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The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON
ATTORNEY GENERAL

May 21, 1996

Anthony J. DiGiorgio, President
Winthrop University
114 Tillman Hall
Rock Hill, South Carolina 29733

Re: Informal Opinion

Dear President DiGiorgio:

You have requested the advice of this Office as to two matters concerning Winthrop's faculty. These issues are separately addressed below.

Your first question is whether Winthrop may pay faculty members on nine month contracts at the outset of the contract period. The Auditor's Office has noted the possible applicability of S.C. Code Ann § 8-11-30 which states in part that "[i]t shall be unlawful for anyone to receive from the State.. or..pay salaries...that are not due to State employees..." The only exception therein is for the month of December.

The identical codification of this provision at § 1-42 in the 1962 Code of Laws has been interpreted previously as prohibiting payment of salaries of State employees in advance. Ops. Atty. Gen. (April 7, 1975). Therefore, payments in advance of work performed cannot be made to faculty members under § 8-11-30 without violating this provision. You have noted that nine month faculty frequently spend much of the summer updating their knowledge, conducting research and planning and preparing for classes. Such activities could not be compensated at the outset of the contract period unless the activities to which you refer come within the terms of the contract. I suggest that you review the contract and the related facts and talk to the Auditor's Office about whether those facts might permit the payment at the outset of the contract period. Normally, fact findings are beyond the scope of opinions of this Office. Ops. Atty. Gen. (December 12, 1983).

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You have also asked whether Winthrop may continue to permit faculty to enroll in up to six credit hours of classes per semester at a rate of \$10 per credit hour. Section 59-111-15 (Supp. 1995) authorizes State colleges, universities and vocational and technical colleges "to provide assistance for educational expenses...to its permanent faculty and staff... [but they] are not entitled to assistance provided in this section for more than four credit hours a semester." The "...primary function in interpreting a statute is to ascertain the intention of the legislature." South Carolina Department of Highways and Public Transportation v. Dickinson, 288 S.C. 134, 341 S.E. 2d 134 (1986). This statute plainly limits the tuition assistance to four hours per semester. I have located no provision of State law that would alter this limitation for Winthrop faculty or authorize Winthrop to adopt a different policy. Therefore, Winthrop may not provide more than four credit hours of assistance to its faculty.

This letter is an informal opinion. It has been written by the designated Assistant Deputy Attorney General and represents the opinion of the undersigned attorney as to the specific questions asked. It has not, however, been personally reviewed by the Attorney General nor officially published in the manner of a formal opinion.

If you have further questions, please let me know.

Yours very truly,

J. Emory Smith, Jr.

Assistant Deputy Attorney General

JESjr