



HENRY McMASTER  
ATTORNEY GENERAL

December 15, 2010

The Honorable Michael A. Pitts  
SC House of Representatives, District 14  
372 Bucks Point Road  
Laurens, South Carolina 29360

Dear Representative Pitts:

We received your letter requesting an opinion of this Office regarding your concern that Clemson University's administration and/or Board of Trustees wants to phase out the Clemson Extension Service and, thereby, the Public Services Activities or ("PSA"). Essentially, you asked whether Clemson University (hereinafter referred to as "Clemson") could lose its land grant charter, including the benefits contained therein, and whether Clemson's attempt to "move away from" the Extension Program violates the Smith-Lever Act. This opinion addresses the relevant statutes and legislative intent at issue in this matter.

#### **Law/Analysis**

In 1889, Clemson Agricultural College was founded pursuant to a devise and bequest from Thomas Green Clemson and upon acceptance by the South Carolina General Assembly of the terms of the Clemson will. 4 S.C. JUR. *Colleges* § 7. Clemson Agricultural College, which became Clemson University in 1964, has operated as a "land grant" institution since shortly after its inception. Andrew C. Land, *A Brief History of Clemson University*, <http://www.clemson.edu>. The Morrill Act,<sup>1</sup> which was approved July 2, 1862, established "land grant" universities. Morrill Act of 1862, ch. 130, 12 Stat. 503 (1862) (codified as amended at 7 U.S.C.A. §§ 301-308 (1980)). The Morrill Act

donated public lands to the several states in order that upon the conditions specified all moneys derived from the sale of such lands or from the sale of land scrip issued under the act should be invested and constitute a perpetual fund the interest of which should be inviolably appropriated by each state accepting the benefits of the act 'to

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<sup>1</sup>The Act was officially titled "An Act Donating Public Lands to the Several States and Territories which may provide Colleges for the Benefit of Agriculture and the Mechanic Arts."

the endowment, support, and maintenance of at least one college where the leading object shall be, without excluding other scientific and classical studies and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts, in such manner as the legislatures of the States may respectively prescribe, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life.’

Hamilton v. Regents of the University of California, 293 U.S. 245 (1934) (quoting the Morrill Act, 7 U.S.C.A. § 304).<sup>2</sup> This Office finds no requirement in the Morrill Act, including section 305 of said Act, which lists the conditions of the grant, or in the Clemson will that mandates Clemson to provide “Extension Services” or “Public Service Activities.” Accordingly, in the opinion of this Office, should Clemson discontinue its Extension Service and/or “Public Service Activities,” although such action would be a great loss to the citizens of South Carolina, it would not be grounds, in and of itself, for revocation of its land grant charter.

The Smith Lever Act established and partially funds the state extension services through the Department of Agriculture. Smith Lever Act of May 8, 1914, ch. 79 , 38 Stat. 372 (codified as amended at 7 U.S.C.A. §§ 341-349). The funds provided by the Smith Lever Act go to a state land grant college selected by the state legislature for the purpose of providing extension services. Id. The extension services are intended “to aid in diffusing among the people of the United States useful and practical information on subjects relating to agriculture, uses of solar energy with respect to agriculture, home economics, and rural energy . . .” 7 U.S.C.A. § 341. As a land grant institution, Clemson is eligible to receive funds pursuant to the Smith Lever Act.

The South Carolina Legislature has provided that

[t]he board of trustees of Clemson University may receive the grants of money appropriated under the act referred to in § 46-7-60<sup>3</sup> and organize and conduct agricultural extension work, which shall be carried on in connection with the college

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<sup>2</sup> The First Morrill Act was enacted July 2, 1862. The Second Morrill Act, enacted on August 30, 1890, provided funds to support land grant institutions created especially to serve African Americans in Southern states. Second Morrill Act, ch. 841, 26 Stat. 417 (1890) (codified as amended at 7 U.S.C. § 321-326, 328-29 (2006)).

<sup>3</sup>S.C. CODE ANN. § 46-7-60 (1976) provides the “assent” of South Carolina to

the provisions and requirements of an act of the Congress of the United States entitled ‘An Act to Provide for the Further Development of Agricultural Extension Work Between the Agricultural Colleges in the Several States Receiving the Benefits of the [First Morrill Act] . . . and all Acts Supplementary Thereto . . . .

of agriculture of the University in accordance with the terms and conditions expressed in such act of the Congress of the United States.

S.C. CODE ANN. § 46-7-70 (1976). Similarly, the legislature has stated that

[t]he board of trustees of Clemson University may receive such grants and use them for the benefit of the State in accordance with the terms and conditions expressed in the act of Congress referred to in § 46-7-80;<sup>4</sup> *provided*, that the grants for the more complete endowment and support of land-grant colleges shall be equally divided between Clemson University and South Carolina State College as now provided by law.

S.C. CODE ANN. § 46-7-90 (1976). Accordingly, although the South Carolina legislature does not specifically name the Smith Lever Act, it is clear that the legislature intends for Clemson University to administer the Extension Service and to receive federal funds for that purpose.

Further, there are numerous South Carolina statutes which reference the Clemson Extension Service, evidencing the legislature's intent for Clemson to administer the Extension Service as well as exemplifying the Clemson Extension Service's importance and prevalence throughout South Carolina. *See, e.g.*, S.C. CODE ANN. § 4-11-50 (Supp. 2009) ("extension service of Clemson University shall place at least one farm and one home demonstration agent in each county in this State . . . and payment of their salaries to be made through . . . the extension service); S.C. CODE ANN § 46-13-160 (1976) ("[t]he Cooperative Extension Service and other divisions of Clemson University shall . . . publish information and conduct short courses of instruction in the areas of knowledge required in § 46-13-60."<sup>5</sup>); S.C. CODE ANN § 3-1-440 (1976) ("[t]he South Carolina National Forest Land Board is hereby created to consist of the Governor . . . , the director of the South Carolina State extension service at Clemson University . . ."); S.C. CODE ANN § 33-47-220 (1976) ("certified copy of the articles of incorporation shall also be filed with the director of the State extension service of Clemson University").

Additionally, of course, Clemson's acceptance of funds to administer the Extension Service requires it to comply with the conditions of any such grant providing said funds. *See* Smith Lever Act, 7 U.S.C.A. § 344 (ascertainment of entitlement to Smith Lever funds) and 7 U.S.C.A. § 345 (replacement of diminished, lost or misapplied funds and restrictions on use of Smith Lever funds).

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<sup>4</sup> S.C. CODE ANN. § 46-7-80 provides the assent of the South Carolina General Assembly "required by 'An Act to Provide for Research into Basic Laws and Principles Relating to Agriculture and to Provide for the Further Development of Cooperative Agricultural Extension Work and the more Complete Endowment and Support of the Land-Grant Colleges . . . .'"

<sup>5</sup>This statute deals with certification of pesticide applicators and licenses.

Accordingly, based on the clear intent of the legislature that Clemson provide and administer the Extension Service and the requirement that Clemson use funds provided for the Extension Service for that purpose, it is the opinion of this Office that should Clemson “move away from” the Extension Service, it would be a violation of the Smith Lever Act, assuming Clemson is receiving funds pursuant to that Act. Additionally, due to the significance and long history of the Clemson Extension Service in this State, as well as the intent of the legislature that Clemson administer this service, it is the opinion of this Office that Clemson may not unilaterally discontinue the program without the consent of the legislature.

Importantly, this Office notes that it has no evidence or information that Clemson has any intention of discontinuing the Extension Service or the Public Service Activities. In fact, the document attached to your opinion request labeled “PSA/CAFLS budget reduction/restructuring plans,” appears to reflect Clemson’s commitment to PSA and the Extension Service. While recognizing that budget cuts are necessary due to state funding cuts, the document states, “[t]he goal is not just to cut the budget; it’s to **ensure that Clemson has a viable PSA organization with the capacity to fulfill Clemson’s land-grant mission and serve the state’s No. 1 economic sector - agriculture and natural resources.**” (emphasis added) The document also notes: “PSA will **focus its remaining state dollars on the core mission of agriculture** and natural resources, **Extension** and regulatory programs[;] PSA budget reductions will exceed state budget cuts in order to **create resources that can be invested in core agricultural research and Extension personnel** and programs in priority areas.” (emphasis added) Further, said document notes that Clemson currently anticipates that “**no county Extension offices . . . will be closed**” and contemplates “‘divestment’ in other areas” so that “**critical . . . Extension positions tied to agriculture and natural resources**” can be maintained. (emphasis added) Accordingly, this opinion addresses the clearly hypothetical issue raised by your letter of whether Clemson’s discontinuance of its Extension Services would violate its land charter rights and/or the Smith Lever Act. Our opinion herein, moreover, should not be taken to indicate or suggest that we believe or have any information that Clemson intends to discontinue or terminate its Extension Services. We clearly do not.

### **Conclusion**

Clemson has operated as a “land grant” institution since shortly after its inception. The Morrill Act established “land grant” universities and specifies conditions in order to receive the benefits of the Act. Morrill Act of 1862, ch. 130, 12 Stat. 503 (1862) (codified as amended at 7 U.S.C.A. §§ 301-308 (1980)) However, this Office finds no requirement in the Morrill Act or in the Clemson will requiring Clemson to provide its Extension Service. Accordingly, it is the opinion of this Office that discontinuation of extension services would not jeopardize Clemson’s land grant charter.

The Smith Lever Act established and partially funds the state extension services through the Department of Agriculture. Smith Lever Act of May 8, 1914, ch. 79, 38 Stat. 372 (codified as amended at 7 U.S.C.A. §§ 341-349). Although the South Carolina legislature does not specifically identify the Smith Lever Act, it clearly intends Clemson to receive funds for the purpose of

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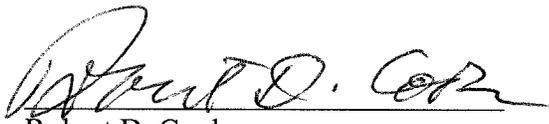
administering the Extension Service. *See, e.g.,* S.C. CODE ANN. § 46-7-70 (1976); S.C. CODE ANN. § 46-7-90 (1976). In the opinion of this Office, Clemson's receipt of public funds through the Smith Lever Act or other grants for the purpose of administering the Extension Service, as well as the clear intent of the legislature that Clemson provide and administer said program, dictate that Clemson may not unilaterally discontinue the Clemson Extension Service. . Again, we emphasize that we have no information whatsoever that Clemson intends to discontinue the Clemson Extension Service. To the contrary, the information you have provided indicates otherwise, and we are responding herein only to your "what if" hypothetical presented.

Sincerely,

Henry McMaster  
Attorney General

  
By: ElizabethAnn L. Felder  
Assistant Attorney General

REVIEWED AND APPROVED BY:

  
Robert D. Cook  
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