

1978 WL 34990 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 21, 1978

*1 R. Laine Ligon
Director
Tuition Grants Agency
411 Palmetto State Life Bldg.
Columbia, SC 29201

Dear Mr. Ligon:

You have asked for an opinion from this Office as to whether a portion of the Tuition Grants appropriation can be reserved for commitments to commuting students (non-boarding) who may apply after all other funds have been awarded. You have pointed out in your opinion request that all available tuition grant funds are often fully committed well before school starts. Many commuting students do not make application for admission or financial aid until just prior to their anticipated enrollment. Typically, you note that this is after the available funds from scholarship and grant sources are exhausted. Because of this, no award can be made even though academic and financial need eligibility is documented. Without the tuition grant award, the commuting student will often either not attend college at all, or enroll at a State supported college.

The applicable statutes governing the Higher Education Tuition Grant Committee are found in [S.C. Code Ann. §§ 59-113-10, et seq.](#) (1976), as amended, [S.C. Code Ann. § 59-113-20](#) (1976) states:

The State of South Carolina shall grant an amount as provided in this chapter to any applicant who meets the following qualifications:

- (a) has been a resident of South Carolina for at least one year;
- (b) is of good moral character;
- (c) has demonstrated qualities of academic merit and financial needs;
- (d) has been accepted by or is registered in a South Carolina independent institution of higher learning as a full time student whose academic programs are not compromised solely of sectarian instructions; and
- (e) is not enrolled in a course of study leading to a degree in theology, divinity, or religious education.

The language in [§ 59-113-20](#) makes no provisions for the setting aside of a portion of the Tuition Grants appropriations and awarding such funds to commuting students, or others, after all other funds have been awarded. Indeed, the language 'shall grant' contained in [§ 59-113-20](#) implies that the Tuition Grant Committee is mandated to award all monies appropriated for its use for grants on a 'first come-first serve' basis to all qualified applicants.

While it is true that the Tuition Grants funds serve a benevolent purpose by encouraging qualified students to attend college, it has been recognized by the S.C. Supreme Court that the Tuition Grants provide substantial benefits to independent colleges.

It is apparent that one of the main purposes of the Tuition Grant is to reduce the cost to a student for attending the private colleges and thereby attract additional students to their campuses so as to fill the vacancies in their student body. Such would have the effect of adding additional funds to their treasuries and thereby improve their financial status. [Hartness v. Patterson](#), 255 S.C. 503, 179 S.E.2d 907, 909 (1971).

*2 Under these circumstances, it is fair to state that the Tuition Grants under § 59-113-10, *et seq.* constitute legislative grants or donations directly to certain qualified students, and indirectly to certain private, independent institutions of higher learning. Based upon the demands of public policy and the protection of the public interest, legislative grants are subject to a strict construction. [Cain v. S.C. Public Service Authority](#), 222 S.C. 200, 72 S.E.2d 177, 183 (1952). In the application of a strict construction of the statutory language concerning legislative grants, every reasonable doubt should be resolved as to limit the powers and rights claimed under the authority of the statute against the grantee. 73 Am.Jur.2d, *Statutes*, §§ 307, 308 (1974).

As a general rule, . . . in the construction of a statutory grant, nothing passes by implication. Thus, a power may not be implied as incidental to powers granted merely because it is useful or convenient. 73 Am.Jur.2d, *Statutes*, § 311 (1974).

Since the General Assembly did not expressly-provide for the setting aside of any funds from the appropriations for the Tuition Grant Committee for the use of a specific class of eligible students such as commuting students, it is the opinion of this Office that the statutes providing for tuition grants must be strictly construed; and as such, there exists no statutory authority which would permit the Tuition Grants Agency to set aside funds to be reserved for commitments to commuting students who may apply after all other funds have been awarded.

If I can provide any further information, please advise.

With kind regards, I remain
Very truly yours,

Nathan Kaminski, Jr.
Assistant Attorney General

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