1972 WL 25319 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
May 19, 1972

***1 Re: H-3169**

The Honorable Rembert C. Dennis
Senator
Box 1174
Moncks Corner, South Carolina 29461

Dear Senator Dennis:
You have requested the opinion of this Office as to whether the second paragraph of Section 2 of the above bill would subject the present University Branches and Centers under the direction of the University of South Carolina and Clemson University, respectively, to the jurisdiction of the Commission on Higher Education so as to require the approval of the latter Commission before new courses may be undertaken.

Paragraph 2 of Section 2 provides:
'It is further provided that such University Branches and Centers are hereby specifically authorized to offer courses in the junior level where—and to offer in the senior level when—, both subject to the approval of the Board of Trustees of the University concerned.'

Section 22-15.9, relating to the Commission on Higher Education, provides, in part:
'No new program shall be undertaken by any State-supported institution of higher learning without the approval of the Commission or the General Assembly.'

This section was enacted in 1967.

Should the amendment to H-3169, quoted above, be adopted, it is the opinion of this Office that the offering of courses on the junior and senior levels would be a matter vested in the discretion of the respective boards of trustees of the University concerned and that the Commission on Higher Education would have no authority with respect thereto. The word 'program' as used in Section 22-15.9 is not defined by statute but it would appear reasonable to construe the same as synonymous with 'courses.' The pre-existing statute creating the Commission on Higher Education vests it with authority over any subsequently created State-supported institution of higher learning, in the absence of a statutory directive to the contrary by the General Assembly. Such directive appears to be found in the amendment, quoted above, which vests the authority for the approval of courses in the junior and senior levels by University Branches specifically in the Board of Trustees of the University concerned. Such a declaration is, of course, the last pronouncement by the General Assembly with respect to this matter and, in the opinion of this Office, the authority so vested cannot be reconciled with the authority given to the Commission on Higher Education by Section 22-15.9.

Evidence of the legislative intent, which appears to clearly state these conclusions, is found in the proposed amendment to H-3169, which would have the effect of specifically providing that the approval of programs and courses should be subject not only to the trustees of the University concerned, but 'to further approval of the Commission on Higher Education—.' Evidence of intent is likewise found in a resolution adopted by the Commission on Higher Education which obviously considered that the second paragraph of Section 2, quoted above, would have the effect of depriving the Commission on Higher Education

  

of any authority with respect to the offering of new courses and programs at the two University Branches. The resolution considered the provisions of H-3169, with the amendment set forth above, and expressed the view that 'the Commission on Higher Education (should) retain its authority as provided by existing legislation to approve new program offerings at all State-supported institutions, and the House version of the bill should so be amended to accomplish that purpose.' The amendment proposed on May 18, 1972, seeks to implement the objectives of this resolution.

***2** This appears to be a clear statement of legislative and administrative construction of the bill in its present form that the Commission on Higher Education would be deprived of any authority with respect to new programs at the University Branches.

The problem presented is a difficult one, involving application of rules of statutory construction. This has led to a difference of opinion among Assistants who have considered the matter at length in this Office. On balance, however, it appears more reasonable to conclude that with the proposed amendment before it, the General Assembly has the choice of vesting the Commission on Higher Education with supervisory authority over the inclusion of new courses in the University Centers, and if it should reject this amendment, it would seem to evidence the clear legislative intent that the sole discretion in such instances is vested in the University trustees concerned.

It is therefore the opinion of this Office that H-3169, as presently worded, does not subject the University Branches referred to therein to the jurisdiction or authority of the Commission on Higher Education with respect to the offering of new courses and programs. The rejection of the proposed amendment would clearly evidence the legislative intent, the ascertainment of which is the paramount objective of statutory construction, whereas the inclusion of the amendment would resolve the issue beyond doubt.

Very truly yours,

Daniel R. McLeod
Attorney General

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