



Department of Justice

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**Office of
General Counsel**

**ROBERT J. CAMPBELL
ATTORNEY GENERAL**

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September 8, 1994

**Mark Schantz
General Counsel
University of Iowa
Iowa City, Iowa 52244**

Dear Mark:

Article VIII, section 3 of the Iowa Constitution specifically provides that the State "shall not become a stock holder" in a private corporation. The provision originated from concerns that State credit and moneys would be used to financially encourage the fledgling railroad industry. Consideration of this constitutional provision is appropriate at this time in my review of the documents you have provided in reference to the University's anticipated participation in a statewide managed care delivery system.

Several prior opinions of this office are relevant to this question. In 1988 Op.Att'yGen. 87, we held that investment in stock is prohibited for the Treasurer of State. In 1986 Op.Att'yGen. 19, we concluded that the Iowa Product Development Corporation is a unit of State government to which State laws apply, unless otherwise provided for. The latter opinion is important for its conclusion that the constitutional prohibition on state ownership of stock would be applicable to the University of Iowa as a unit of State government.

Increasing business sophistication since the constitutional provision was debated in 1857 has required us to consider the purpose for which the provision was drafted and the evils the provision sought to avoid. It is our opinion that any question presented to the Iowa Supreme Court under this constitutional provision would undergo the same analysis, notwithstanding Justice Scalia's propensity to construe strictly the usage of words such as "stock" in a constitution. We have had occasion to review whether the constitutional prohibition is applicable to mutual funds, deferred compensation programs for State employees and venture capital debentures. Clearly, the constitutional provision does not in all cases prohibit ownership of stock by

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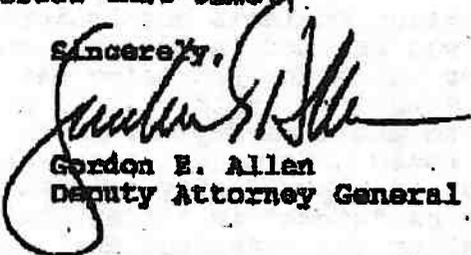
State agencies or instrumentalities, depending upon the purpose of the organizational structure, and the result of the particular business transaction.

Our previous opinions and the applicable case law indicates that article VIII, section 3, of the Constitution was adopted because of a concern over excessive government entanglement in the activities of private corporations, the avoidance of a risk of loss of public funds due to private corporate activity, and the avoidance of public debt for private activity. Op.Att'yGen. #93-12-4. In analyzing a particular investment transaction, we believe the Iowa courts would consider all of these factors.

The University's proposal which we have been discussing has as its purpose the continued provision of quality health care by the University Hospitals and the preservation of a patient base necessary for a nationally recognized teaching hospital. The structure I have reviewed indicates that no tax dollars will be at risk. The funding for the proposal is to come from nonappropriated dollars of the hospital. As you know, the Supreme Court of Indiana has opined that such an expenditure does not run afoul of the Indiana provision, which is similar in language. Obviously, I have no way of predicting whether the Iowa Court would follow the Indiana precedent, but the analysis appears to be sound. Thirdly, as I understand the organization, neither the State nor the University would directly own stock of any private corporation. Instead, a subsidiary nonprofit corporation would be established and as has thus far been explained, moneys from the University would be in the nature of an unsecured loan.

Based upon my review of the documents and the explanations of the purpose, financing, and legal structure thus far, I am comfortable that your plans are not prohibited by this specific constitutional provision. My opinion is obviously contingent upon the conditions in existence at the time of closing on December 31, 1994. I would appreciate the opportunity to review the final proposals on or before that time.

Sincerely,



Gordon E. Allen
Deputy Attorney General

/jan
cc: Wayne Richey