

1981 WL 158107 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 12, 1981

***1 Re: Requested Attorney General's Opinion**

Mr. Paul Jerald Ward
University Legal Counsel
Office of the President
Legal Affairs and Legislation
University of South Carolina
Columbia, South Carolina 29208

Dear Mr. Ward:

You have requested an opinion of this Office concerning the entitlement of the University of South Carolina (U.S.C.) to receive state funding for students attending U.S.C.'s Fort Jackson classes. The facts which underlay the dispute herein between U.S.C. and the South Carolina State Commission on Higher Education (CHE) are somewhat involved and not crystal clear; however, the facts as they have surfaced will be stated herein so that all parties will be aware of the factual basis for this opinion.

U.S.C. and, perhaps, other state supported institutions of higher education, have for some years offered college level courses to servicemen, federal employees, and their dependents at military bases in South Carolina. U.S.C. has offered classes in Columbia, Sumter, Myrtle Beach, and Beaufort; the classes have been offered at facilities actually located on the military installations, property of the United States government. Herein rests the origin of the dispute.

In 1973, CHE implemented a comprehensive policy with regard to instruction on military installations by state supported colleges. (Minutes of Meeting of South Carolina Commission on Higher Education, April 5, 1973, Appendix A). CHE in its 1973 policy acted to limit the scope of programs offered at military installations and clearly stated that such programs ought to be self-supporting. CHE further directed that any state subsidies be discontinued. Pursuant to the 1973 policy, U.S.C. did not submit a count of students receiving military base instruction to CHE in the University's projection of full time equivalent (FTE) students until 1979. In 1979, U.S.C. included military based students in its FTE projection for its Beaufort, Coastal Carolina, and Sumter campuses; U.S.C. did not include students at Fort Jackson along with projections for its Columbia campus. The projections submitted in September, 1979, were to be transmitted by CHE to the State Budget and Control Board and/or the General Assembly, specifically the House Ways & Means Committee, for inclusion in the 1980 General Appropriations Act, supporting the appropriation of state funds to U.S.C. on a per student basis for FTE students. [§ 59-103-35, Code of Laws of South Carolina](#), 1976, as amended. Upon discovery of the inclusion of the military students, CHE revised U.S.C.'s projection, deleted said students and submitted the projections to the Legislature.

The next sequence of events is somewhat cloudy due, primarily, to a lack of documentation. Apparently, at U.S.C.'s request, the House Ways & Means Committee reinstated U.S.C.'s original FTE projections which included military students at U.S.C.'s Beaufort, Coastal Carolina, and Sumter campuses; however, the Columbia campus projections were not amended to reflect the Fort Jackson students. (See Appendix B). Thus, at no time were the Fort Jackson students included in U.S.C.'s projected FTE student count. U.S.C. has been unable to provide a reason for not including the Fort Jackson students in its original submission to CHE in September, 1979, or not requesting the Ways & Means Committee to amend the Columbia campus projection.

***2** The situation herein is somewhat further confused by recent CHE action. On June 6, 1980, the Commission amended its 1973 policy, allowing credit hours taught on military installations to be included in the 'Revised Appropriation Formula'. This,

of course, would be accomplished through the FTE student projection. (Minutes, June 6, 1980, Appendix C). The relevant portion of Appendix C reveals that CHE did not specify when the new policy would become effective. Thereafter, CHE sought to clarify this point, and at its November 6, 1980, meeting the Committee on Business and Finance reported the intent of the Commission was for the new policy to apply to the 1981-82 fiscal year and not 1980-81. (Minutes, November 6, 1980, Appendix D).

Against this briefly stated factual background, U.S.C. generally contends that the Ways & Means Committee established a policy in amending the FTE student projections for U.S.C.'s branch campuses that will support a similar amendment for the Columbia campus projection. CHE, on the other hand, maintains that the Ways & Means Committee effected no such policy and contends that U.S.C. has waived any entitlement to such amendment by its failure to include the Columbia campus in its original September, 1979, projection or in its subsequent request to the Ways & Means Committee. Further, CHE relies upon its minutes, which reflect that its change in policy regarding state funding of instruction on military bases would not be effective until fiscal year 1981-82.

CHE is a state agency assigned broad duties in reviewing, studying, and making recommendations about matters concerning higher education in South Carolina. [Section 59-103-10, et seq., Code of Laws of South Carolina](#), 1976, as amended. In addition to the duties outlined in the Code, CHE and U.S.C. are assigned specific responsibilities with regard to determining FTE students. Act No. 517, Acts and Joint Resolutions of South Carolina, 1980 (1980 General Appropriations Act, § 23). The 1980 General Appropriations Act contains U.S.C.'s projected FTE enrollment for the Columbia campus, as well as branch campuses. From the projections contained in the Appropriations Act, U.S.C.'s appropriation from state funds will be modified, either increasing or decreasing the appropriation based upon a revised FTE student count, following certification by CHE to the State Budget & Control Board of U.S.C.'s actual FTE student enrollment for the fall of 1980.

The projections in the 1980 General Appropriations Act reflect the changes made by the Ways & Means Committee; therefore, the projections for the Coastal, Beaufort, and Sumter campuses include students receiving instruction on military installations. The projections in the Appropriations Act do not reflect the students at Fort Jackson in the projected FTE student count at the Columbia campus. Thus, no matter what the Ways & Means Committee may have intended by amending the FTE student projections at U.S.C.'s request, the entire General Assembly has passed upon the projections. Of course, in interpreting any statute, the primary goal is to determine the actual intention of the Legislature. Here, the General Assembly's confirmation of U.S.C.'s Columbia campus FTE projection without the inclusion of the Fort Jackson students can only lead to the conclusion that the General Assembly did not intend that those students be included. This conclusion is made more clear in light of the General Assembly's specific approval of the inclusion of the military students at Coastal, Beaufort and Sumter. For CHE to now allow U.S.C. to revise its figures for the Columbia campus would be tantamount to an administrative revision of a state statute duly enacted by the General Assembly. No citation is necessary to state that neither U.S.C. nor CHE has such authority.

*3 The position outlined in the previous paragraph is further confirmed in the General Appropriations Act, in which an appropriation is found for the University of South Carolina after the designation, 'Total Military Center' of \$300,020.00 under the heading of Total Funds. I am informed that funds listed under the heading of 'Total Funds' are revenues generated from sources other than state funds, and that the appropriation to U.S.C. following the designation 'Total Military Center' is for the operations of U.S.C.'s program at Fort Jackson, reflecting student fees that support the program. Thus, the General Appropriations Act bears out that the General Assembly specifically treated U.S.C.'s program at Fort Jackson on an entirely different basis from those at U.S.C.'s branch campuses.

Finally, the Citadel and South Carolina State College offered programs similar to those of U.S.C. in Charleston and at Shaw Air Force Base, commencing with fiscal year 1980-81. Neither the Citadel nor State College included the military students in their Fall, 1979 projections; however, both colleges claimed reimbursement for the military students in their actual Fall, 1980 FTE student count. CHE disapproved these claims, and no complaints or further action have been taken by the Citadel or State College with regard to the CHE position. This demonstrates that CHE has maintained a consistent position with regard to this matter, and apparently, the Citadel and State College agree or at least have acquiesced in CHE's position.

Based on the foregoing discussion, the opinion of this Office is that the University of South Carolina is not entitled to include students receiving instruction at Fort Jackson in the University's full-time equivalent student count for fiscal year 1980-81.

Sincerely,

Paul S. League
Assistant Attorney General

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