

1981 WL 157918 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 17, 1981

**\*1 RE: Requested Attorney General's Opinion**

Mr. Edward M. Shannon, III  
Director  
South Carolina Tuition Grants Agency  
411 Keenan Building  
Columbia, South Carolina 29201

Dear Mr. Shannon:

You have requested an opinion of this office concerning the effect of two provisos included in § 16 of the State General Appropriations Act for fiscal year 1981-82 (H2461, R232). Section 16 of the Act appropriates money to the South Carolina Higher Education Tuition Grants Committee (Committee) to carry out its mission during fiscal year 1981-82; moreover, § 16 contains four provisos directing the Agency to expend its appropriation in a particular manner. Specifically, you have sought advice as to how your Agency will carry out two provisos in particular, which, considering the Agency's total funding, appear to be in conflict with each other.

The two provisos in question read as follows:

Provided, that no student may be refused a tuition grant based on the fact that he or she did not apply for a grant in any particular year; however, no student grant shall be reduced below its 1980-81 level.

Provided, Further, that it is the intent of the General Assembly to grant awards to all eligible South Carolinians in 1981-82 if sufficient funds are appropriated to do so, but, provided that in any event the number of awards made in 1981-82 be increased by ten percent of the number of awards made in 1980-81.

The problem confronting the Committee in carrying out the mandate of the two provisos is made clearer and is exacerbated by the Governor's veto of a third proviso, preventing the Tuition Grants Agency from carrying forward and expending in fiscal year 1981-82, unexpended funds from last year. The problem confronting the Committee as presented in your opinion request is that students receiving grants last year may not have those grants reduced this year, while the Agency must increase the total number of grants. Thus, the Committee is faced with increasing total number of grants without sufficient funds to make grants in compliance with Committee guidelines.

The first proviso quoted hereinabove, while not drafted in terms of making it crystal clear, seems to require that a student receiving a grant during 1980-81 and eligible for a grant this year receive a grant no smaller than last year's. This is a fair reading of the first proviso, considering that eligible students are considered individually under Committee guidelines.

The second proviso initially requires the Committee to make awards to all eligible South Carolinians, but the proviso includes a condition on this requirement, releasing the Committee from this obligation if insufficient funds are appropriated to carry out the mandate. The General Assembly, however, within the same overall proviso inserted a second requirement that the number of awards made in 1981-82 be increased by ten percent over last year. This requirement is not conditioned upon the appropriation of sufficient funds. The General Assembly very clearly stated its intention that the number of awards in 1981-82 be increased

by ten percent over last year 'in any event'. Thus, the Committee is faced with increasing the total number of grants without sufficient funds to make awards equal to those students receiving grants last year.

\*2 The cardinal rule in interpreting or construing statutes is to discern and follow the intention of the General Assembly. Here, the provisos must be read together and given their fullest effect within the intended meaning of legislature. The first proviso places an absolute requirement on the Committee to make awards to students receiving grants last year at no less a level than last year's grant. In order to carry out the requirement of the second proviso, grants could not be made to eligible students in amounts similar to those of last year's grantees, because the Committee is left with insufficient funds after funding grantees under the first proviso. This fact, standing alone, is insufficient to relieve the Committee from implementing the mandate of the second proviso. The General Assembly recognized that sufficiency of funds might prevent the Committee from making awards to all eligible South Carolinians; however, with such recognition in mind, the General Assembly proceeded to require a ten percent increase in awards without conditioning such increase upon sufficiency of funds appropriated. Therefore, the apparent intention of the General Assembly was that a ten percent increase of awards be made, regardless of the amount of funds available to make such increase.

Generally, a proviso is construed as are other statutes, and a proviso within a statute is to be construed in connection with the body of the act. [Ponder v. City of Greenville](#), 196 S.C. 79, 12 S.E.2d 851 (1941). Further, the usual purpose of a proviso is to modify or condition the immediately preceding portion of a statute or restrain and qualify language that follows a proviso. [Cain v. South Carolina Public Service Authority](#), 222 S.C. 200, 72 S.E.2d 177 (1952). Here, the provisos in question stand alone and do not directly relate to one another. In [State ex rel. Walker v. Sawyer](#), 104 S.C. 342, 88 S.E. 894 (1916), the court, in construing a proviso, stated:

The words 'provided that' are usually used to express a condition, limitation, or exception. Perhaps, no words more apt for the purpose could be chosen. But they are not always so used; and their meaning must be gathered from the context in a consideration of the whole instrument.

Thus, the second proviso must be interpreted in light of the first proviso. The court, in [Walker](#), proceeded to discuss an exception to the plain meaning rule in statutory construction. The court will not give effect to the ordinary words used in a statute if such interpretation leads to a plainly absurd result that the court cannot find intended by the Legislature.

Here, the requirement of the second proviso cannot be construed as so plainly absurd that the Legislature did not intend the ordinary meaning thereof. This is probably a correct reading of § 16 of R232 alone; however, reference to § 16 of Act No. 517, Acts and Joint Resolutions of South Carolina, 1980 (1980 State General Appropriations Act), leads to a similar conclusion. The 1980 General Appropriations Act appropriates approximately the same amount of funds for the grants program as is appropriated in the 1981-82 Act. Further, the two provisos in question here are new ones, included with the Committee's appropriations for the first time in 1981-82. Thus, the General Assembly clearly intended to restrict the discretion of the Committee in making tuition grants.

\*3 Therefore, based upon the foregoing discussion, the opinion of this office is that the Committee may not reduce the grant of any eligible student this year below the amount of the grant awarded the same student last year. In addition to this requirement, the Tuition Grants agency is required to increase the total number of grants awarded this year by ten percent over last year with whatever funds are left over after implementing the first proviso.

Sincerely,

Paul S. League  
Assistant Attorney General

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