

1981 WL 157908 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

August 13, 1981

***1 RE: State Appropriation to the University of South Carolina for Fiscal Year 1980-81**

The Honorable Earl E. Morris, Jr.
Comptroller General
Post Office Box 11228
Columbia, South Carolina 29211

Dear Mr. Morris:

You have requested an opinion of this office, clarifying the University of South Carolina's entitlement to state appropriations for fiscal year 1980-81 based upon USC's actual full-time equivalent student count. Specifically, you have asked whether USC is entitled to a state appropriation for fiscal year 1980-81 for military students enrolled at USC but attending classes at Fort Jackson in Columbia.

This question initially surfaced in October, 1981, when the University sought an opinion of this office on the matter. Thereafter, by opinion dated January 12, 1981, this office advised USC and the State Commission on Higher Education that USC was not entitled to a state appropriation in the fiscal year 1980-81 general appropriations act for the Fort Jackson students. A copy of the January 12, 1981 opinion, along with attachments, was supplied to you in Attorney General McLeod's August 3, 1981 letter. To briefly summarize, in the 1980-81 general appropriations act the General Assembly, for whatever reason, did not include the Fort Jackson students in USC's projected fall 1980 enrollment; moreover, the General Assembly specifically included in the appropriations act the funding for the Fort Jackson program out of student fees. Thus, the General Assembly clearly treated USC's Fort Jackson program on a basis different from programs offered at USC's branch campuses for military students.

In an effort to place the Fort Jackson program on an equal basis with USC's branch campus military programs, a joint resolution was introduced into the General Assembly on or about April 15, 1981. The joint resolution, however, was not enacted and ratified by the General Assembly until July, 1981, and the resolution only became effective upon the Governor's approval on July 20, 1981. The joint resolution, R214, clearly evinces the intention of the General Assembly that military students in public senior colleges and universities be included in the count of full-time equivalent students for appropriation purposes. Be that as it may, in response to a question from the State Auditor this office issued an opinion dated July 30, 1981, stating that the joint resolution is prospective in nature and may not be given a retrospective application.

The July 30, 1981 opinion was based upon the prevailing rule followed in South Carolina in interpreting statutes; that is, construction of a statute may not be undertaken if the statute is clear and unambiguous upon its face. Here, the joint resolution, R214, contains no readily apparent ambiguity; therefore, the general rule of prospective application of statutes was followed in the July 30, 1981 opinion. Since the issuance of that opinion, this office has been requested by USC to reconsider its position with regard to R214. That opinion has been reconsidered with specific reference to three matters extrinsic to the joint resolution.

***2** A question may exist as to which fiscal year and appropriations act was in effect at the time of the passage of R214. By joint resolutions, R205, R206, the General Assembly essentially extended the operation of the 1980-81 General Appropriations Act beyond June 30, 1981, until the effective date of the 1981-82 General Appropriations Act. The 1981-82 General Appropriations Act became effective July 28, 1981. Thus, some ambiguity does exist with regard to the relationship between R214 and the 1980-81 General Appropriations Act.

In that some ambiguity or uncertainty exists with regard to the implementation of R214, resort may be made to statutory construction. [Timmons v. Tricentennial Comm.](#), 254 S.C. 378, 175 S.E.2d 805 (1970). Contemporaneous circumstances may be relevant in construing a statute. Here, R214, read for the first time in the House of Representatives on April 15, 1981, was an apparent response to the July 12, 1981 opinion of this office, discussed hereinabove. Thus, R214 began its tortuous path through the General Assembly during fiscal year 1980-81. The attention of this office has been called to a colloquy that occurred during a meeting of the House Ways and Means Committee during its deliberations on the 1981-82 General Appropriations Bill. A transcript of the tape recorded meeting of the Committee indicates that one member of the House, apparently referring to H2571, R214, informed the Committee of a need to correct a problem regarding full-time equivalent student counts for military students at USC, the Citadel, and South Carolina State College. The transcript indicates a desire to make an adjustment in the count of military students during fiscal year 1980-81. The transcript, however, is not crystal clear, particularly with regard to the understanding of other Committee members and with regard to action upon the joint resolution. In any event, the transcript of the Ways and Means Committee meeting is of little use here and would be of questionable admissibility as evidence in a court of law in this state. See [Tallevast v. Kaminski, et al.](#), 146 S.C. 225, 143 S.E. 796 (1928), and [Timmons v. Tricentennial Comm.](#), *supra*.

While the transcript from the Ways and Means Committee is of questionable value, a statutorily required fiscal impact statement on R214 (H2571) is relevant and enlightening. [Section 2-7-72, Code of Laws of South Carolina](#), 1976, as amended, requires that any bill or resolution introduced into the General Assembly requiring the expenditure of funds must have affixed to it a statement of estimated fiscal impact and cost. Under certain circumstances, the fiscal impact statement attached to the bill must include a signed statement by the State Auditor. The impact statement for R214, a copy of which is attached hereto, clearly indicates that the estimate of cost to the state was figured for fiscal year 1980-81. The only reasonable conclusion to be drawn from the fiscal impact statement is that the proponents of R214 intended that the adjustments in student counts and resulting adjustments in appropriations come from funds appropriated during fiscal year 1980-81. Further, the fiscal impact statement states clearly that the estimated cost of the state after fiscal year 1980-81 is 'none'.

*3 Viewed in the abstract, R214 should be accorded prospective application only; however, after consideration of contemporaneous circumstances and the fiscal impact statement appurtenant to the resolution, a conclusion can be drawn that the General Assembly intended that R214 be applicable to fiscal year 1980-81 and state appropriations for that year. Based upon the foregoing discussion, the opinion of this office is that the University of South Carolina, the Citadel and South Carolina State College are entitled to an adjustment in state appropriations out of the 1980-81 General Appropriations Act for military students.

Sincerely,

Paul S. League
Assistant Attorney General

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