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STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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Alabama A & M University – Loans –  
Funds – Colleges and Universities –  
Madison County

The Board of Trustees of Alabama A&M University may secure a temporary loan, in the form of a bank line of credit, to be paid back in the current fiscal year with current fiscal year revenue.

Dear Representative Hall:

This opinion of the Attorney General is issued in response to your request.

QUESTION

Can the Board of Trustees of Alabama A&M University establish a line of credit with a bank to borrow money?

FACTS AND ANALYSIS

This Office understands that Alabama A&M University (“University”) seeks to secure a short-term loan of over six million dollars, which equals two monthly payments to the University by the State Comptroller from the University’s annual appropriation from the Education Trust Fund. This Office additionally understands that the loan will be paid back with interest at the end of the fiscal year. The University will only use its annual tuition and fees from the current fiscal year to pay back the loan. The University seeks the loan because of the state’s inability to timely make its monthly appropriation payment, which,

of late, is forty days behind each month. The funds will only be utilized to make payroll. The University will not provide any security for the loan.

Alabama A&M University is a public university created pursuant to section 16-49-1, *et seq.*, of the Code of Alabama. ALA. CODE § 16-49-1 to 16-49-55 (2001 & Supp. 2009). The Board of Trustees of the University ("Board") is "constituted a body corporate" of the state. ALA. CODE § 16-49-21 (2001).

The Legislature has given the Board broad powers in section 16-49-22 of the Code of Alabama. This section provides as follows:

***Such corporation shall have all the rights, privileges and franchises necessary to the promotion of the end of its creation and shall be charged with all corresponding duties, liabilities and responsibilities.*** Such corporation may hold and may lease, sell or in any other manner not inconsistent with the object or terms of the grant or grants under which it holds, dispose of any property, real or personal, or any estate or interest therein remaining of any grant by any governmental unit or by any person, accruing to the corporation from any source, as it may deem best for the purposes of the university.

ALA. CODE § 16-49-22 (2001) (emphasis added).

The powers of the Board of Trustees of the University of Alabama stated in sections 16-47-2 and 16-47-3 of the Code of Alabama are virtually identical to this language. ALA. CODE § 16-47-2, § 16-47-3 (2001). This Office has construed the companion language in section 16-47-3 to the emphasized language above as granting the right to acquire property. Opinion to Honorable Thomas A. Bartlett, Chancellor, University of Alabama System, dated January 4, 1988, A.G. No. 88-00100. *See, also*, opinion to Honorable Robert E. Witt, President, The University of Alabama, dated February 11, 2009, A.G. No. 2009-042 (concluding that, despite no express power to acquire property, the University of Alabama, through its corporate powers, may obtain surplus real property from the federal government). Consistent with these opinions, the Board of Trustees of Alabama A&M University has broad corporate powers, which includes the power to obtain a loan.

Section 213 of article XI of the Recompiled Constitution of Alabama provides that no new debt shall be created against the State of Alabama. ALA. CONST. art. XI, § 213 (amend. 26). This Office has explained that there is an

exception in section 213.18 of article XI of the Recompiled Constitution of Alabama for "revenue bonds or other securities issued by state universities for construction or improvements to buildings or facilities . . . ." Opinion to Dr. John T. Gibson, President, Alabama A&M University, dated February 14, 1997, A.G. No. 97-00113 at 3. Consistent with section 213.18 of the Constitution of Alabama, section 16-3-28 of the Code of Alabama sets forth the powers of the State Board of Education and state educational institutions to borrow money. ALA. CODE § 16-3-28 (2001).

In upholding a bond issue for a new dormitory at Alabama College, now the University of Montevallo, the Alabama Supreme Court was careful to distinguish between a debt under section 16-3-28, an exception to section 213, and a temporary loan paid back in the current fiscal year, which is not prohibited by section 213. *Harman v. Ala. College*, 235 Ala. 148, 177 So. 747 (1937). The Court stated as follows:

The power here under consideration is not to be confused with the right to make temporary loans for current expenses payable out of current revenues. When such revenues are available and sufficient, but not presently in hand, provision is made, properly, without making a debt in a true sense, to anticipate such payments through short temporary loans payable during the current year and out of current revenue intended for such use. Sections 130, 136, School Code; *Farned v. Bolding*, supra.

177 So. at 750-51.

The Alabama Supreme Court has further explained the authorization for temporary loans as follows:

[S]ection 213, supra, demands that the State shall be run on a pay as you go basis, but . . . "current obligations within the revenues levied and assessed, and in process of collection, are not debts merely because such revenues have not yet come into the treasury. They are considered as constructively in the treasury." [227 Ala. 64, 148 So. 607]. See, also, to the same effect, *Norton v. Lusk*, 248 Ala. 110(3), 26 So.2d 849; *Abrasley v. Jefferson County*, 241 Ala. 660, 4 So.2d 153; *Farned v. Bolding*, 221 Ala. 217, 128 So. 435; *Turnipseed v. Blan*, 226 Ala. 549(2), 148 So. 116;

Allgood v. Stallings, 197 Ala. 121, 72 So. 383. In those cases, supra, this Court very carefully pointed out the difference between a debt within the limits of the Constitution and current obligations payable only out of current revenue levied and assessed for the fiscal year . . . .

*Opinion of the Justices* No. 88, 251 Ala. 91, 36 So. 2d 475, 478 (1948); *see, also, In re Opinions of the Justices* No. 58, 238 Ala. 293, 191 So. 82, 86 (1939). Accordingly, the Board may secure a temporary loan, provided the loan is paid back in the current fiscal year with current fiscal year revenue.

CONCLUSION

The Board of Trustees of Alabama A&M University may secure a temporary loan, in the form of a bank line of credit, to be paid back in the current fiscal year with current fiscal year revenue.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Ward Beeson of my staff.

Sincerely,

TROY KING  
Attorney General  
By:



BRENDA F. SMITH  
Chief, Opinions Division

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