



ALAN WILSON
ATTORNEY GENERAL

October 7, 2011

Mr. Kenneth B. Wingate
SC Commission on Higher Education
1122 Lady Street, Suite 300
Columbia, SC 29201

Dear Mr. Wingate:

We received your letter requesting clarification concerning two prior opinions of this Office dated January 5, 2011 and May 11, 2011. Specifically, you asked us to address the definition of “new” or “new programs” as related to the Commission on Higher Education’s (CHE) authority to approve a new USC/Greenville Hospital System School of Medicine in Greenville. You have expressed concern that there are situations with respect to academic programs where at first glance, certain new programs may appear to be simple expansions. You explained that the core of your concern is the two above referenced opinions “might be used in the future to contend that certain program expansions or additions or other program changes might not be subject to” CHE review even though “we have long interpreted [such authority] to be the intent of the General Assembly.” We understand the proposed addition to the USC Medical School is not part of your inquiry.

In the opinion dated January 5, 2011, we opined as follows:

[T]he proposed addition to the USC Medical School Program in Greenville does not require CHE approval. Employing the common and ordinary meaning of the phrase “new program,” as used in the statutes relating to CHE’s authority, we deem the addition of first and second year USC Medical School courses in Greenville to the already established program – one in which third and fourth years of USC Medical School have long been offered in Greenville – to be the addition to an existing program rather than the establishment of a “new program” for purposes of § 59-103-35 and related statutes.

Op. S.C. Atty. Gen., January 5, 2011 (emphasis added). This conclusion was affirmed in our opinion dated May 11, 2011. See, Op. S.C. Atty. Gen., May 11, 2011. This Office also opined that “the Legislature itself expressly recognized a distinction between the initiation of a ‘new program’ and the expansion or addition to an existing program.” Op. S.C. Atty. Gen., January 5, 2011.

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The law is clear that the South Carolina Commission on Higher Education has authority to approve new public college or university programs in South Carolina. For example, S.C. Code § 59-103-35 provides in pertinent part as follows:

No new program may be undertaken by any public institution of higher education without the approval of the commission. The provisions of this chapter apply to all college parallel, transferable and associate degree programs of technical and comprehensive education institutions. All other programs and offerings of technical and comprehensive education institutions are excluded from this chapter.

S.C. Code § 59-103-35. Similarly, S.C. Code § 59-123-10 provides in relevant part:

[i]t is further intended that any new programs undertaken by the institution [of higher education] will first be approved by the Commission on Higher Education and that no organizational changes in the operation and management of the institution shall be made as a result of the change in name.”

S.C. Code § 59-123-10. Also, S.C. Code § 59-101-150 states that “[n]o new program shall be undertaken by any State-supported institution of higher learning without the approval of the Commission [on Higher Education] or the General Assembly.” S.C. Code § 59-101-150. Nevertheless, it remains the opinion of this Office that “the proposed addition to the USC Medical School Program in Greenville does not require CHE approval.” See, January 5, 2011.

The conclusion drawn in the January 5, 2011 and May 11, 2011 opinions is based upon the situation addressed in those opinions. We reaffirm our conclusion that CHE approval is unnecessary with respect to the unique situation involving the proposed expansion of the USC Medical Program in Greenville. Such is not to say, however, that CHE approval is not required in other circumstances unrelated to the USC/Greenville Medical Program. We leave it to the Commission to apply the law in these other circumstances.

Very truly yours,



Leigha Blackwell Sink
Assistant Attorney General

REVIEWED AND APPROVED BY:



Robert D. Cook
Deputy Attorney General