

05-5519

# The State of South Carolina



## Office of the Attorney General

T. TRAVIS MEDLOCK  
ATTORNEY GENERAL

REMBERT C. DENNIS BUILDING  
POST OFFICE BOX 11549  
COLUMBIA, S.C. 29211-1549  
TELEPHONE: 803-734-3970  
FACSIMILE: 803-253-6283

February 21, 1995

Mr. Fred R. Sheheen  
Commissioner  
South Carolina Commission on Higher Education  
1333 Main St.  
Columbia, SC 29201

Re: Informal Opinion

Dear Fred:

You have requested the advice of this Office as to whether the Commission on Higher Education is required to ensure that nonpublic postsecondary institutions in this State comply with the Americans with Disabilities Act (ADA) (42 U.S.C. §12101 et seq.) as a condition of their licensure by the Commission. See S.C. Code Ann. § 59-58-10 et seq. (Supp. 1993). The Commission does not appear to be required to ensure ADA compliance by these institutions seeking licensure.

Federal regulation 28 CFR §35.130(6) states that "...[t]he programs or activities of entities that are licensed or certified by a public entity are not, themselves, covered by this part." Because the preceding part of §35.130(6) addresses nondiscrimination by public entities in administering licensing programs, this regulation appears to exempt an entity from requiring ADA compliance by an institution that it licenses. State law does not appear to impose any additional requirements on the Commission to enforce this federal law under these circumstances. See §§ 59-58-40 and 59-58-50 and 25A S.C. Code Ann. Reg. 62-6(H).

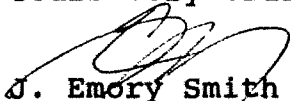
The conclusion herein is limited to the absence of any requirement that the Commission condition licensure upon ADA compliance. This letter does not address the scope of such licensing criteria as "adequate space, equipment" and "sufficient learning resources" under Reg. 62-6(H). Finally, this letter is an informal opinion. It has been written by a designated Deputy Attorney General and represents the position of the undersigned attorney only as to the specific questions asked. It has not,

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however, been personally reviewed by the Attorney General nor  
officially published in the manner of a formal opinion.

If you have any questions, please let me know.

Yours very truly,



J. Emory Smith Jr.  
Deputy Attorney General

JES