895

