

1981 WL 158115 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 21, 1981

***1 Re: Opinion Concerning Act No. 410 of 1978**

Mr. Fred R. Sheheen
South Carolina Commission on Higher Education
Rutledge Building
1429 Senate Street
Columbia, South Carolina 29201

Dear Mr. Sheheen:

You have sought the opinion of this office concerning several questions arising out of Act No. 410, Acts and Joint Resolutions of South Carolina, 1978 (codified as [§ 59-103-35, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended). The last paragraph of Act No. 410 grants the Commission on Higher Education authority to recommend termination of existing programs at state supported institutions of higher education. Further, the Act specifies an appeal procedure following the Commissions's recommendation. Your opinion request concerns several aspects of the statutory appeal procedure.

First, you have asked whether the time periods contained in the statute mean calendar days. After a Commission recommendation, an institution is accorded sixty (60) days in which to appeal the recommendation to the Senate Education Committee and the House Education and Public Works Committee. The Committees are to reach a decision within one hundred and twenty (120) days from the date of the filing of the appeal. The statute itself is silent upon the question you have raised; therefore, resort to other sources is necessary. [§ 15-1-20, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended, provides as follows:

The time within which an act is to be done shall be computed by excluding the first day and including the last; provided, however, that if the last day of the period so computed is a Saturday, a Sunday, or a legal holiday, such day shall be excluded and a time period shall run until the end of the next day which is not a Saturday, a Sunday, or a legal holiday.

§ 15-1-120 is contained in Chapter One, 'General Provisions', in Title 15, 'Civil Remedies and Procedures' of the South Carolina Code of Laws. This statute was considered in [South Carolina Electric and Gas Company v. Public Service Commission](#), 272 S. C. 316, 251, S.E.2d 753 (1979), wherein the predecessor to the present statute was held not applicable to matters before the State Public Service Commission. The Court so held because the former statute contained, in its original version, the term 'as provided herein', apparently referring to the statutes on Civil Remedies. Those statutes did not include matters before the Public Service Commission; moreover, the Commission had promulgated comprehensive rules to not require filing of papers on Saturdays, Sundays, or holidays. The 1980 Amendment to [§ 15-1-20](#) includes the exclusion of Saturdays, Sundays, or holidays in computing time; further, the Amendment does not specifically address the matter considered by the Supreme Court as to the scope of the statute. This office is of the opinion that, for purposes of the appeal specified in [§ 59-103-35](#), the guideline for computing time specified in [§ 15-1-20](#) is most likely applicable. Therefore, the time should be computed by counting sixty (60) or one hundred and twenty (120) calendar days respectively, unless the sixtieth (60th) or one hundred and twentieth (120th) day falls on a Saturday, Sunday, or legal holiday. In that case, the time will be extended until the first day which is not a Saturday, Sunday, or legal holiday.

***2** Second, you have asked from what date is the sixty (60) days for filing an appeal to commence. The statute in question states, 'An appeal from this recommendation must be made by the governing board of an affected institution within sixty (60)

days to the Senate Education committee and the House Education and Public Works Committee which will hear the parties to the appeal.' The statute does not specifically address this point; moreover, the exact intent of the legislature is not manifest upon the face of the statute. In view of this situation, the opinion of this office is that fundamental fairness to the institutions involved would dictate that an appeal must be made within sixty (60) days following notification of the recommendation of the Commission on Higher Education.

Third, you inquire whether the 'parties to the appeal' will include the Commission or its representatives. The applicable portion of the statute is set forth in the previous paragraph. The statute does not define or identify the term 'parties'; however, the only entities contemplated by the statute are the Commission on Higher Education and any individual institution for which the Commission has recommended the termination of a program. Therefore, it is the opinion of this office that both the affected institution and the Commission on Higher Education should be deemed 'parties' within the statute for the purposes of the appeal provision.

Fourth, you inquire whether the two legislative committees are to meet jointly, both to hear the parties and to arrive at 'a decision'. The statute is absolutely silent as to the procedure to be followed by the individual legislative committees. Thus, the individual committees themselves must establish a procedure for hearing and disposing of appeals.

Fifth, you have asked, '. . . what constitutes 'a decision' if for example, one committee concurs with a specific recommendation and the other committee disagrees, either in whole or in part?' The applicable portion of the statute states, 'If the committees concur in the recommendation for termination, the program will be terminated at a time to be determined by the Commission.' A literal reading of the statute indicates that the legislature envisioned termination of a program, following the recommendation and appeal from the Commission action, only upon the concurrence of both legislative committees. If one committee concurs with the Commission on Higher Education, but the other committee does not concur, then the program in question may not be terminated under the precise terms of the statute.

Finally, you have asked whether the original recommendation made by the Commission stands, with legislative endorsement, should the legislative committees fail to reach 'a decision' within one hundred and twenty (120) days from the filing of the appeal. The statute provides that should an institution appeal a Commission recommendation, then the program in question may not be terminated without the concurrence of two legislative committees. Thus, should the committees not reach a decision within the one hundred and twenty (120) day time period specified in the statute, no concurrence by the committees with the Commission recommendation exists, and the program would not be subject to termination at that time. In that the statute requires a decision within one hundred and twenty (120) days, failure to render a decision by either committee within the statutory period could likely subject the tardy committee or committees to a Writ of Mandamus, issued by the State Circuit Court, compelling the committee to make some disposition of the matter.

*3 Please do not hesitate to call upon me if you have any further questions concerning this matter.

With kindest regards.

Sincerely,

Paul S. League
Assistant Attorney General

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