



ALAN WILSON
ATTORNEY GENERAL

August 4, 2021

The Honorable Richard A. Harpootlian, Member
South Carolina Senate
Post Office Box 1090
Columbia, SC 29202

Dear Senator Harpootlian:

We are in receipt of your letter of August 3 expressing disagreement and disappointment with our recent guidance to the University of South Carolina regarding Provisos 117.163 and 117.190. As to your question concerning who had made the inquiries regarding the University's COVID-19 Guidelines, these inquiries were made by Representative Stewart Jones, who sent us a letter and several follow up emails and Representative Chris Wooten who I spoke to by telephone. Your inference that no inquiries had been made to this Office is incorrect.

Second, as to any inference that Proviso 117.163 was, in your view, applied erroneously, our letter plainly states that the University was compliant with the Proviso. The University is requiring a one-time student COVID test upon return to campus or, in the alternative, a student may choose to reveal proof of a vaccination or that he or she has tested positive for COVID-19 in the past 90 days for an exemption from the requirement of testing. We concluded that this policy does not violate the Provisos. Had you more carefully read our letter, you would have surely seen that we agreed with the University's Guidelines in this regard. We simply asked the University to clarify that it was not requiring vaccinations as a condition for admission or enrollment, which it did.

Yet, you chose to focus upon the mask requirement. As to the intent of Proviso 117.190 relating to masks, Representative Jones advised us that "[a]s the author of the Proviso, I'd like to state that the intent of Proviso 117.190 is to ensure that the choice of wearing a mask or getting a COVID vaccine is left to the students individually and not required in order to be present (emphasis added). Please address this in your opinion." We were informed that there were numerous co-sponsors to Representative Jones' Proviso.

Thus, while you have your view of the Proviso's meaning, other members of the General Assembly, who were involved in its drafting, view the legislative intent quite differently. Our letter squarely addresses this, pointing out that, read literally, the University's reading was reasonable. However, we are required to defer to legislative intent which is, of course, always

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controlling from a legal standpoint. As our Supreme Court has recognized, legislative intent may override the literal language where a statute is subject to more than one reading.

There is, however, an easy fix to your concerns and one which avoids vitriolic attacks. As you know, no statute is written perfectly, particularly in the haste of adopting a state budget. You are an influential Senator and a persuasive advocate. If your view of legislative intent of Proviso 117.190 is correct, and the understanding of Representatives Jones and Wooten is incorrect, it should be a simple matter for you to propose and push through to enactment a clarifying amendment to reflect what you perceive as the true intent of the General Assembly. As we stated in our August 2 letter, it is the Legislature who sets state health policy in the final instance, not the University of South Carolina or the State Attorney General. This Office did not create the problem. Again, if you believe the intent of the Legislature was in accordance with your view, I strongly urge you to seek a clarifying amendment of Proviso 117.190 when the Legislature returns in September.

Sincerely,



Alan Wilson
Attorney General

cc: The Honorable Harris Pastides