

1980 S.C. Op. Atty. Gen. 12 (S.C.A.G.), 1980 S.C. Op. Atty. Gen. No. 80-2, 1980 WL 81886

Office of the Attorney General

State of South Carolina

Opinion No. 80-2

January 15, 1980

***1 Subject: Degree—Granting Private Educational Institutions**

The term, nonpublic educational institution, defined in Act No. 201 of 1977 includes institutions which furnish a degree or instruction leading to a degree by means of televised or correspondence instruction.

To: Executive Director

South Carolina Commission on Higher Education

Question:

Is the offering of instruction by means of televised or correspondence courses by a nonpublic educational institution subject to regulation by the South Carolina Commission on Higher Education, pursuant to Act No. 201 of 1977?

Statutes and Cases:

[§ 59-46-10, et seq., Code of Laws of South Carolina](#), 1976, as amended; [Murray v. Sovereign Camp, W.O.W.](#), 192 S.C. 101, 5 S.E.2d 560 (1939); [Sutherland, Statutory Construction](#), Vol. 2A, § 57.09

Discussion:

Act No. 201, [Joint Acts and Resolutions of South Carolina](#), 1977, codified as [§ 59-46-10, et seq.](#), provides for the licensing and regulation of certain nonpublic educational institution. Specifically, you asked whether a nonpublic educational institution 'established' outside of South Carolina must be licensed pursuant to the above referenced statute, prior to offering degree credit courses in South Carolina by means of televised or correspondence instruction.

Pursuant to [§ 59-46-20](#), the South Carolina Commission on Higher Education is the ' . . . sole authority for licensing nonpublic educational institutions established in this State and for those established elsewhere to operate in or confer degrees in this State.' The term 'nonpublic educational institution' is defined in [§ 59-46-10\(3\)](#), as follows:

'Nonpublic educational institution' includes, but is not limited to, any educational entity that is wholly or partly located in or operating in this state and is not owned or operated in whole or in part by the State, that is maintained and operated as a school, institute, college, junior college, university or entity of whatever kind which furnishes or offers to furnish a degree as defined herein or which furnishes or offers to furnish instructions leading toward or prerequisite to a degree beyond the secondary level and which requires that in order to obtain a degree the recipient partially or satisfactorily completes appropriate courses or classes or laboratories or research studies in person or by correspondence. 'Nonpublic educational institution' shall not include any degree granting school, institute, college, junior college, university or entity which was chartered by the Secretary of State Before 1953, or colleges of chiropractic.

Institutions, although established outside of South Carolina, can be encompassed by the definition of nonpublic educational institution, even though such institution is not 'wholly or partly located in' this state. The above definition is quite clear that either physical location or operation in this state, and not both, is all that is required for a nonpublic educational institution to come within the terms of the statute. The General Assembly, in enacting § 59-46-10 uses the words 'not limited to' which suggests that other possible situations involving institutions established in or outside of South Carolina may come within the definition of nonpublic educational institution. The Legislature, therefore, intended the statute to be given a broad interpretation, and the full effect must be given to each section. [Murray v. Sovereign Camp, W.O.W.](#), 192 S.C. 101, 5 S.E.2d 569 (1939).

*2 Presumably, out-of-state institutions will be collecting fees from South Carolina residents; South Carolina residents will be watching television courses or completing the home study programs in South Carolina; and the credits or degrees earned in such manner may be submitted to future employers or colleges for recognition. These activities lead to the conclusion that out-of-state nonpublic educational institutions are 'operating' within South Carolina no matter where they are physically established, based upon the conduct outlined above. The term 'operate' is readily susceptible to definition as follows: 'Operate. II. Transitive senses. 5. To effect or produce by action or the exertion of force or influence; to bring about, accomplish, work. 7. To direct the working of; to manage, conduct, work (a railway, business, etc.); to carry out,' The [Oxford English Dictionary](#), Oxford at the Clarendon Press (1961), Vol. VII. See also [Kronholtz v. Connecticut State Board of Examiners in Optometry](#), 21 Conn. Sup. 332, 154 A.2d 619, 624; [City of St. Louis v. Brune Management Company](#), 391 S.W.2d 943, 947 (Mo. App.); and [Fulton Foundation v. Wisconsin Department of Taxation](#), 13 Wis.2d 1, 108 N.W.2d 312, 315.

Section 59-46-40 states: 'no nonpublic educational institution established in this State shall have the authority to confer degrees upon any person in this State or elsewhere, unless a license is first secured from the commission and no nonpublic educational institution established elsewhere shall have the authority to operate in or confer degrees in this State unless a license is first secured from the commission.' The statute is couched in negative terms, which terms are construed as being mandatory. [Sutherland, Statutory Construction](#), Vol. 2A, § 57.09. Therefore, an out-of-state institution offering degree courses through television or home study programs are 'nonpublic educational institutions', and a license to operate in the State of South Carolina must first be obtained from the Commission on Higher Education before such out-of-state institution may contact students in South Carolina. Conclusion:

[Section 59-46-10](#), encompasses nonpublic educational institutions established outside of South Carolina, which offer degree courses by means of televised or correspondence instruction.

Paul S. League

Assistant Attorney General

1980 S.C. Op. Atty. Gen. 12 (S.C.A.G.), 1980 S.C. Op. Atty. Gen. No. 80-2, 1980 WL 81886