

1982 WL 189383 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 26, 1982

\*1 The Honorable Howard R. Boozer  
Executive Director  
South Carolina Commission on Higher Education  
Rutledge Building—1429 Senate Street  
Columbia, South Carolina 29201

Dear Dr. Boozer:

You have requested the opinion of this office concerning the authority of the Commission on Higher Education under a proviso contained in the Appropriations Act passed in 1982 but not yet printed in the Acts and Joint Resolutions of this year. According to your letter, the proviso reads as follows:

‘Provided, Further, That of the amounts appropriated for contractual services under Section 23, Subitem B of Item 1 (Medical School) a portion shall be used by the University of South Carolina by August 1, 1982, to accept full and equal partnership in the Consortium of the Community Teaching Hospitals (Extramural Programs coordinated by the Medical University of South Carolina). The Consortium will serve to provide clinical education resources and programs for both the Medical University of South Carolina and the University of South Carolina and their respective medical schools. In the event that a mutually satisfactory agreement is not reached between the University of South Carolina and the Consortium by October 1, 1982, the Commission on Higher Education will make final determinations concerning such agreement.’

You wish to be advised as to whether the Commission has the authority to compel the Medical University of South Carolina and the University of South Carolina to enter an agreement for participation in the Consortium of Community Teaching Hospitals if these schools have not already done so.

The only duty and authority given to the Commission by this proviso is contained in the last sentence. It provides that the Commission on Higher Education will make final determinations concerning the Consortium agreement if the University of South Carolina has not reached agreement with the Consortium by October 1, 1982. The use of the word ‘will’ indicates that this sentence should be construed as being mandatory. Sutherland Statutory Construction, Vol. 2A § 57.03 (4th Ed.) Thus, the Commission must set the terms for the ‘agreement’ if the parties have not done so; however, the use of the word ‘agreement’ here is somewhat misleading in that the term implies consent of the parties. Because the Commission has the authority to set the terms of the ‘agreement’ only if the University and the Consortium have not been able to agree previously themselves, this term might be more properly read as meaning ‘plan’. That the Commission would have the authority to impose this plan on the University is made clear by reading the last sentence of the proviso with reference to the first sentence in it. The first sentence requires the University to use money appropriated to accept partnership in the Consortium. Thus, because the University must participate in the Consortium and because the Commission must determine the plan of its participation with the Consortium if a voluntary arrangement has not been achieved, the Commission has the authority to impose a binding plan on the University; however, the Commission's authority to impose such a plan would not be effective until October 1, 1982.

\*2 If you have any questions or if we may be of further assistance, please do not hesitate to contact us.

Yours very truly,

Frank K. Sloan  
Deputy Attorney General

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