

STATE OF TENNESSEE
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Opinion No. 04-150

Change in Use or Withdrawal of Donor's Contribution to Chairs of Excellence Endowment Fund

QUESTIONS

1. May income earned by the Chairs of Excellence Endowment Fund (Endowment) be used for scholarships instead of supporting the activities of Chairs of Excellence?
2. Does the Endowment's Board of Trustees have the authority to approve a request from a private donor to withdraw funds contributed by the private donor to establish a Chair of Excellence?
3. If the answer to questions #2 is yes, then under what conditions may the Board of Trustees approve such a request?

OPINIONS

1. No. Tenn. Code Ann. § 49-7-501(f) states that income from the Endowment may be used for the sole purpose of funding Chairs of Excellence.
2. The Endowment is an irrevocable trust. We have found no authority for the Endowment's Board of Trustees to approve a donor's request to withdraw all or part of his contribution to the Endowment.
3. We know of no conditions under which the Board could approve such a request.

ANALYSIS

The Chairs of Excellence Endowment Fund (Endowment) is an irrevocable¹ trust fund. Tenn. Code Ann. § 49-7-501(b). The State Treasurer is chair of the Endowment's Board of Trustees and is the administrator of the Endowment. Tenn. Code Ann. § 49-7-501(b) and (c). The Tennessee Higher Education Commission has an advisory role regarding the location of chairs recommended

¹An "irrevocable trust" is a "trust which may not be revoked after its creation as in the case of a deposit of money by one in the name of another as trustee for the benefit of a third person (beneficiary)." *Black's Law Dictionary*, page 1511 (6th ed. 1990).

by the University of Tennessee and the Tennessee Board of Regents. Tenn. Code Ann. § 49-7-502(e).

Tenn. Code Ann. § 49-7-501(f) is clear that the corpus of the Endowment may not be spent for any purpose. Income from the Endowment, however, may be spent to fund Chairs of Excellence, but for no other purpose.² Tenn. Code Ann. § 49-7-501(f). Nowhere in the statute creating the Endowment is there authority to spend trust corpus or income on scholarships. Nor does the statute permit a donor to reserve a power of revocation.

The powers of public officials are defined by law. 21 Tenn.Jur, *Public Officers* § 36. Statutes define the Board of Trustees', the Treasurer's and THEC's authority and duties regarding the Endowment, and they do not give any of them the authority to approve a donor's request to withdraw all or part of his contribution. Tenn. Code Ann. §§ 49-7-501 and 49-7-502. These statutes also do not give the Treasurer, the Endowment's Board of Trustees or THEC the authority to approve a donor's request to redirect the use of a donation to the Endowment.

Therefore, neither the Treasurer, the Endowment's Board of Trustees nor THEC may spend Endowment corpus or income on scholarships, and we have found no statute setting out conditions under which they could approve a donor's request to withdraw his contribution or to alter its intended use.

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² The statute makes one limited exception: income may be spent on investment expenses. Tenn. Code Ann. § 49-7-501(f).