

1978 S.C. Op. Atty. Gen. 28 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-16, 1978 WL 22502

Office of the Attorney General

State of South Carolina

Opinion No. 78-16

January 27, 1978

*1 TO: Board of Trustees, c/o Dr. M. M. Nance, Jr.
President
South Carolina State College

QUESTIONS:

I.

Does the Commission on Higher Education have the authority to direct use of university or college fees levied by the institution's board of trustees upon students for specific programs and activities?

II.

Does the Commission have the authority to require institutions to increase or decrease such fees?

STATUTES, CASES, ETC.

[S.C. Code Ann. § 59-103-10](#), et seq. (1976);

1977 [S.C. Acts and Joint Resolutions](#), Act No. 219, § 122-23;

[Lewis v. Gaddy](#), 254 S.C. 66, 173 S.E.2d 376, 378 (1970).

DISCUSSION:

The Commission on Higher Education is established pursuant to [S.C. Code Ann. § 59-103-10](#), et seq. (1976). The statutory scheme, read as a whole, envisions an independent commission charged with responsibility of coordinating the overall efforts of the State's institutions of higher learning in serving the educational needs of the state. See [S.C. Code Ann. § 59-103-20](#) (1976). The Commission on Higher Education is also charged with the responsibility of coordinating all budgetary requests made by the State-supported institutions of higher learning.

All State supported institutions of higher learning shall submit their budgets to the Commission for approval, which shall in turn make budgetary presentations to the State Budget & Control Board and the General Assembly (or any committee thereof) on behalf of all the institutions.

[S.C. Code Ann. § 59-103-30](#) (1976).

These budgetary responsibilities are also elaborated upon in [S.C. Code Ann. § 59-103-60](#) (1976) which, in part, states: The Commission shall review the annual budgets of the State-supported institutions of higher learning and shall make such recommendations to the State Budget & Control Board and the General Assembly concerning these budgets as may

be considered desirable, and shall make such further recommendations from time to time to the State Budget & Control Board as the Commission may deem in the interest of the improving higher education in the state.

Although the Commission's supervisory authority is broad, the General Assembly has set certain limitations as to its control over the specific budgets, and use of funds comprising those budgets, of the various institutions of higher learning. [S.C. Code Ann. § 59-103-30\(b\)](#) states:

Supplemental budgetary requests from any institution of higher learning must be submitted to the Commission. If the Commission does not concur in such requests, the institution of higher learning may request a hearing on such requests before appropriate committees of the General Assembly.

As to specific fees charged by the various institutions of higher learning, which generate certain revenues for the overall budget of the respective institutions, the General Assembly through the Appropriations Act has designated that student fees will be set by the board of trustees of the respective institutions at the direction of the General Assembly. In 1977-78 Appropriations Act, 1977 [S.C. Acts & Joint Resolutions](#), Act No. 219, § 122, it is stated that the board of trustees of the respective institutions shall fix fees applicable to academic and general maintenance and operation costs 'at rates no less than those prevailing in the year 1976-77'; and that fees set by the board of trustees applicable to dormitory rental, dining halls, laundry, infirmary and all other personal subsistence expenses 'shall be sufficient to fully cover the cost of providing such facilities and services'. This same section also states:

*2 Student activity fees may be fixed at such rates as the respective boards shall deem reasonable and necessary.

Section 123 of the Appropriations Act also establishes the manner in which fees shall be charged by stating:

No such fee or income shall be charged in excess of the amount that is necessary to supply the service, or fulfill the purpose for which such fee or income was charged.

This same section also provides in conclusion:

[F]unds at State institutions of higher learning derived wholly from athletic or other student contests, from the activities of student organizations, and from the operations of canteens and book stores, may be retained at the institution and used as determined by the respective governing boards and may be audited annually by the state.

As a matter of statutory construction, statutes in pari materia (on the same subject must be construed together and reconciled, if possible, so as to render both operative. See [Lewis vs. Gaddy, 254 S.C. 66, 173 S.E.2d 376, 378 \(1970\)](#)). Looking at those statutes setting forth the general authority of the Commission on Higher Education, and at those laws controlling the authority for fixing student fees at the respective institutions of higher learning, it is reasonable to conclude that the Commission on Higher Education is granted the authority to coordinate the overall budgetary presentation, and provide equitable and effective allocation of funds among the respective institutions, presenting the final budgetary request to the General Assembly for the State-wise funding of these programs of higher education. But the Commission on Higher Education cannot direct the specific use of student fees at any State institution of higher learning, where use and amounts of such student funds are mandated by the General Assembly or control is delegated to the boards of trustees of the various State institutions of higher learning. Nor can the Commission on Higher Education direct any institution of higher learning to increase or decrease such fees where the level of such fees is mandated by statute, or the authority to set the fees is vested in the board of trustees of the respective institutions.

CONCLUSION:

The Commission on Higher Education does not have the authority to direct the use of university or college fees, nor the authority to require that they be increased or decreased. The lack of such authority is not in derogation of the Commission's general statutory purpose, which is to achieve an equitable distribution of State funds among the colleges and universities under its supervisory authority.

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