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The State of South Carolina

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October 12, 1987

The Honorable Fred R. Sheheen
Commissioner, South Carolina
Commission on Higher Education
1333 Main Street
Suite 650
Columbia, South Carolina 29201

Dear Commissioner Sheheen:

You have requested the opinion of this Office as to several questions concerning the following proviso to Commission on Higher Education's Section of the 1987-1988 Appropriations Act at §17:

> "17.7. Each four-year campus of each state-supported senior college and university shall have the same representation on all formal and informal councils, advisory groups, committees, and task forces of the commission, not including the Formula Advisory Committee, as the independent four-year colleges."

Your questions concern the scope of representation given by the proviso to four-year campuses of state supported colleges and universities (branch campuses).

You have asked whether the term "independent four-year colleges" in the proviso applies to privately supported colleges or to public colleges and universities that do not constitute branches of other institutions. This term is not defined in the proviso. Although "independent institution of higher learning" is defined to apply to private colleges for the purpose of tuition grants, that definition does not apply to the instant matter. §59-113-500 of the Code of Laws of South Carolina (1976); see Hartness v. Patterson, 255 S.E. 503, 179 S.E.2d 907 (1971). Because of this absence of express definitional guidance, the following rule of statutory construction is applicable here:

> "In the construction of statutes, the dominant factor is the intent, not the language of the

> legislature. Abell v. Bell, 229 S.C. 1, 91 S.E.2d 548 (1956). A statute must be construed in light of its intended purposes, and, if such purpose can be reasonably discovered from its language, the purpose will prevail over the literal import of the statute. Id." Spartanburg Sanitary Sewer District v. City of Spartanburg, 321 S.E.2d 258 (S.C. 1984).

Because the proviso in question gives independent colleges representation on "...all...(emphasis added) councils, advisory groups, committees and task forces..." except for the Formula Advisory Committee and because, according to the information provided to this Office, private colleges are included as members of only one council (see §59-103-50 of the Code), the legislative intent must have been to give branch campuses more representation than private colleges. Therefore, because the term independent colleges does not refer to private colleges and because the proviso adds representation for the branch campuses, the term independent colleges must have been intended to refer to the public colleges and universities that do not constitute branch campuses. Sutherland Statutory Construction, Vol. 2A, §§ 46.05 and 51.02, 4th Ed. In other words, as set forth in the proviso, the branch campuses are to be given the same representation on the referenced committees, etc. as have non-branch public colleges and universities.

You have also asked for the meaning of the word "informal", as utilized in the proviso. A dictionary definition of the word informal means "...conducted or carried without formal, regularly prescribed or ceremonious procedure" Webster's Third New International Dictionary. Applying this definition to the broad grant of representation to branch campuses on all councils, groups, etc. indicates that the branch campuses should be included in any council, group etc. formed by the Commission on the same basis as are the independent colleges, regardless of formality, except for the expressly excluded Formula Advisory Committee. Spartanburg, supra. Clearly, if all independent colleges were included on a particular group, the branch campuses should be included also. Consideration should also be given to include one or more branch campuses in smaller groups if a cross sectional sample of colleges is convened or if the matter directly relates to the purpose of a particular branch. Spartanburg, supra.

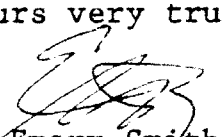
Finally, you have asked whether the proviso is germane to the Appropriations Act in that it excludes the branch campuses from the Formula Advisory Committee, the body that has a direct effect on appropriations matters. This question relates to Art. III, §17 of the South Carolina Constitution that provides that "[e]very act or resolution being the force of law shall relate to but one subject,

and that shall be expressed in the title". "The test to be applied to the provisions of an Appropriations Act is whether the challenged legislation reasonably and inherently relates to the raising and spending of tax monies." Ex Parte Georgetown County Water and Sewer District, 284 S.C. 466, 327 S.E.2d 654, 655 (1985). This test must also be considered in light of the rule that "[a] legislative act will not be declared unconstitutional unless its repugnance to the constitution is clear and beyond a reasonable doubt." Robinson v. Richland County Council, South Carolina Supreme Court, Opinion No. 22749, July 6, 1987. Because of the strong presumption of constitutionality accorded legislation and because of the Commission's authority to make recommendations and take other action concerning policies, programs, curricula, etc. of institutions of higher learning (§§59-103-135 and 59-103-60 of the Code), matters which indirectly effect funding, a court may be likely conclude that the proviso is not in conflict with Art. III, §17.

In conclusion, the proviso in question gives branch campuses the same representation on formal and informal councils as independent four-year public colleges, except as to the Formula Advisory Committee. These councils include ones on which all four-year public colleges are included, and consideration should be given to including one or more branch campuses on councils on which cross sectional representation is sought or which directly relate to the purpose of a particular branch. Because of the presumption of constitutionality accorded to legislation and because of the Commission's duties with respect to reviewing policies and programs, etc. of the State institutions of higher learning which effect funding, a court may be likely to find that the proviso is germane to the Appropriations Act.

If you have any questions, please let me know.

Yours very truly,



J. Emory Smith, Jr.
Assistant Attorney General

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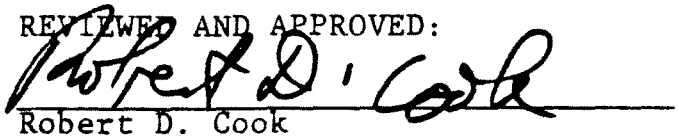

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