ALAN WILSON
ATTORNEY GENERAL

February 18, 2015

The Honorable W. Brian White
Chairman, House Ways and Means Committee
525 Blatt Building
Columbia, SC 29211

Dear Chairman White:

You have requested an opinion regarding the financial crises of South Carolina State University. By way of background, you state the following:

> . . . the Higher Education and Technical Schools Subcommittee has recommended to the Ways and Means Committee to suspend all operations at South Carolina State University. The subcommittee proposed to dismiss the board of trustees and to terminate the employment of the president and the faculty and staff. Furthermore, a joint resolution removing the current members of S.C State's Board of Trustees and devolves its duties to the Budget and Control Board has been referred to the Ways and Means Committee for consideration. I ask you to research the authority of the General Assembly to take these actions and the legal ramifications a suspension or devolution of the university may have.

Law/Analysis

At the outset, it is important to emphasize that you have requested a legal opinion of this Office. We note that the Office takes no position on the policy considerations of the proposals you outline in your letter or in the legislation you have attached. Such policy considerations are the exclusive province of the General Assembly and this Office has no comment thereupon.

By way of background, we quote from several prior opinions regarding South Carolina State. In my opinion, dated April 5, 1990, we stated the following:

> South Carolina State has evolved out of the Colored Normal Industrial Agricultural and Mechanical College of South Carolina, first established in 1872 as the South Carolina Agricultural and Mechanical Institute and existing with Claflin College. In 1890, the College existed as a branch and was under the control and management of the University of South Carolina (then South Carolina College) when the General Assembly required the separation of South Carolina Agricultural and Mechanical Institute from Claflin College and the reorganization of the branches

> after July, 1891. Consequently, the Colored Normal Industrial Agricultural and Mechanical College of South Carolina was formed with a Land Grant Mission and the name of the institution was subsequently changed to South Carolina State College.

Op. S.C. Att'y. Gen., April 5, 1990, 1990 WL 599250. Another opinion, Op. S.C. Att'y. Gen., No. 3932, January 14, 1975, 1975 WL 22230, noted that

> South Carolina State College was established by Act of the General Assembly in 1896. The College was originally named the Normal, Agricultural and Mechanical College for the Colored Race. 22 STAT 173 (1896). In 1954 the College was renamed South Carolina State College. 48 STAT 1722 (1954).

The statutory authority for South Carolina State University is currently set forth at S.C. Code Ann. § 59-127-50 et. seq. Section 59-125-50 separates South Carolina State from Claflin University "and all other" schools or colleges "under the direction or control of any church or religious or sectarian denomination or society." Section 59-127-60 establishes the Board of Trustees of South Carolina State. Other statutes, such as § 59-127-70, authorize the Board to provide all necessary buildings, establish courses "covering the normal, industrial, agricultural and mechanical sciences" and to provide for "a proper corps of professors and instructors. . . ." Various other provisions set forth other powers and duties of the Board, such as bond authority, etc. Based upon the foregoing, it is clear that the establishment and governance of South Carolina State has always been pursuant to statutory enactment, and that the General Assembly has, by statute, provided for the reorganization of such governance as well as the addition of powers to the Board.

Our Supreme Court, in Plowden v. Beattie, 185 S.C. 229, 193 S.E. 651, 655 (1937) quoted with approval the following language from State v. Rhame, 92 S.C. 455, 461-462, 75 S.E.2d 881, 883 (1912):

> "[p]ublic officers are created for the benefit of the commonwealth, incumbents have no contract or property rights in them, and unless otherwise it be provided by the Constitution, they are subject entirely to legislative control. Hence, subject to the Constitution, the General Assembly may fix the term, provide for the removal, abolish the office, reduce the term, and in every respect control the existence, powers, emolument, and tenure of public officers.

Moreover, the Court has consistently reaffirmed the broad legislative powers of the General assembly as follows:

> [i]n our division of powers, the General Assembly has plenary power over all legislative matters unless limited by some constitutional provision. Clarke v. S.C. Pub. Serv. Auth., 177 S.C. 427, 438-39, 181 S.E. 481, 486 (1935). Included within the legislative power is the sole prerogative to make policy decisions; to exercise discretion as to what

> the law will be. State v. Moorer, 152 S.C. 455, 479, 150 S.E. 269, 277 (1929); Sutton v. Catawba Power Co., 101 S.C. 154, 157, 85 S.E. 409, 410 (1915). . . .

Hampton v. Haley, 403 S.C. 395, 403-4, 743 S.E.2d 258, 262 (2013).

Further, when asked to opine on potential legislative action, our consistent response has been as follows:

> any statute enacted by the General Assembly carries with it a heavy presumption of constitutionality. As we have often stated, any act of the General Assembly is presumed valid unless and until a court declares it invalid. Our Supreme Court has often recognized that the powers of the General Assembly are plenary, unlike those of the federal Congress whose powers are enumerated. State ex. rel. Thompson v. Seigler, 230 S.C. 115, 94 S.E.2d 231, 233 (1956). Accordingly, any act of the General Assembly must be presumed valid and constitutional. An act will not be considered void unless its constitutionality is clear beyond any reasonable doubt. Thomas v. Macklen, 186 S.C. 290, 195 S.E. 539 (1937); Townshend v. Richland Co., 190 S.C. 270, 2 S.E.2d 779 (1939).
>
> Moreover, only a court and not this Office, may strike down an act of the General Assembly as inequitable or unconstitutional. While this Office may comment upon what we deem an apparent constitutional defect, we may not declare the Act void. Put another way, a duly enacted statute "must continue to be followed until a court declares otherwise."

Op. S.C. Att'y Gen. 2006 WL 269605 (January 12, 2006) (citing Ops. S.C. Att'y Gen., 2005 WL 1383357 (May 2, 2005); 1997 WL 419880 (June 11, 1997).

One constitutional issue which may arise is Art. III, § 34 which provides that "where a general law can be made applicable, no special law shall be enacted." In Med. Soc. Of S.C. v. Medical Univ. of S.C., 334 S.C. 270, 513 S.E.2d 352 (1999), our Supreme Court addressed legislation which related only to the Medical University of South Carolina and was challenged as unconstitutional special legislation. There, the Court stated that "[t]he purpose of the prohibition on special legislation is to make uniform where possible the statutory laws of this State in order to avoid duplicative or conflicting laws on the same subject." The Court also noted, however, that "there are cases where a special law will best meet the exigencies of a particular situation." 334 S.C. at 279, 513 S.E.2d at 357. A number of decisions were cited by the Court as meeting that criteria. See, S.C. Pub. Serv. Auth. v. Citizens and South Nat. Bank, 360 S.C. 142, 386 S.E.2d 775 (1989); Duke Power Co. v. S.C. Pub. Serv. Comm'n, 284 S.C. 81, 326 S.E.2d 395 (1985). According to our Supreme Court, the MUSC legislation was not unconstitutional because of the following:

> [i]n this case, MUSC is a unique State Agency because it is the only one that owns and operates an acute-care teaching hospital. Further, the proposed transaction regarding hospital services is one unique to MUSC.

> Moreover, the fact that MUSC has no authority to enter the proposed transaction without legislative approval indicates such legislation is necessary. Since the legislature had a "logical reason and sound basis" for enacting a special law authorizing the proposed transaction, Act No. 390 is not unconstitutional special legislation.

334 S.C. at 280, 513 S.E.2d at 358.

Also of concern is Art. III, § 17 of the Constitution which requires that "every Act or resolution having the force of law shall relate to but one subject, and that shall be expressed in the title." This is the so-called "anti-logrolling" or "bobtailing" provision of the Constitution. The concern here would be whether placing your proposal in the Appropriations Act would violation Art. III, § 17.

This question was addressed in Giannini v. S.C. Dept. of Transportation, 378 S.C. 573, 664 S.E.2d 450 (2008). There, the Court explained the purpose of Art. III, § 17 as follows:

> [t]he purpose of Article III, § 17 is (1) to apprise the members of the General Assembly of the contents of an act by reading the title, (2) prevent legislative log-rolling and (3) inform the people of the State of the matters with which the General Assembly concerns itself. . . . Article III, § 17 is to be liberally construed so as to uphold an Act if practicable. Doubtful or close cases are to be resolved in favor of upholding an Act's validity.
>
> Article III, § 17 does not preclude the legislature from dealing with several branches of one general subject in a single act. It is complied with if the title of an act expresses a general subject and the body provides the means to facilitate accomplishment of the general purpose. However, Article III, § 17 requires "the topics in the body of the act [be] kindred in nature and hav[e] a legitimate and natural association with the subject of the title," and that the title conveys "reasonable notice of the subject matter to the legislature and the public."

378 S.C. at 585, 664 S.E.2d at 456, quoting Sloan v. Wilson, 362 S.C. 430, 608 S.E.2d 579 (2005). In Giannini it was asserted that the reenactments of Tort Claims Act caps violated the single-subject rule imposed by Art. III, § 17, because it did not reasonably relate to the raising and spending of tax monies – the purpose of the Appropriations Act.

However, the Court in Giannini rejected that argument. The Court referenced several previous decisions regarding application of Art. III, § 17 to the Appropriations Act:

> [w]e recognized in Town of Hilton Head v. Morris, 324 S.C. 30, 484 S.E.2d 104, 107 (1997) that "a measure enacted as part of a general appropriations act does not violate Article III, § 17, if it reasonably and inherently relates to the raising and spending of tax monies." See also Keyserling v. Beasley, 322 S.C. 83, 470 S.E.2d 100 (1996) (provisions of

> appropriations act which created negotiating committee to establish new regional radioactive waste disposal compact and which repealed statute adopting prior compact were related to raising and spending of revenues and, thus complied with one-subject rule); Hercules v. South Carolina Tax Comm'n, 274 S.C. 137, 262 S.E.2d 45 (1980) (statute providing for suspension of the statute of limitations on tax assessment if a corporate tax payer fails to give the Tax Commission notice of an IRS examination was germane to the General Appropriations Act in which it was contained and thus did not violate the constitutional requirement that every act relate to but one subject).

378 S.C. at 586, 664 S.E.2d at 456-7. Based upon these earlier decisions, the Court rejected the same subject argument. In the words of the Supreme Court,

> [w]ere, 1994 Act No. 497, lists in its title that the act is "To Provide That Certain Provisions of Sections 15-78-100 and 15-78-120 of the 1976 Code Are reenacted And Made Retroactive To April 5, 1988." Further, Part 2, § 107 of the Appropriations Act amends the Uniform Contribution Among Joint Tortfeasors Act to make it inapplicable to government agencies, and reinstates the Tort Claims Caps set forth in § 15-78-120(a)(1). The 1997 Appropriations Act, Act No. 155, Part II, § 55, similarly reenacts the $500,000 cap set forth in § 15-78-120(a). The statutory reenactments reasonably and inherently relate to the raising and spending of tax monies. Town of Hilton Head v. Morris. Accordingly, reenactment of the caps does not violate Article III, § 17.

Based upon the reasoning in Giannini, we believe a court would conclude that the proposed legislation "reasonably and inherently relate[s] to the raising and spending of tax monies." The proposal is designed to remedy the situation where a state college or university cannot function within the State revenues which the Legislature appropriates and consistently runs budgetary deficits. Certainly, the Legislature has the constitutional authority to address a school or college which cannot live within the budget appropriated to it.

Conclusion

As our Supreme Court has consistently emphasized, the General Assembly possesses plenary power over all legislative matters except as may be limited by the Constitution. This power includes the authority "'subject to the Constitution to "fix the term, provide for removal, abolish the office, reduce the term, and in every respect control the existence, powers, emoluments, and tenure of office.'" Plowden v. Beattie, supra.

South Carolina State was created by statute, as discussed herein. The General Assembly has set forth the powers of the S.C. State Board and other officers by statute. Thus, the law gives the Legislature plenary authority to revisit, amend, modify or even repeal those laws as it sees fit, except as limited by the Constitution. It has done so on several occasions in the past. As our Supreme Court has recognized, "[t]hose holding offices created by the Legislature hold them subject to legislative will." State v. Hough, 103 S.C. 87, 87 S.E. 436, 437 (1915).

We have pointed out two potential constitutional issues herein, that of "special legislation" addressed by Art. III, § 34 and that of same-subject or "bobtailing" governed by Art. III, § 17. Any enactment of the General Assembly will be presumed constitutional and all doubt resolved in favor of constitutionality. Based upon the precedents of our Supreme Court with respect to these constitutional issues, we believe a court is most likely to uphold such legislation as valid. The proposed proviso, as a part of the Appropriations Act, would most likely be found to reasonably and inherently relate to the raising and spending of tax monies. Giannini, supra. The Joint Resolution, which deals with abolition of the Board and devolution of its powers upon the Budget and Control Board would likely be found by a court to address a "unique" situation, noting that it is "critical that this institution of higher learning continues to remain open and functional to serve current and future students seeking the valuable educational experience that South Carolina State University can and should continue to provide. . . ." The MUSC case, referenced above, can serve as a valuable precedent with respect to any "special legislation" argument. In either event, this Office can comment upon these issues, but only a court could decide the question with finality. But it is our opinion a court would likely uphold such legislative action.

Finally, as noted, our opinion herein relates only to the issues of State law raised by you.[1] It is for the General Assembly to address the policy issues underlying the proposed legislation.

Sincerely,

Robert D. Cook
Solicitor General

[1] S.C. State is a land grant and Historically Black College receiving federal funds under the Morrill Act.