

## The State of South Carolina



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February 2, 1994

Mr. Edward M. Shannon, III  
Executive Director  
S.C. Higher Education Tuition Grants Commission  
Keenan Building, Suite 103  
Post Office Box 12159  
Columbia, SC 29211

Dear Eddie:

You have requested the opinion of this Office as to whether South Carolina residents attending Columbia Bible College are eligible to receive assistance through the South Carolina Tuition Grants Program due to the decision of the United States Supreme Court in the case Witters v. Washington Dept. of Services for the Blind, 474 U.S. 41, 88 L.Ed.2d 846, 106 S.Ct. 748 (1986). According to your letter, the only Columbia Bible College students who have been considered eligible to receive assistance from the Tuition Grants Program have been those who were enrolled in the education major. Your question is whether all otherwise eligible Columbia Bible College students are entitled to receive assistance.

This type of aid appears to be constitutional under the Establishment Clause of the First Amendment of the United States Constitution according to Witters and the more recent case, Zobrest v. Catalina Foothills School District, \_\_\_ U.S. \_\_\_, \_\_\_ L.Ed.2d \_\_\_, 113 S.Ct. 2462 (1993). In Witters, at issue was vocational rehabilitation services assistance paid to students who then transmitted it to the educational institution of their choice. In that case, a student wanted to use the assistance for attendance at a private Christian college where he would be studying subjects including the Bible and church administration. The Court upheld the constitutionality of aid to that student in that any aid that "...ultimately flows to religious institutions does so only as a result of the genuinely independent and private choices of aid

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recipients." 474 U.S. at 488, 106 S.Ct. at 752. In Zobrest, the Court held that the provision of a sign-language interpreter to a deaf student to attend classes at a Roman Catholic high school would not violate the Establishment Clause. The Court found that Witters applied in that case, and some of the Court's reasoning was as follows:

The service at issue in this case is part of a general government program that distributes benefits neutrally to any child qualifying as "handicapped" under the IDEA [Individuals with Disabilities Education Act, 20 USC § 1400, et seq.], without regard to the "sectarian-nonsectarian, or public-non-public nature" of the school the child attends. By according parents freedom to select a school of their choice, the statute ensures that a government-paid interpreter will be present in a sectarian school only as a result of the private decision of individual parents. 113 S.Ct. at 2407.

The same reasoning in these cases applies here. Among eligible institutions, the decision as to where to use a tuition grant is that of the student rather than of the Commission. South Carolina's program, as was Washington's, is "made available generally without regard to the sectarian-nonsectarian, or public-non-public nature of the institution benefitted." Witters, 474 U.S. at 487, 106 S.Ct. at 752 (quoting Committee for Public Education and Religious Liberty v. Nyquist, 413 U.S. 756, 782-783, n. 38, 37 L.Ed.2d 948, 93 S.Ct. 2955, 2970, n. 38 (1973)). The Tuition Grants Program creates no financial incentive for students to choose a sectarian school and it is a neutral program that "is in no way skewed towards religion." Witters, 474 U.S. at 488, 106 S.Ct. 752; see Zobrest, 113 S.Ct. at 2467.

For these same reasons, this aid does not appear to be violative of art. XI, § 4, of the South Carolina Constitution which prohibits money paid from public funds from being "used for the direct benefit of any religious or other private educational institution." Hartness v. Patterson, 255 S.C 503, 505, 179 S.E.2d 907 (1971), held that tuition grant money violated a previous version of this constitutional provision which prohibited aid for the "indirect" as well as direct benefit of such institutions. The problem in that case was that the aid was indirect, but this constitutional provision has since been amended to delete this provision. Therefore, since Hartness did not indicate that the aid would be for the direct benefit of the institution, the tuition grants assistance for students attending Columbia Bible College should not be violative of present art. XI, § 4. Although Hartness held that the tuition grant money was "of material aid to the institution to which it is paid", it does not appear to be of any more aid to the institution than the benefits upheld in Witters.

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A final question to be addressed is whether the aid to Columbia Bible College students would be violative of § 59-113-20(e) which includes as a qualification for assistance that the student not be "...enrolled in a course of study leading to a degree in theology, divinity or religious education." According to the 1993/94 Academic Catalog of Columbia Bible College which you sent with your opinion request, the College offers three study options: a one-year "Bible Certificate", a two-year "Associate of Arts" degree and a four-year "Bachelor of Arts" or "Bachelor of Science" degree. See Catalog at pages 14-19.

Giving the above statutory provision its plain meaning<sup>1</sup> indicates that the Associate Degree and Bachelor's Degree programs would not be covered by paragraph (e) because they are degrees in matters other than "theology, divinity or religious education." That the prohibition would not apply to majors in religious subject areas is indicated by the plain use of the word "degree" and also by paragraph (d) of § 59-113-20 which excludes students from eligibility if they are attending institutions of higher learning whose academic programs are comprised "solely of sectarian instruction." (Emphasis added). The use of the word "solely" indicates that institutions having a mix of sectarian and nonsectarian instruction such as Columbia Bible College would be qualifying for their otherwise eligible students.

Finally, the catalog describes the Bible Certificate Program as a "foundational year for all other two and four year programs." Students have the option at the end of the program to continue for two or four year degrees. Whether the word "certificate" would be deemed a "degree" under § 59-113-20 need not be answered because the Bible Certificate Program is a foundational program for the other two and four year programs which are qualified, as discussed above. See § 59-46-10 (4). If the Bible Certificate Program students were excluded, others enrolled in the two and four year program could be excluded as well, but the legislature has not indicated such an intent.<sup>2</sup>

Although § 59-113-20 does not appear to exclude the Columbia Bible College programs, you may want to seek legislative clarification of what appears to be a legislative intent not to exclude such programs. See Note 2. These conclusions about the degrees and the certificate are not intended to preempt the Commission from reaching a different conclusion based upon other facts. Factual

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<sup>1</sup> "Where the terms of a statute are clear and unambiguous,...[the Court] must apply them according to their literal meaning." South Carolina Department of Highways and Public Transportation v. Dickinson, 288 S.C. 134, 341 S.E.2d 134 (1986).

<sup>2</sup> Legislative intent is the dominant factor in the construction of statutes. Spartanburg Sanitary Sewer District v. City of Spartanburg, 283 S.C. 67, 321 S.E.2d 258 (1984).


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investigations are beyond the scope of opinions of this Office, (Ops. Att'y Gen. December 12, 1983); however, § 59-113-20 does not appear to exclude these programs as they are described in their catalog.

In conclusion, neither § 59-113-20, S.C. Const. art. XI, § 4, nor the Establishment Clause of the United States Constitution appear to bar tuition grants assistance to otherwise eligible students at Columbia Bible College who are enrolled in the above-described programs. If any other programs exist there, this opinion is not intended to address them. This opinion also does not address the question of whether the free exercise clause of the First Amendment requires that tuition grants assistance be extended to such students. Witters did not address that issue nor did Zobrest.

I hope that this information is of assistance to you. If you have any questions, please let me know.

Yours very truly,



J. Emory Smith, Jr.  
Deputy Attorney General

JESjr:ppw

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