

B-230735

July 20, 1988

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FOR 30 DAYS

The Honorable Neal Smith
House of Representatives

RELEASED

Dear Mr. Smith:

This is in response to your letter of March 4, 1988, requesting our opinion on whether Drake University may use income earned on an endowment trust, funded with appropriated funds, as non-federal matching funds for federal grant applications as well as other legitimate purposes. In our view, the income from the endowment trust fund should be classified as non-federal funds and may be used for any purpose consistent with the grant agreement and the purposes for which the endowment trust was established.

ESTABLISHMENT OF THE TRUST

An act making supplemental appropriations for fiscal year ending September 30, 1985, and for other purposes, Pub. L. No. 99-88, August 15, 1985, 99 Stat. 293, 305, contains an appropriation entitled: "Payment to the Legal Services Corporation." This provision appropriated \$4,000,000 for the Legal Services Corporation (LSC) to make a grant to the Drake University School of Law in Des Moines, Iowa, to establish a clinical program supplementing Legal Services grantees in that area. Upon receipt of the grant, the governing body of Drake University was instructed to create an endowment fund trust, into which \$3,000,000 of the grant was to be conveyed.

The income from the \$3,000,000 trust corpus was to be used exclusively to support the clinical program on a continuing basis. The trust is subject to an audit by this Office for the sole purpose of determining that all funds are properly accounted for and properly expended. The appropriation further provides that if the University elects to discontinue the clinical program, the corpus of the endowment trust shall revert to the Treasury of the United States and that such reversion shall be provided for in the acceptance document. The remaining \$1,000,000 of the grant, not included in the trust, was to be used by the University for facilities, equipment, and other costs actually incurred in establishing the clinical program.

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In Pub. L. No. 100-202, December 22, 1987, 101 Stat. 1329, an additional \$1,500,000 was appropriated for Drake University, to be placed in the endowment fund trust to be used under the same conditions and requirements set forth in the previous LSC appropriation for Drake University. This additional appropriation brings the total of the endowment fund to \$4,500,000.

LEGAL ANALYSIS

The general rule is that interest earned by a grantee on funds advanced by the United States belongs to the United States rather than the grantee and must be returned, except as otherwise provided by law. However, once grant funds are applied to the accomplishment of the purpose of the grant, the rule does not apply. 59 Comp. Gen. 218 (1980); B-192459, July 1, 1980. Both the law^{1/} and the grant agreement direct the University to establish an endowment fund trust into which a certain amount of grant funds were to be conveyed. The purpose of the trust was to generate income from the corpus to support the legal clinic as beneficiary on a continuing basis. Accordingly, when the grant funds were placed in the trust, the grant funds were applied to the accomplishment of the purpose of the grant. Use of the trust income by the University, acting as trustee, is subject only to the conditions set forth in the grant agreement.

The University is obligated by the conditions of the grant agreement and the trust to use the income exclusively to support the legal clinic as beneficiary of the trust. We see no obstacle to the University using such income for non-federal matching funds for other federal grant applications, provided that the income from the endowment fund is used exclusively to support the clinical program. Therefore, the University could only use the income to match other federal grants which are directly relevant to the clinical program.

CONCLUSION

We therefore conclude that the endowment fund trust income may be used for non-federal matching funds for other federal grant applications and for other purposes, so long as such use is consistent with the terms and conditions of the grant agreement and the sponsoring federal agency of the grant

^{1/} In 42 Comp. Gen. 289 (1962), we stated that a grantee may not establish an endowment fund trust with the proceeds of the grant unless specifically authorized by law. That requirement is satisfied in this instance.

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approves the use of such matching funds for the proposed grant.

Unless you publicly announce its contents earlier, we plan no further distribution until 30 days from the date of this opinion. At that time, we will send copies to interested parties and make copies available to others on request.

Sincerely yours,

Wilton J. Foster

for Comptroller General
of the United States