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ATTORNEY GENERAL



REPLY TO:
KUNAL J. CHOKSI
SENIOR DEPUTY ATTORNEY
GENERAL

January 27, 2025

Via Email

Saint Augustine's University
By and Through Counsel
Theodore C. Edwards, II
tedwards@banksfirm.com

Re: Saint Augustine's University

Mr. Edwards:

I'm writing on behalf of the North Carolina Department of Justice regarding Saint Augustine's University's ("SAU") proposed lease of its nonprofit assets. On December 13, 2024, pursuant to N.C. Gen. Stat. § 55A-12-02(g), our Office received SAU's initial notice ("the Notice") of its intent to enter into a lease agreement with 50 Plus 1 Sports ("50+"), which would essentially convey lease rights to all 103 acres of SAU's on- and off-campus property to 50+ for 99 years.

Per the statute, our Office is empowered to review and require information with respect to transactions involving leases, conveyances, and dispositions of a nonprofit corporation's property. The chief goal of this review is to ensure that, to the greatest extent possible, assets allocated for a charitable purpose remain permanently dedicated to a charitable purpose that closely reflects the corporation's initial purpose.

We take the responsibility of this statutory review authority seriously and recognize SAU's importance to the community and the state. We have a duty to ensure that nonprofit assets within North Carolina are protected, and that extends to helping our HBCUs thrive and give their students the education that will help them succeed. We, like you, want to ensure that SAU can continue to operate in the short term and succeed in the long term.

This letter outlines our chief areas of serious concerns we have about the proposed sale. First, to date, SAU has not provided sufficient documentation to support the proposal. Second, based on our review of the documents submitted thus far, we are concerned about SAU's ability to continue to operate and fulfill its mission if this proposed lease agreement is finalized without substantive improvements. We understand that SAU has financial and time constraints that are not related to our review, and we welcome the opportunity to review the additional documents we have previously requested and to discuss these concerns.

Review of the documents initially provided to our Office on December 13, 2024, revealed that, given the complexity of the transaction, additional information and material would be required to flesh out and provide proper context for the transaction. We have been requesting those materials from SAU since December 13, 2024.

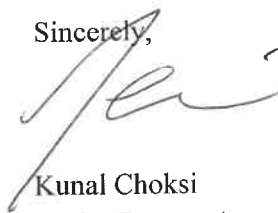
Based on the information submitted to date, another serious source of concern is that the proposed upfront payment of between \$20 million and \$70 million dollars is too low to justify transfer of the lease rights (hereafter, the “transfer”) of SAU’s property, which according to the appraisals prepared for SAU by BBG Real Estate Services, is appraised at over \$198 million. That large of a gap raises red flags about the defensibility of the deal. Absent further information or justification from the parties, to ensure that SAU’s assets remain dedicated to a charitable purpose, the deal should be renegotiated to, among other things, reflect the true value of the property being transferred. For example, 50+ could either provide SAU with a greater upfront payment or the deal could involve a smaller percentage of SAU’s property for the same payment.

Based on this concern, and others raised further discussed below, this Office cannot issue a non-objection to the proposed transaction until SAU provides the following information:

- **Financial Projections to Justify the Transfer.** As noted above, the current deal terms transfers 100% of SAU’s appraised \$198 million property for upfront payments of up to \$70 million. SAU and 50+ only produced “pro-forma” revenue projections to be shared with SAU to justify this apparent gulf in valuation by claiming that the lease would provide SAU with additional monies in future years. SAU represented that this analysis was prepared using a “comprehensive and transparent methodology.” But despite repeatedly informing SAU that we required this information, most recently on January 17, 2025, SAU has not provided our Office with the data and underlying assumptions upon which the projections are based nor any details as to the “methodology” used.
- **Due Diligence on 50+ and its Financials.** SAU’s board and trustees were obligated to perform due diligence on whether 50+ can meet its obligations under the transaction and has the experience to develop revenue-generating property on the leased land. To provide assurance that SAU’s charitable assets do not end up in the hands of whomever finances 50+, our Office requires sufficient proof that 50+ has the financial ability to comply with its obligations to SAU and avoid default with its financiers. SAU, again despite repeated requests, has not provided any such diligence to this office including any documentation of financing 50+ has secured to meet its payment obligations, details about similar deals 50+ has developed, including deals with other universities, or the company’s audited financial statements.
- **A Legal Opinion or Diligence regarding SAU’s Continued Tax-Exempt Status.** There is precedent for the IRS revoking, and courts upholding the revocation, of a 501(c)(3) nonprofit’s tax-exempt status on grounds and circumstances analogous to the proposed transaction. *See, e.g., Manning Association vs. Commissioner of Internal Revenue*, 93 TC 596 (1989). To date, our Office has not received any opinion or evidence from SAU on this issue.
- **More information on how SAU will continue as an Educational Institution after this deal.** We understand that SAU has suffered financial difficulties for some time. We have requested information on how this transaction will preserve and revive SAU’s educational mission and finances, including site plans showing which property 50+ intends to develop and which it will preserve for educational purposes. We are also waiting to receive information related to the “Foundation,” the new entity created purportedly to preserve SAU’s educational mission, including its expected operations, its corporate governance structure, and the composition of its board.

Please provide our Office with the requested information as soon as possible so we can accurately assess the proposed transaction and comply with our duties under N.C. Gen. Stat. § 55A-12-02(g). As always, our Office is open to discussing the above-referenced concerns with SAU and exploring ways that we can facilitate SAU thriving as an educational institution. We would welcome the opportunity to explain our review timelines to your accreditation agency and encourage it to grant any necessary extensions to SAU's submission deadlines to reflect the review timeline set forth in North Carolina law.

Sincerely,



Kunal Choksi
Senior Deputy Attorney General
Director, Consumer Protection Division

CC:

Phillip Woods, Special Deputy Attorney General
Llogan Walters, Special Deputy Attorney General