

1983 WL 182026 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 17, 1983

*1 Honorable Francis X. Archibald
South Carolina House of Representatives
1128 John Rutledge Avenue
Hanahan, South Carolina 29406

Dear Representative Archibald:

You have requested the opinion of this Office on several matters concerning a letter addressed on June 15, 1983, to Governor Riley by USC President Holderman and MUSC President Edwards, as to planned cooperation by the medical schools of the two universities. A copy of that letter is attached.

I. You ask several questions, the response to which can be made more clear by a general background as to the factual and legal situation concerning the two medical schools. Cooperation between the two medical schools and the best use of funds for joint programs have been a concern of the General Assembly since the authorization of the USC medical school. For example, [Section 59-101-190, Code of Laws of 1976](#), as amended, establishes a joint Dean's Committee on Medical Doctor Education, an advisory committee to assure coordination between the State's two medical schools to achieve operational efficiency.

The Joint Consortium Board referred to in the June 15, 1983, letter from the two university presidents, is an advisory board established by the two universities in response to the General Assembly's requirement in the 1982-83 Appropriations Act, that USC participate in the 'consortium of community teaching hospitals.' See Section 23, Act 466 of 1982. As you will note from the attached opinion of this Office, dated July 26, 1982, the General Assembly absolutely required such cooperation. The agreement of the two university presidents to expand the membership and enlarge the scope of their joint advisory committee, would appear to be a logical response to the Governor's and the General Assembly's expressed requests for greater coordination and cooperation between the two medical schools.

It is important to bear in mind that this advisory committee may only make recommendations to the boards of trustees of the two universities, which have plenary statutory powers to govern their institutions. See [Code § 59-117-40](#), as to the University of South Carolina board; and [Code § 59-123-60](#) as to the Medical University, generally. The USC Board's powers specifically include the appointment of committees, which would include a joint advisory committee in our opinion. Then, ultimately, the programs and budgets approved by the two Boards must be passed upon by the State Commission on Higher Education (CHE) before submission to the Budget & Control Board and to the General Assembly. See, [Code § 59-103-35](#), as amended. If either university proposes a program or budgetary adjustment within the fiscal year, that too must be reviewed by the CHE, and any fund transfers from one appropriated account to another approved by the Budget & Control Board. See, Section 141 of Act 151 of 1983, the current Appropriations Act.

You state in your letter that several questions were raised in your mind from reports (presumably news articles) received by you, indicating the two university presidents had each agreed to shift \$750,000 in funding from medical education to health programs for young children, at the urging of the Governor and to avert a possible \$5 million gubernatorial veto in their budgets. You will note from the two presidents' letter that the report was factually incorrect, in that they simply committed to seek their respective board's approvals to the program and that the proposed shift of \$750,000 was not from medical education but to increase emphasis in programs and research on health and development of young children and health of the elderly.

*2 II. With this background we turn to the questions stated in your letter.

(1) 'Your opinion is requested as to the legality and constitutionality of the presidents making such a switch in funds after the budget has been written by the General Assembly.'

The answer is, of course, that the two presidents themselves can make no such change, as their letter states. If the two university boards of trustees approve the proposed change in program it must be reviewed by the CHE, and no funds could be actually transferred even within the medical education budgets until approved by the Budget & Control Board, as authorized by the General Assembly. We, therefore, perceive no legal or constitutional problem if all the proper steps are followed in making the proposed change in program.

(2) 'A similar opinion is requested as to the alleged action by the Governor to bring about this switch in funds.'

This Office is not privy to the alleged conversations between the Governor and the two presidents. Whether or not a Governor should choose to use a threat of veto, if such occurs, is a political question, not a legal or constitutional one. There can be no doubt the Governor has the veto power. [S. C. Constitution, Article IV, Sec. 21](#). Whether he chose to exercise it in this case, the programs and use of funds at the two medical schools could not be decided by the Governor. Any change in programs and budgets must go through the legal and statutory steps above-described. The two presidents only committed themselves to seek such approval.

(3) 'Finally, your opinion as to the legality and constitutionality of the presidents of the two medical schools agreeing to expand a joint coordinating board for medical education without submitting this matter to the General Assembly.'

As above mentioned, such a joint committee is merely an advisory body and has no power to make decisions. It has long been the custom of State officers, agencies, and institutions to set up advisory committees to assist in important problem solving. The interest and insistence of the General Assembly in better coordination and cooperation of the State's two medical schools, would appear logically to dictate the expansion of their joint committee. Ultimately, their advice cannot impinge on the powers of the General Assembly. If their budget advice is accepted and approved by the trustees of USC and MUSC, the budgets still must be reviewed by the CHE and the Budget & Control Board before forwarding to the House of Representatives. Only when those budgets are adopted in an Appropriations Act will they become final; and they may be thereafter modified only to the limited extent provided by the statutory processes governing higher education programs and budget adjustments.

Sincerely,

Frank K. Sloan
Chief Deputy Attorney General

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