

The State of South Carolina



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December 28, 1989

Mr. John C. Sutusky
Associate Commissioner for Facilities
South Carolina Commission for Higher
Education
1333 Main Street, Suite 300
Columbia, South Carolina 29201

Dear John:

You have requested the advice of this Office as to whether the Commission on Higher Education (Commission) is the final authority concerning authorization of facilities at a location other than on a currently approved campus or on property contiguous thereto and whether such facilities include only the erection of new buildings rather than the acquisition of existing buildings. The language of section 59-103-110 provides as follows:

"No public institution of higher learning shall be authorized to construct any new permanent facility at any location other than a currently approved campus or on property immediately contiguous thereto unless such new location and such new facility has been approved by the Commission...[certain exceptions for Trident Technical College and Francis Marion College.]"

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The plain meaning (South Carolina Department of Highways and Public Transportation v. Dickinson, 341 S.E.2d 134 (1986)) of section 59-103-110 and the ordinarily mandatory meaning of its use of the word "shall" (id.) indicate that the requirement is mandatory for an institution of higher learning to obtain the approval of the Commission before constructing a new permanent facility other than on an approved campus or on property contiguous thereto. The specific language of section 59-103-110 and its mandatory language indicates that the disapproval of a request under that statute could not be avoided by the budget approval process under section 59-103-35, by the provisions for recommendations to the Budget and Control Board as to facilities and other matters under section 59-103-60, or by the Joint Bond Review Committee provisions under section 2-47-10, et seq. Sutherland Statutory Construction, Vol. 2A §51.01. Accordingly, a decision of the Commission disapproving a request under section 59-103-110 could not be reversed by another public agency; however, although no further review is provided from the disapproval of a request by an institution of higher learning under section 59-103-110, the approval of the Commission of such a request would not preclude Joint Bond Review Committee and Budget and Control Board review as provided under section 2-47-10, et seq.

The plain meaning (Dickinson, supra) of "construct any new permanent facility" in section 59-103-110, including its use of the words "construct" and "new", indicates that the provision refers to a building that is to be built rather than to an existing facility. This conclusion is supported by the ordinary meaning of the word "construct" which, with reference to buildings, indicates the erection of the building rather than the acquisition of an existing facility. See Words and Phrases, Vol. 8A "construct"; Black's Law Dictionary, "construct"; and The Oxford English Dictionary, "construct".

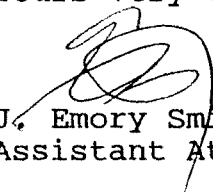
In conclusion, the Opinion of this Office is that obtaining the approval of the Commission is mandatory as to a request of a public institution of higher learning under section 59-103-110 to construct a new permanent facility, other than on an approved campus or property contiguous thereto, and the disapproval of such a request may not be reversed by another public agency; however, the approval by the Commission of such a request may still require Budget and Control Board and Joint Bond Review Committee review. Finally, the words "construct any new permanent facility" in sec-

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tion 59-103-110 refer to the physical erection of a new building rather than to the acquisition of an existing facility.

If you have any questions, please let me know.

Yours very truly,



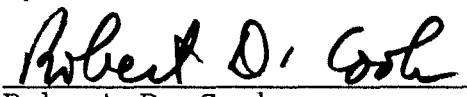
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