

1981 WL 157970 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 18, 1981

*1 Edward L. Sessions, D.C.
Chairman
Board of Chiropractic Examiners
3835 Rivers Avenue
Charleston, South Carolina 29405

Dear Dr. Sessions:

You have requested an opinion from this Office whether any person who has graduated from Sherman College can now be licensed by the Board of Chiropractic Examiners, regardless of the date of his enrollment in, and graduation from, Sherman College. It is the opinion of this Office that any such person who is a graduate of Sherman College now meets the qualification of being a graduate of a chiropractic college that is accredited or has recognized candidate status, as that term is used in § 40-9-40, S.C. CODE, 1976 (as amended), without regard to the date of enrollment in, or graduation from, Sherman College. This conclusion is based on the following reasons. First, the statute provides that the requirement is met if the applicant 'is a graduate of a chiropractic college which is accredited by or has recognized candidate status with . . . an accrediting agency approved by the State Commission on Higher Education [for this purpose] . . . ' § 40-9-40, *Id.* As you are aware, the State Commission on Higher Education has approved the Southern Association of Colleges and Schools (SACS) as such an accrediting agency. On or about June 19, 1981, Sherman College received candidacy status with SACS. (In this regard see the discussion of your fourth question, below.) Since Sherman College now has candidate status with an approved accrediting agency, according to this statute, any graduate of Sherman College is, regardless of the date, a graduate of a chiropractic college which now has candidate status with an accrediting agency according to State law.

It might be argued that the statute should be read to mean that an applicant must be a graduate of a chiropractic college which was accredited at the time of his graduation. But that is not the language used in the statute. When the legislature intended such a meaning in another paragraph of this statute, it used those words to indicate, clearly that meaning. The statute provides, in that other part, that 'any person who graduated from a chiropractic college which had accredited or recognized candidate status . . . at the time of such graduation . . . shall be allowed to practice chiropractics until December, 1979. . . . ' *Id.* In this provision being construed now, however, the limiting phrase 'at the time of such graduation' is absent. Since that phrase is used in one portion of this section and not used in the portion being considered here, it must be assumed that the omission was intentional. 2A SUTHERLAND, STATUTORY CONSTRUCTION, § 46.05. Since we conclude that the omission was intentional, it is our opinion that the statute should be read in such a way as would permit a graduate of any chiropractic college or school which now has accreditation or recognized candidate status according to this statute to sit for the licensing examination, without regard to the date of such graduation, so long as that person meets the other qualifications of the statute.

*2 It might further be argued that this construction would permit licensing of graduates from formerly unaccredited schools that were academically deficient at the time of such graduation, and that a subsequent accreditation would not upgrade the deficient education of those former graduates. Yet licensing of some such graduates is already expressly permitted by this statute, in the case of a person enrolled in any chiropractic college prior to July 1, 1974. § 40-9-40, *Id.* Our construction of the provision under consideration now is consistent, therefore, with the above-noted earlier provision regarding professional educational requirements of license applicants. Thus the conclusion expressed herein is consistent with the plain meaning of the words used in the statute, and furthermore is consistent with the entire statutory section read as a whole. For these reasons it is the opinion of this Office that any graduate of Sherman College now meets the professional educational requirements of § 40-9-40, *Id.*, without regard to the dates of his enrollment in, and graduation from, that school.

Second, you have asked whether the date of its 'on site inspection' should be deemed the date on which Sherman College received its candidacy status. It is unlikely that the date of the inspection would be deemed to be the date on which accreditation status was received. However, in light of the above reply to your first question, the actual date of accreditation is irrelevant so far as educational qualifications of applicants are concerned.

Third, you have asked whether Sherman College graduates who were transfer students from Adio College, an unaccredited institution, are entitled to take the licensing examination under South Carolina State law. It is the opinion of this Office that such persons would be deemed to have met the professional educational requirements of [§ 40-9-40, S.C. CODE](#), 1976 (as amended), so long as they graduate from an accredited school. The clear wording of the statute provides that a person is qualified, in this respect, if 'he is a graduate of a chiropractic college which is accredited . . . ' Id. The statute does not require that he matriculate at that school for his entire course of study. This may be a matter that might relate to a school's accreditation with SACS. But that inquiry is outside the jurisdiction of the Board of Chiropractic Examiners under State law. Therefore, it is our opinion that graduates of Sherman College should be deemed to have met the professional educational requirements of [§ 40-9-40, Id.](#), without regard to whether any of those persons were transfer students from another institution.

Fourth, you noted that Act 307 of 1980 required chiropractic colleges in this State to obtain accreditation or candidate status within one year from the date on which the Commission on Higher Education publishes a list of recognized accrediting agencies. Failure to obtain accreditation status during this time was to result in the Commission's revoking the status of that college as a recognized college of chiropractic. The list of accrediting agencies was published by the Commission on June 5, 1980. You further advised that Sherman College did not receive candidate status from one of the listed agencies until June 19, 1981. No immediate action, however, was taken by the Commission. This inaction was apparently based on advice from the Attorney General to the Commission. (See enclosure) Thereafter on July 17, 1981, the South Carolina General Assembly amended Act 307 of 1980 so as to extend the above deadline from one year to nineteen months. As of the time that the amendment was enacted, the Commission was without legal authority to revoke Sherman's status, because the only law then in effect allowed all chiropractic colleges in this State until approximately January 5, 1982, to obtain accreditation status. Sherman College had, of course, obtained accreditation status on or about June 19, 1981. Therefore, as of the date of the amendment to the 1980 Act, Sherman College had fully complied with that Act.

*3 It should be pointed out that § 1 of Act No. 307 of 1980 imposes certain duties on the State Commission on Higher Education but imposes no corresponding duties or responsibilities on the State Board of Chiropractic Examiners. Under the South Carolina State law, the Board of Chiropractic Examiners has no legally cognizable interest in the obligations imposed on others in Section 1 of that Act.

Nonetheless you indicated that you had some question about the constitutionality of the amendment to Act 307 since that amendment appeared in the General Appropriations Act for 1981. Presumably your question relates to the applicability of [Article III, § 17 of the South Carolina Constitution](#) which provides that '[e]very act . . . shall relate to but one subject, and that shall be expressed in the title.' The subject of this amendment does appear in the title of the Appropriations Act where it provides, inter alia, that it is an act ' . . . TO AMEND Act 307 of 1980, RELATING TO THE PROCEDURE FOR ACCREDITATION AND CHARTERING OF CHIROPRACTIC COLLEGES OR SCHOOLS, SO AS TO INCREASE FROM ONE YEAR TO NINETEEN MONTHS THE TIME ALLOWED FOR SUCH COLLEGES OR SCHOOLS TO OBTAIN ACCREDITATION OR CANDIDATE STATUS. . . . ' The Supreme Court has not definitively construed the requirement that an act relate to but one subject. The Court has, however, upheld a provision in another challenged appropriations act apparently on the grounds simply that it related to an agency for which appropriations were elsewhere made in the act. [Cauldwell v. McMillan](#), 224 S.C. 150, 77 S.E.2d 798 (1953). That reasoning would apply in this instance. Furthermore the law recognizes a strong presumption of constitutionality of a statute, and a statute will not be overturned by the courts unless it is found, beyond reasonable doubt, to contravene the Constitution. [Gaud v. Walker](#), 214 S.C. 451, 53 S.E.2d 316 (1949). You also questioned whether or not this was an ex post facto law. That constitutional provision prohibits only retroactive criminal laws or civil penalties. [McCoy v. State Highway Dept.](#), 169 S.C. 436, 169 S.E. 174 (1933); 2 SUTHERLAND, STATUTORY CONSTRUCTION, § 42.01.

Since neither appear in this amendment, that constitutional prohibition would be inapplicable here. However, regardless of the constitutionality of this amendment to Act 307 of 1980, Sherman College would most likely be deemed to have complied with Act 307, for reasons set out in the enclosed opinion of the Attorney General.

You have asked, in addition, whether or not the Board of Chiropractic Examiners has authority to employ legal counsel outside this Office. The General Appropriation Act provides that this may be done only upon the written approval of the Attorney General and at a compensation approved by him. § 10, Part I, General Appropriations Act of 1981, (H2461, R232). You asked then whether the Attorney General's Office would represent the members of the Board if they were sued by Sherman College. This Office is required by statute to represent any officer of the State prosecuted in a civil action by reason of any act done or omitted in good faith in the course of his employment. [§ 1-7-50, S.C. CODE](#), 1976. The statute requires further that, before such a defense is undertaken, the Attorney General must investigate the facts on which the action is based and determine that the individual 'was acting in good faith, without malice, and in the course of his employment.' [§ 1-7-60, S.C. CODE](#), 1976. If those conditions are met, this Office would provide representation to any public officer named as a defendant in a lawsuit.

***4** In conclusion, it is the opinion of this Office that any person who has graduated from Sherman College should be deemed to have satisfied the professional educational requirements of [§ 40-9-40, Id.](#), for those reasons set out above. Furthermore, the Board of Chiropractic Examiners may not retain legal counsel without the written approval of the Attorney General. However, this Office will undertake the defense of the members of the Board of Chiropractic Examiners if they are sued on account of any act done or omitted in good faith, without malice, and in the course of their employment. See, [Gold v. South Carolina Board of Chiropractic Examiners](#), 271 S.C. 74, 245 S.E.2d 117 (1978).

Sincerely yours,

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Assistant Attorney General

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