

1973 S.C. Op. Atty. Gen. 175 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3542, 1973 WL 21001

Office of the Attorney General

State of South Carolina

Opinion No. 3542

June 13, 1973

***1** Honorable H. D. Barnett
Chairman
Commission for Higher Education
Sumter County
Sumter, South Carolina

Dear Mr. Barnett:

Thank you for your letter of June 2, 1973, inquiring as to whether the contracts for the operation of an extension branch in Sumter now existing between your Commission and Clemson University may be terminated by your Commission and new agreements entered into with the University of South Carolina without seeking the approval of the State Board for Technical and Comprehensive Education or the State Commission on Higher Education.

Section 21–704.12 provides that jurisdiction of two-year State-supported post secondary institutions is vested in the State Board for Technical and Comprehensive Education; but excepted from this general requirement are the following:

Excepted are the present University branches and centers which shall continue the present programs under the direction of the University of South Carolina and Clemson University, respectively.

I am informed that your Commission, pursuant to authority vested in it, has entered into certain contractual agreements; and it is my further understanding that these agreement include an operational agreement with Clemson University, a lease agreement with Clemson University, and a three-party agreement between your Commission, Clemson University and the Department of Health, Education and Welfare. I have seen only the first of these agreements, and I express no opinion at all as to whether that agreement or any other existing agreements are or are not terminable. This is a matter which must be determined by the county attorney or other appropriate counsel, as well as by counsel for the other parties to the agreements. The views expressed herein are directed, therefore, solely to the question of whether the fact of termination, if it is undertaken, is subject to approval by the State Board for Technical Education and by the State Commission on Higher Education. This opinion is also directed at the possible application of Section 21–704.12, Code of Laws, 1962.

It is my opinion that the concurrence of the agencies or groups identified in Section 21–704.13 is not necessary for the termination of the contracts referred to above. Section 21–704.13 relates to modifications to meet changing educational needs which may be contemplated by two-year institutions. There are three specific categories of changes embraced within this section of the law, none of which specifically relates to the termination of contracts of the type herein considered. The concluding paragraph of Section 21–704.13 reads:

Any major modification as specified in this section shall require the concurrence of the local governing or advisory boards and the legislative delegations affected, the board of trustees of the university directly affected, the State Board for Technical and Comprehensive Education, and the Commission for Higher Education,

***2** The major modifications referred to in Section 21–704.13, which require such concurrence, are those precisely identified in that section and no other; and, as stated, the termination of the aforementioned contracts does not come within the specific items requiring approval of the various entities identified above.

If the contracts are terminated, as I think they can be by mutual consent of the parties in accordance with the terms thereof, then the question of whether the University of South Carolina may be substituted in the place of Clemson University under similar contractual arrangements is presented.

It is my opinion that the exception contained in Section 21-704.12 does not have the mandatory effect of requiring the continuance of present contracts which university branches and centers may have with Clemson University or the University of South Carolina. These contracts were entered into prior to the enactment of that statute and constitutional construction would require that it be interpreted so as not to impair the obligation of contracts; consequently, if the contracts were terminable before the enactment of the statute, they continue to be terminable. It is my further opinion that the exception does not preclude a university branch from entering into contracts with another University in the manner indicated by your letter. It is only necessary that the branches continue the present programs under either university. In reaching this conclusion, I am using the word 'and' as found in the last portion of the statute is if it read 'or', which I feel is justified to avoid a harsh interpretation. I do so because I believe that the Legislature did not intend that a university branch should be wedded to either university without the possibility of change.

As to whether or not the approval of the State Commission on Higher Education is required, suffice it so say that there is no statute which expressly requires that agency's approval of any new contract between an extension branch and either one of this State's two universities where one of those universities is merely substituted for the other as the university responsible for the carrying out of an existing program at the branch.

The concurrence, then, of the Commission on Higher Education and the State Board for Technical and Comprehensive Education is not necessary if termination of the agreements occurs. The University of South Carolina, if termination is possible, may be substituted for Clemson University under similar arrangements.'

Where new programs, however, are incorporated under another agreement, those programs will be subject to the approval of the Commission on Higher Education; and any action which may come within the scope of Section 21-704.13 would likewise be subject to approval by the various entities identified in that statute.

In summary, it is my opinion: (1) The present contracts between the Sumter County Commission on Higher Education and Clemson University may be terminated provided such termination is permissible and can be achieved in accordance with the terms of the applicable agreements with Clemson University. (2) The Sumter County Commission on Higher Education may enter into a new contract with the University of South Carolina if such termination is accomplished. (3) Any new programs to be placed into effect must have the approval of the Commission on Higher Education. The phrase 'new programs' is used in the sense in which it appears in the Act relating to the Commission on Higher Education. (4) Any action undertaken by the Sumter County Commission on Higher Education or any other action which comes within the scope of the Act relating to the Commission on Technical and comprehensive Education must be approved as required by the terms of that Act.

Very truly yours,

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Attorney General

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