

1981 WL 157889 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 30, 1981

**\*1 Re: State Appropriation for Military Students at the University of South Carolina's Columbia Campus**

Mr. Edgar A. Vaughan, Jr.  
State Auditor  
207 Wade Hampton Office Building  
Post Office Box 11333  
Columbia, South Carolina 29211

Dear Mr. Vaughan:

You have requested an opinion of this office as to the effect of R214 (H2571), which is a joint resolution recently enacted by the General Assembly and signed by the Governor on July 20, 1981. Specifically, you seek an opinion as to whether the mandate in R214 that military students in senior colleges and universities be included in the full-time equivalent student count for determination of appropriations should be applied to fiscal year 1980-81.

While the question posed raises an issue as to the authority of the General Assembly to alter the General Appropriations Act for fiscal year 1980-81 by joint resolution that takes effect in a subsequent fiscal year, the simple answer to your question is that R214 may not be given retrospective application. The South Carolina Supreme Court has consistently held that, in construing a statute, a presumption obtains that it must be deemed prospective in application, unless the statute expressly provides for retrospective application or such legislative intent is clear upon the face of the statute. [Hercules, Inc. v. South Carolina Tax Commission](#), 274 S.C. 137, 262 S.E.2d 45 (1980), and [Hyder v. Jones](#), 271 S.C. 85, 245 S.E.2d 123 (1978). In [Neel v. Shealy](#), 261 S.C. 266, 199 S.E.2d 542 (1973), the Court succinctly stated the basis for prospective construction of statutes, quoting from [Curtis v. Renneker](#), 34 S.C. 468, 13 S.E. 664 (1891):

'In the first place, it cannot for a moment be contended that there are any express words in the statute manifesting an intention on the part of the Legislature that it should have a retroactive operation; nor, in the second place, are there any words from which it must necessarily be implied that it was intended to give the Act this effect . . . A change of policy was undoubtedly intended, but, as there is nothing in the Act demanding a construction different from that generally followed in the interpretation of statutes, its operation must be held to be prospective, and not retroactive.'

Neither the title, the two substantive sentences of § 1, nor the specification of time for taking effect in § 2 in R214 evinces any indication that the General Assembly intended the joint resolution to apply to any fiscal year prior to the one in which the resolution became effective. Certainly, R214 contains no express declaration that it is to be applied retroactively; moreover, the resolution does not refer to either fiscal year 1980-81 or the General Appropriations Act effective for fiscal year 1980-81.

One broad exception exists to the general rule stated hereinabove; that is, statutes which are deemed remedial or curative in character are normally given a retrospective application, so long as such retrospective application does not impair vested rights. R214 contains no indication of intention of the Legislature that it deemed the joint resolution necessary as remedial or curative. The joint resolution is not directly concerned with either remedies or procedures, but rather appears to be enactment of substantive law. The entire thrust of the joint resolution is to require that a certain category of students in South Carolina senior colleges and universities be included in the count of full-time equivalent students for determining appropriations. Thus, R214 cannot be applied retroactively as curative or remedial legislation.

\*2 Finally, R214 does not take on the character of validating legislation or a reaffirmance of an old law. The joint resolution makes no reference to any other statute, part or present; therefore, R214 cannot be deemed an attempt by the General Assembly to amend prior existing legislation. See generally, [State v. Patterson](#), 220 S.C. 269, 66 S.E.2d 875 (1951).

Based upon the foregoing discussion, the opinion of this office is that R214 is entitled to prospective application only, and the joint resolution does not provide authority for the University of South Carolina to include military students at Columbia as full-time students for purposes of funding under the 1980-81 General Appropriations Act.

With kindest regards,

Sincerely,

Paul S. League  
Assistant Attorney General

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