

1978 WL 34673 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 26, 1978

\*1 The Honorable Alex Harvin, III  
Member  
House of Representatives  
Clarendon County  
Box 266  
Summerton, South Carolina 29148

Dear Mr. Harvin:

Thank you for your letter of January 17 in which you request information concerning the Clemson Will, and specifically ask whether the General Assembly has any power with respect to adding members to the Clemson Board of Trustees.

A copy of the Clemson Will is herewith enclosed. In Item 1, beginning on page 9 of the enclosed document, Thomas G. Clemson devised, in trust, 814 acres of his lands for the purpose of establishing an agricultural college by the State of South Carolina. He provided in Item 2 of his Will for the creation of a board of trustees to consist of seven members, initially appointed by him in his Will, with the right to appoint their successors, and an additional six members to be named by the State Legislature. The will provides that should the State accept the donation of the land, it 'shall never increase the board of trustees to a number greater than thirteen in all—.' The General Assembly accepted the Will by a statute enacted in 1899 and which is now codified as Section 59-19-10, subject to the terms and conditions of the Will of Thomas G. Clemson.

The Board of Trustees for Clemson University cannot, therefore, exceed 13 in number and the 6 members to be named by the State cannot be increased. The Will was considered in Hopkins v. Clemson Agricultural College in a decision or the United States Supreme Court in 1910 and has been subsequently considered in other cases decided by the State Supreme Court and by the Federal District Court. All of these cases recognize the binding nature of the Trust established by Clemson and accepted by the State. The terms of such a Trust, when accepted by the State, are binding upon the State.

With best wishes,  
Very truly yours,

Daniel R. McLeod  
Attorney General

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