



STATE OF WEST VIRGINIA  
OFFICE OF THE ATTORNEY GENERAL  
CHARLESTON 25305

CHARLIE BROWN  
ATTORNEY GENERAL

May 8, 1987

The Honorable A. James Manchin  
Treasurer of State  
Building 1, Room E-147  
State Capitol Complex  
Charleston, West Virginia 25305

Dear Mr. Manchin:

You have requested an opinion of this office regarding the following question: whether the Secondary School Activities Commission (hereinafter referred to as "SSAC") is an agency of State government which must comply with the requirements of W. Va. Code § 12-2-2.

Code 12-2-2 provides in pertinent part as follows:

"All officials and employees of the State authorized by statute to accept moneys due the State of West Virginia shall keep a daily itemized record of such moneys so received for deposit in the state treasury and shall deposit within twenty-four hours with the state treasurer all moneys received or collected by them for or on behalf of the State for any purpose whatsoever. The treasurer shall promulgate rules and regulations, in accordance with the provisions of chapter twenty-nine-A [§ 29A-1-1 et seq.] of this Code governing the procedure for such deposits. When so paid, such moneys shall be credited to the state fund and treated by the auditor and treasurer as part of the general revenue of the State \* \* \*."

That section goes on to provide that certain funds shall be carried in separate accounts and are excepted from the requirement that they cannot be used unless authorized and directed by the Legislature. Among those funds to be set aside in separate accounts are the following:

"All moneys collected or received under any act of the legislature providing that funds collected or received thereunder shall be used for specific purposes." Code 12-2-2(j).

The SSAC is composed of principals, or their representatives, of secondary schools in West Virginia whose county boards of education have certified in writing to the state superintendent of schools that they have delegated the control, supervision, and regulation of the interscholastic athletic and band activities of their respective schools to the SSAC. Such delegation is authorized by Code 18-2-25, which states in part:

"County boards of education are hereby authorized to expend moneys for and pay dues to the West Virginia secondary school activities commission, and all moneys paid to such commission, as well as moneys derived from any contest or other event sponsored by said commission, shall be quasi-public funds as the same are defined in article five [§ 18-5-1 et seq.], chapter eighteen, and such funds of the commission shall be subject to an annual audit by the state tax commissioner." (Emphasis supplied.)

"Quasi-public funds" are defined in Code 18-5-13 as "any money received by any principal, teacher, student or other person for the benefit of the school system as a result of curricular or non-curricular activities."

Private and parochial secondary schools may also elect to delegate the control and supervision of their interscholastic athletic events and other extracurricular activities to the SSAC; however, Code 18-2-25 provides that they are subject to the same terms, conditions, regulations, and requirements as those provided for public secondary schools.

This office has previously opined that the SSAC is an organization established by Code 18-2-25 as an administrative agency of the state and a participating public employer in the West Virginia Public Employees Retirement System. That opinion concluded:

"Thus, the West Virginia Secondary School Activities Commission was established by the Legislature in Code 18-2-25 to accept delegated jurisdiction over the interscholastic athletic events and band activities of all public, private and parochial secondary schools of the State. The scope of the Commission's authority gives it status as an agency of the State of West Virginia as manifested by the requirement of Code 18-2-25 that it issue rules and

regulations governing the conduct of these affairs. Promulgation of the Commission's rules and regulations are subject to: (1) prior approval by the West Virginia Board of Education; and (2) Code, Chapter 29A (the Administrative Procedure Act) \* \* \*."

58 Ops. Att'y Gen. 151, 157 [1980].

Furthermore, a later opinion concluded that the SSAC is a state agency whose funds may be invested in the Consolidated Investment Fund established pursuant to Code 12-6-1 et seq. Opinion of the Attorney General, February 3, 1986 (as yet unpublished).

Based upon the foregoing, it is the opinion of this office that: (1) members of the Secondary School Activities Commission are officials and employees of a state agency who are authorized by statute to accept public funds; and (2) said agency must comply with the requirements of Code 12-2-2 governing deposits to the state fund and those funds must be carried in separate accounts.

Very truly yours,

CHARLES G. BROWN  
Attorney General

By



Deputy

BRENDA HILL COLE