

*PREFACE:*

For audit purposes (state, internal, and foundation auditors) it is critical that gifts and other funds be recorded to the correct legal entity. Even though the associated entities/foundations are here to 'support' the University, they are separate legal entities.

If funds belonging to the University, a State agency, are moved to an associated entity, it could be construed as a diversion of State funds. This has been an increased area of focus over the last five years by state auditors, and in times of increased budgetary pressures, there could be even more focus.

**Why can't funds be transferred from the University to a foundation?**

NC State University (University) is a constituent institution of the University of North Carolina System, and as such, a component unit of the State of North Carolina. In short, the University is a public agency that is supported predominantly by taxpayer dollars as well as various other fund sources such as tuition, fees, gifts, grants, contracts, revenues from auxiliaries, and sales and service operations, to name a few. Regardless of the source, all funds in effect are University funds which must be budgeted and accounted for in accordance with NCGS 116-36.1.

[http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_116/GS\\_116-36.1.html](http://www.ncga.state.nc.us/EnactedLegislation/Statutes/HTML/BySection/Chapter_116/GS_116-36.1.html)

Once funds become University funds, the transfer of those funds or other assets from the University to an associated entity is prohibited, even if that separate legal entity exists solely to 'support' the University. The University is **not** authorized by the General Assembly to transfer funds to related, not-for-profit organizations.

These regulations related to the transfer of funds from a state agency to an educational foundation were clarified by the North Carolina Attorney General in a 1983 letter ruling provided to the State of North Carolina Auditor.

### **116-36.1. Regulation of institutional trust funds.**

(a) The Board is responsible for the custody and management of the trust funds of the University of North Carolina and of each institution. The Board shall adopt uniform policies and procedures applicable to the deposit, investment, and administration of these funds which shall assure that the receipt and expenditure of such funds is properly authorized and that the funds are appropriately accounted for. The Board may delegate authority, through the president, to the respective chancellors of the institutions when such delegation is necessary or prudent to enable the institution to function in a proper and expeditious manner.

(b) Trust funds and investment earnings thereon, are available for expenditure by each institution without further authorization from the General Assembly.

(c) Repealed by Session Laws 2011-145, s. 9.6E(a), effective July 1, 2011.

(d) Trust funds are subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes but are not subject to the provisions of the State Budget Act except for capital improvements projects which shall be authorized and executed in accordance with G.S. 143C-8-8 and G.S. 143C-8-9.

(e) Each institution shall submit such reports or other information concerning its trust fund accounts as may be required by the Board.

(f) Trust funds or the investment income therefrom shall not take the place of State appropriations or any part thereof, but any portion of these funds available for general institutional purposes is appropriated and shall be used to supplement State appropriations to the end that the institution may improve and increase its functions, may enlarge its areas of service, and may become more useful to a greater number of people.

(g) As used in this section, "trust funds" means:

- (1) Monies, or the proceeds of other forms of property, received by an institution as gifts or devises that are neither presumed nor designated to be gifts or devises to the endowment fund of the institution;
- (2) Moneys received by an institution pursuant to grants from, or contracts with, the United States government or any agency or instrumentality thereof;
- (3) Moneys received by an institution pursuant to grants from, or contracts with, any State agencies, any political subdivisions of the State, any other states or nations or political subdivisions thereof, or any private entities whereby the institution undertakes, subject to terms and conditions specified by the entity providing the moneys, to conduct research, training or public service programs, or to provide financial aid to students;

- (4) Moneys collected by an institution to support extracurricular activities of students of the institution;
- (5) Moneys received from or for the operation by an institution of activities established for the benefit of scholarship funds or student activity programs;
- (6) Moneys received from or for the operation by an institution of any of its self-supporting auxiliary enterprises, including institutional student auxiliary enterprise funds for the operation of housing, food, health, and laundry services;
- (7) Moneys received by an institution in respect to fees and other payments for services rendered by medical, dental or other health care professionals under an organized practice plan approved by the institution or under a contractual agreement between the institution and a hospital or other health care provider;
- (8) The net proceeds from the disposition effected pursuant to Chapter 146, Article 7, of any interest in real property owned by or under the supervision and control of an institution if the interest in real property had first been acquired by gift or devise or through expenditure of monies defined in this subsection (g) as "trust funds," except the net proceeds from the disposition of an interest in real property first acquired by the institution through expenditure of monies received as a grant from a State agency;
- (9) Moneys received from the operation and maintenance of institutional forests and forest farmlands, provided, that such moneys shall be used, when used, by the institution for support of forest-related research, teaching, and public service programs;
- (10) Moneys received from an activity authorized by G.S. 66-58(b)(8)m., n., and o.;
- (11) Moneys deposited to the State Education Assistance Authority Fund pursuant to G.S. 116-209.3.

(h) The Board may authorize, through the President, that the chancellors may deposit or invest each institution's available trust fund cash balances in interest-bearing accounts and other investments as may be authorized by the Board in the exercise of its sound discretion, without regard to any statute or rule of law relating to the investment of funds by fiduciaries.

(i) The cash balances on hand as of June 30, 1978, and all future receipts accruing thereafter, of funds identified in this section are hereby appropriated to the use of the University of North Carolina and its constituent institutions. (1977, 2nd Sess., c. 1136, s. 30; 1981, c. 529; 1983, c. 913, s. 19; 1989 (Reg. Sess., 1990), c. 936, s. 1(c); 2005-397, s. 3; 2006-203, s. 45; 2011-145, s. 9.6E(a); 2011-284, s. 84.)