

1981 WL 157892 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 3, 1981

**\*1 In Re: Letter of Howard R. Boozer, Executive Director, Commission on Higher Education, dated July 31, 1981**

The Honorable Earle E. Morris, Jr.  
Comptroller General  
Post Office Box 11228  
Columbia, South Carolina 29211

Dear Mr. Morris:

While no official request for an opinion has been received from anyone, a number of agencies, specifically, the Higher Education Commission, the University of South Carolina and the State Auditor's Office, have made inquiries concerning the payment out of last year's appropriations (fiscal year 1980-81) for the payment of monies to the University of South Carolina for compensation of Full-Time Equivalent students, particularly those from Ft. Jackson, at the University during the preceding fiscal year.

In connection with this, I have today received a letter from Howard R. Boozer, Executive Director, Commission on Higher Education, dated July 31, 1981, a copy of which was forwarded to you.

I am enclosing a copy of an opinion heretofore issued to Honorable Edgar A. Vaughn, State Auditor, with respect to the validity of this payment. As the letter from Dr. Boozer refers to Joint Resolution H-2571 (R-214), this opinion expresses the view of this Office that the payments in question cannot be made in the manner contemplated. A full and comprehensive analysis of the problem is set forth in an opinion of this Office dated January 12, 1981, which explains the basis upon which the conclusions expressed in the letter of this Office dated July 30, 1981, are predicated.

I am forwarding this material to you so that you will be fully apprised of the views of this Office that have been rendered today and to emphasize that the possibility may exist of a taxpayer's action in this matter to restrain the payment of these funds. I have no indication from any source that such an action may be likely but past experience indicates clearly that this eventuality must not be overlooked. In my opinion, the better procedure would be to withhold payment of these funds pending determination by the courts in order to forestall any such action by a third party.

Very truly yours,

Daniel R. McLeod  
Attorney General

P.S. Since the foregoing was dictated, your office has stated that they request an official opinion. I presume that this was done after having talked with you but it was handled entirely by telephone. We will prepare an opinion accordingly and submit it to you.

D.R.M.

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