1973 WL 26865 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
August 28, 1973

***1** Mr. James R. Michael
S. C. Commission on
Higher Education
1429 Senate Street
Columbia, South Carolina 39201

Dear Mr. Michael:
You have requested an opinion from this office as to the authority of the Commission on Higher Education over the addition of junior and senior level courses at branches and centers of the University of South Carolina and Clemson University.

The Commission on Higher Education was created and provided for by a 1967 Act (1967 (55) 261). The Commission was vested with authority over any subsequently created state-supported institutions of higher learning, in the absence of a statutory directive to the contrary by the General Assembly. The 1967 Act was codified as §§ 22-15.6 to 22-15.11, S.C. CODE ANN. (1962) (1971 Cum. Supp.), and § 22-15.9 thereof provides, in part:
No new program shall be undertaken by any State-supported institution of higher learning without the approval of Commission or the General Assembly.

Subsequent to the above, in 1972, the State Board for Comprehensive and Technical Education was created and its powers, duties, etc., provided for (1972 (57) 2469). The Act was modified as §§ 21-704.11 to 21-704.17, S.C. CODE ANN. (1962) (1972 Supp.). Section 1-704.12 places within the jurisdiction of the State Board all two-year, State-supported, post-secondary institutions and their programs that were then operating and any thereafter created. Exception was made, however:
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.

Another provision is included in § 21-704.12 which has become the basis of the problem with which you are concerned. That provision reads, in part:
It is provided further that such university branches or centers are hereby specifically authorized to offer courses in the junior level where . . . and to offer in the senior level when . . ., both subject to the approval of the board of trustees of the university concerned. Such branch or center shall continue to be under the administrative and jurisdictional control of its local governing board and the board of trustees of the University of South Carolina for Clemson University, as the case may be.

This provision appears to be such a statutory directive as is contemplated by § 22-15.9 where it is said:
. . . without the approval of the Commission or the General Assembly. [Emphasis added].

It therefore appears that the 1972 Act placed jurisdiction and control over the implementation of junior and senior level course programs at University of South Carolina and Clemson branches with the local governing board of the branch and the board of trustees of the University of South Carolina or Clemson, as the case might be. Such jurisdiction was therefore removed from the Commission on Higher Education.

During the 1973 session of the General Assembly an act was passed which dealt with the Commission on Higher Education (R640, H1801, Approved June 22, 1973). Section 2 thereof repeated verbatim the portion of § 22-15.9 which was quoted above. You have suggested that this re-enactment might alter the construction, referred to above, of §§ 22-15.9 and 22-704.12. A well recognized rule of statutory construction is included in Vol. 1A of Sutherland Statutory Construction, 4th Ed., § 23.29, however, which states:

***2** The re-enactment of a statute is a continuation of the law as it existed prior to the re-enactment insofar as the original provisions are repeated without change in the re-enactment. Consequently, an intermediate statute which has been superimposed upon the original enactment as a modification of its provisions is likewise not repealed by the re-enactment of the original statute, but is construed as being continued in force to modify the re-enacted statute in the same manner that it did the original enactment. However, this immunity from repeal is extended only to those provisions of intermediate acts which are consistent with the re-enactment, and therefore, any provisions in the intermediate act which are inconsistent with the re-enactment are repealed.

See also 82 C.J.S., Statutes, §§ 295, 370.

The 1972 Act (§ 1-704.12) is consistent with the 1967 Act (§ 22-15.9), which was re-enacted in 1973. This is true because the 1972 Act, in amending the 1967 Act conformed with the provision of the 1967 Act which states:

. . . without the approval . . . of the General Assembly.

Accordingly, it is the opinion of this office that authority over the addition of junior and senior level course programs at branches or centers of the University of South Carolina and Clemson University was removed from the jurisdiction of the Commission on Higher Education by Act No. 1268 of 1972 (1972 (57) 2469, now § 1-704.12 of the Code); and that this conclusion is not changed by the re-enactment in 1973 of the statute which had originally given the Commission jurisdiction over such matters.

Sincerely,

C. Tolbert Goolsby, Jr.
Deputy Attorney General

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