

1983 WL 182076 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

December 12, 1983

*1 Dr. Howard R. Boozer
Executive Director
South Carolina Commission on Higher Education
Rutledge Building
Columbia, South Carolina 29201

Dear Dr. Boozer:

You have requested the advice of this Office as to whether the State Commission on Higher Education (State Commission) must approve a plan of the Aiken County Commission on Higher Education (Aiken Commission) for private investors to construct student housing on land owned by the Aiken Commission. The housing is intended for use by students at the University of South Carolina at Aiken (USC); however, this Office has been advised that the proposal will not involve State or USC property or funds.¹ USC will not be involved in the management, upkeep or ownership of the proposed housing. The proposal provides that, at a future date, the student housing would revert to the Aiken Commission. These circumstances are ones not expressly addressed by laws pertaining to the Commission on Higher Education.

[Section 2-47-40 of the Code of Laws of South Carolina \(1976\)](#) requires ‘institutions of higher learning requesting or receiving funds from any source in the financing of any permanent improvement project . . .’ to submit statements to the Budget and Control Board through the State Commission.² This law does not define ‘institutions of higher learning,’ but the definition of a similar term in the State Commission laws should be applicable. Section 59-103-5(2). See also Section 59-107-10. According to it, the term ‘public institution of higher learning’ means ‘. . . any State supported-post-secondary educational institution . . .’ Clearly, the plain meaning of these terms would bring USC within this definition, but it is not directly requesting or securing funds so as to fall within the statute on that basis. See Sutherland, vol. 2A, Section 57.03. The Aiken County Commission on Higher Education does not come within the plain meaning of the definition, Id. See Section 21-1099, et seq., Code of Laws of South Carolina, 1962; Act 269, Acts and Joint Resolutions of South Carolina, 1977. Therefore, because the Aiken Commission does not come within this definition, this project would not ordinarily be subject to State Commission review.³ We have been informed that on at least one occasion in the past, the State Commission has reached a similar conclusion as to a related matter. Normally, substantial deference should be given to the construction of a statute by an agency charged with its administration. See Etiwan Fertilizer Co. v. S.C. Tax Commission, 217 S.C. 354, 60 S.E. 2d 682 (1950).

Conceivably, there might be such a close relationship between a local higher education commission and a public college or university so as to make that commission the alter ego of the related institution and thus bring a particular transaction within the State Commission’s jurisdiction. See Citadel Development Corporation v. County of Greenville, et al (Court of Appeals, #1, 10/31/83). To review all the facts involved here needed to make such a determination would be beyond the province of this Office in the issuance of opinions. This Office has consistently stated that it may not resolve factual issues. See, Op. Atty. Gen., November 2, 1983. Therefore, we express no opinion whatsoever as to whether the facts of this matter would alter the application of the law indicated in the above paragraph. Nor do we express any approval, disapproval, validation or invalidation with respect to any proposal or plan which may be involved here. This letter should be construed only as an interpretation of [Section 2-47-40](#) with respect to its usual and ordinary meaning and not an application of that interpretation to any particular factual situation. We also express no opinion as to whether any proposed transaction meets other requirements of State law.

Yours very truly,

*2 J. Emory Smith, Jr.
Assistant Attorney General

Footnotes

- 1 We have not seen any copy of any proposed written agreement for the project and its uses. The information set out herein has been provided to this Office by telephone or letter.
- 2 Preceding portions of this statute require 'any agency or institution' to submit information regarding permanent improvement projects to the Budget and Control Board for review. Although this law appears to be intended to apply to State agencies and the Aiken Commission appears to be local, the applicability of these preceding portions need not be decided here as the specific provision regarding the State Commission appears to control its duties. See Sutherland Statutory Construction, vol. 2A, Section 50.05 (4th Ed.); however, the preceding portion of [Section 2-47-40](#) indicates that those institutions which must submit statements to the State Commission are those 'requesting or receiving funds from any source for the use in the financing of permanent improvement projects.'
- 3 Section 59-103-110 provides for approval by the State Commission of permanent improvement projects not located on approved campuses or property contiguous thereto. This law should not be applicable here for the same reasons noted as to [Section 2-47-40](#) even if the property is not built on property contiguous to USC. Other State Commission laws appear to be inapplicable also. Section 59-103-35 refers to approval of new programs by the State Commission; however, this Office has been advised that the State Commission has not interpreted the word 'program' to include matters such as student housing. This matter also would not appear to be one that would come within the budget approval authority of the Commission in that no State money would be involved. See, Section 59-103-35. See also Section 59-103-60.

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