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CHARLES MOLONY CONDON
ATTORNEY GENERAL

March 19, 1998

George L. Schroeder, Director
Legislative Audit Council
400 Gervais Street
Columbia, South Carolina 29201

Re: Informal Opinion

Dear Mr. Schroeder:

You state that the Legislative Audit Council is conducting a review of Francis Marion University. You have raised two specific questions which are necessary for you to complete that review. These are:

1. What is the precise meaning of the term "scholarship aid" listed in South Carolina Code § 59-112-70? Which types (academic, athletic, other) and amounts of scholarships may be considered "scholarship aid" by state supported educational institutions for the purpose of abating non-resident fees?

2 The Commission on Higher Education (CHE) has adopted guidelines that define scholarship aid. The relevant CHE guideline requires that non-resident students receive academic scholarships of 250 or more per semester in order to receive a non-resident fee waiver and be counted as a resident for funding purposes. What is the legal authority of these guidelines?

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Request Letter

Law / Analysis

No definition of "scholarship aid" is contained in § 59-112-70 or in § 59-112-10 et seq. The statute simply provides that "[n]otwithstanding other provisions of this chapter, the governing boards listed in § 59-112-10A above, are authorized to adopt policies for the abatement of any part or all of the out-of-state rates for students who are recipients of scholarship aid." I note also that the heading in the Code for § 59-112-70 states "Abatement of rates for students on scholarship." An examination of our past opinions reveals no assistance in further defining or delineating the meaning of this particular statute.

In attempting to determine the meaning of § 59-112-70, a number of principles of statutory interpretation are relevant. First and foremost, of course, is the time-honored tenet that all rules are subservient to the one which requires that legislative intent must prevail. State v. Harris, 268 S.C. 117, 232 S.E.2d 231 (1977). Moreover, a court will reject the meaning of the words of a statute which would lead to absurd consequences. Robson v. Cantwell, 143 S.C. 104, 141 S.E. 180 (1928). Words used must be given their plain and ordinary meaning without resort to subtle or forced construction for the purpose of limiting or expounding the statute's operation. In other words, the real purpose and intent of the lawmakers will prevail over the literal import of the words. Caughman v. Cola. Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1948). Walton v. Walton, 282 S.C. 165, 318 S.E.2d 14 (1984). The context of the statute must be examined as part of the process of determining the intent of the General Assembly. Hancock v. Southern Cotton Oil Co., 211 S.C. 432, 45 S.E.2d 850 (1948). The Court must presume that the Legislature intended by its action to accomplish something and not do a futile thing. State ex rel. McLeod v. Montgomery, 244 S.C. 308, 136 S.E.2d 778 (1964).

Moreover, it is well established that construction of a statute by the agency charged with its administration is entitled to most respectful consideration and should not be overruled without cogent reasons. Logan and Associates v. Leatherman, 290 S.C. 400, 351 S.E.2d 146 (1986); Emerson Electric Co. v. Wasson, Inc., 287 S.C. 394, 339 S.E.2d 118 (1986). Where the administrative interpretation is long-standing and has not been expressly changed by the General Assembly, such construction is entitled to even greater deference. Marchant v. Hamilton, 279 S.C. 497, 309 S.E.2d 781 (S.C. App. 1983). The Court will defer to such interpretation where it is reasonable even if it is not the only reasonable construction.

A "scholarship" is ordinarily defined as an allowance to an undergraduate or graduate of a university to aid him in prosecuting his studies. Ussery v. U.S., 296 F.2d

582, 585 (5th Cir. 1961). Scholarship aid connotes the purpose of assistance that stands in distinction to self-interest or employer compensation to his employee. Id. The phrase "scholarship" is generally defined to mean maintenance for a scholar or student and the foundation for the support of a student rather than payment for services rendered. Pelz v. U.S., 551 F.2d 291, 292 (U.S. Ct. Cl. 1977). Teaching assistant funds have been held to be compensation for services rather than a scholarship or fellowship. Steinmetz v. U.S., 343 F.Supp. 384, 385 (N.D. Cal. 1972). See also, Bingler v. Johnson, 394 U.S. 741, 89 S.Ct. 1439, 1448, 22 L.Ed.2d 695 (1969).

As stated above, nothing in the statute attempts to define "scholarship aid" or seeks to set a minimal dollar amount for what constitutes a "scholarship." Moreover, nothing in the statute distinguishes between the types of "scholarship aid" being referenced therein (i.e. academic, athletic etc.). Based upon a literal reading of the statute, in other words, one could argue that any amount of financial assistance of whatever nature -- no matter how small, or no matter for what purpose -- could be deemed to constitute "scholarship aid."

However, to my mind, such a literal interpretation is inconsistent with the purpose of the General Assembly in enacting § 59-112-10 et seq. The statute as a whole seeks to distinguish between "... the amounts which resident and non-resident students must pay as tuition." Op. Atty. Gen., July 16, 1973. Thus, it would appear inconsistent with this purpose to construe the "scholarship aid" exception, allowing non-residents to pay the in-state rate, in such a literal manner so as to permit virtually any token payment to qualify as "scholarship aid"; such a reading would enable the statute to be circumvented by allowing virtually all non-resident students to pay in-state rates.

You note that the Commission on Higher Education "has adopted guidelines that define scholarship aid" requiring "that non-resident students receive academic scholarships of $250 or more per semester in order to receive a non-resident fee waiver and be counted as a resident for funding purposes." It would appear to me that, in the absence of more definitive guidance in the statute itself, these are reasonable criteria for interpretation of the law. This is particularly so inasmuch as these guidelines have not been changed or altered by the General Assembly.

With respect to the authority for promulgating such guidelines, I would assume that the Commission on Higher Education would reference § 59-112-100 as its authority therefor. Such provision states that

> [t]he Commission on Higher Education may prescribe uniform regulations for application of the provisions of this chapter and may provide for annual review of such regulations.

It would seem, based upon its broad sweep, that this statute would be sufficient to enable the CHE to render the guidelines you reference. Inasmuch as CHE has been designated by the General Assembly as the agency to promulgate uniform regulations regarding resident and non-resident tuition, it would appear that a court would give the CHE guidelines considerable deference in this regard.

I note that § 59-112-70 does authorize the governing boards of the State's colleges and universities to "adopt policies for the abatement of any part or all of the out-of-state rates for students who are recipients of scholarship aid." Thus, there is left to the governing boards of colleges and universities considerable discretion and leeway with respect to the "abatement of any part or all of the out-of-state rates for students" who are recipients of scholarship aid. Reading § 59-112-70 together with § 59-112-100 (which is codified later in the chapter), it would appear reasonable to apply Subsection -70 in terms of the college's discretion to abate any part or all of its out-of-state rates to scholarship recipients; however, the CHE, which is empowered to prescribe "uniform regulations," would define what is meant by "scholarship aid". In short, the CHE defines what "scholarship aid" is, but the colleges and universities possess the discretion to then apply this definition to their non-resident students through a determination of university policy with respect to "the abatement of any part or all of the out-of-state rates for students". Such a reading of the statutes in harmony with one another thus, gives substantive meaning to both.

We would emphasize, as we have in the past, that there are numerous ambiguities contained in § 59-112-10 et seq. and that the General Assembly may wish to clarify the statute. Simply put, the statute needs further delineation of what constitutes "scholarship aid". Until such time, however, as any legislative amplification is forthcoming, I would recommend that the CHE guidelines regarding this definition be followed as a reasonable interpretation of § 59-112-70. These CHE guidelines provide a "uniform" definition of "scholarship aid" which all schools of higher education can follow in the absence of further definition in the statute by the General Assembly. Moreover, based upon my interpretation of § 59-112-70, the CHE possesses sufficient statutory authority to interpret the meaning of "scholarship aid" through these guidelines.

This letter is an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney

as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kind regards, I am

Very truly yours,

Robert D. Cook
Assistant Deputy Attorney General

RDC/an