

Dear Senator Chapman: (Similar letter to Representative Theodore)

Attached for your consideration is proposed legislation pertaining to the establishment of eligibility for paying tuition and fees in in-state rates at the public postsecondary educational institutions. The proposed legislation will remedy two features of the existing law which have presented problems and will make other relatively minor changes based on the experience of the past few years.

Legislation enacted in 1971 extends in-state rates to "persons who have been domiciled in South Carolina for a period of no less than twelve months with an intention of making a permanent home therein, including persons in their majority, emancipated minors, and unemancipated minors whose parents have been (so) domiciled..." Thus, persons in their majority are able to qualify for in-state rates after residing in South Carolina for twelve months and showing intent to make the State their permanent home, even though they depend on financial support from parents or others domiciled outside of South Carolina and paying no taxes in this State. This is believed to be inconsistent with the intent of the General Assembly in enacting the 1971 legislation.

Legislation enacted in 1974 extends in-state rates to "persons who reside in and have been domiciled in South Carolina for less than twelve months but who have full-time employment in the State and the spouse and unemancipated minors of such persons." Such a person's child eighteen years of age or over, however, is treated as a person of majority age who must be domiciled in the State for twelve months to qualify for in-state rates, even though financially dependent on the parent, and a seventeen year old brother or sister qualifies for in-state rates at once.

The proposed legislation extends in-state rates to "Independent persons who have been domiciled in South Carolina for a period of no less than twelve months with an intention of making a permanent home therein, and their dependents, ..." An independent person is defined in the legislation as a person

in his or her majority whose predominant source of income is his or her own earnings or income. This change will make it more difficult to qualify for in-state rates and limit those rates to persons who can reasonably be expected to pay taxes in South Carolina. A dependent is defined in the legislation as one whose predominant source of income is from a parent, spouse or guardian, and eligibility for in-state rates for a dependent will follow that of the parent, spouse or guardian.

A number of sections of the current law will be changed by the above proposed changes. Further, based on experience since 1971 other relatively minor changes should be made. For these reasons, the proposed legislation stands by itself, repealing all relevant existing acts while consolidating their pertinent provisions. A comparison of the proposed legislation with the current law is enclosed.

The Presidents of the public senior colleges and universities, the Executive Director of the State Board for Technical and Comprehensive Education, and their staff members concerned with establishing eligibility for in-state rates contributed to the development of the proposed legislation. The Attorney General provided some useful suggestions. Phillip M. Grier, University Counsel, University of South Carolina; Joseph B. McDevitt, University Counsel, and Ben W. Anderson, Assistant to the University Counsel, Clemson; and McKenzie A. Perry, Jr., College Counsel, College of Charleston, were significantly involved and will be happy to discuss the proposed legislation if you desire.

It is recommended that the proposed legislation be enacted during this session of the General Assembly. If we can be of any assistance, please let me know.

Sincerely,

Howard R. Boozer

Enclosures

cc: Members, Senate Education Committee (or House Public Works and Education Committee)
Members, Commission on Higher Education
Presidents of public senior colleges and universities and Executive Director SBTCE and their staff members concerned with student residency

No. _____

An Act To Define Domicile For The Purpose Of Paying Tuition And Fees At State-Supported Postsecondary Educational Institutions; To Make Provisions For Persons In The State Less Than Twelve Months But With Full-Time Employment; To Make Provision For Military Personnel; To Make Provision For Full-Time Faculty And Administrative Employees; To Make Provision for Dependents Of The Preceding Persons; To Make Provision For Recipients Of Scholarship Aid; To Provide For The Administration Of This Act; And To Repeal Acts Pertaining to The Preceding.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Definitions. - As used in this Act:

A. The words "State Institution" as hereinafter used shall denote those postsecondary educational institutions under the jurisdiction of -

- (1) the Board of Trustees, Clemson University;
- (2) the Board of Trustees, Medical University of South Carolina;
- (3) the Board of Trustees, South Carolina State College;
- (4) the State College Board of Trustees;
- (5) the Board of Visitors, The Citadel;
- (6) the Board of Trustees, the University of South Carolina;
- (7) the Board of Trustees, Winthrop College; and
- (8) the State Board of Technical and Comprehensive Education.

B. The word "student" as hereinafter used shall mean and connote any person enrolled for studies in any State Institution.

C. The word "residence" or "reside" as hereinafter used shall mean and connote continuous and permanent physical presence within this State, provided that temporary absences for short periods of time shall not affect the

establishment of a residence.

D. The word "domicile" as hereinafter used shall mean and connote a person's true, fixed, principal residence and place of habitation; it shall indicate the place where such person intends to remain, and to which such person expects to return upon leaving without establishing a new domicile in another state. For purposes of this section one can have only one legal domicile; one is presumed to abandon automatically an old domicile upon establishing a new one. Housing provided on an academic session basis for students at State Institutions shall be presumed not to be a place of principal residence, as residency in such housing is by nature temporary.

E. The words "in-state rates" as used hereinafter shall mean and connote charges for tuition and fees established by State institutions for persons who are domiciled in South Carolina in accordance with this Act; the words "out-of-state rates" as used hereinafter shall mean and connote charges for tuition and fees established by State institutions for persons who are not domiciled in South Carolina in accordance with this Act.

F. The words "independent person" as hereinafter used shall mean a person in his or her majority, or an emancipated minor, whose predominant source of income is his or her own earnings or income from employment, investments, or payments from trusts, grants, scholarships, loans, or payments of alimony or separate maintenance made pursuant to court order.

G. The words "dependent" or "dependent person" as hereinafter used shall mean one whose financial support is provided not through his or her own earnings or entitlements as aforesaid, but whose predominant source of income or support is payments from a parent, spouse, or guardian; provided however that the words "dependent" or "dependent person" shall not include a person who is the recipient of alimony or separate maintenance payments made pursuant to court order.

H. The word "minor" shall mean a person who has not attained the age of eighteen years; and the words "emancipated minor" shall mean a minor whose parents have entirely surrendered the right to the care, custody and earnings of such minor and are no longer under any legal obligation to support or maintain such minor.

I. The word "parent" shall mean a person's natural or adoptive father or mother; or if one parent has custody of the child, the parent having custody; or if there is a guardian or other legal custodian of such person, then such guardian or legal custodian; provided, however, that where circumstances indicate that such guardianship or custodianship was created primarily for the purpose of conferring South Carolina domicile for tuition and fee purposes on such child or dependent person, it shall not be given such effect.

J. The word "spouse" shall mean the husband or wife of a married person.

SECTION 2. Determination of domicile for tuition and fee purposes. - South Carolina domicile for tuition and fee purposes shall be established as follows in determinations of rates of tuition and fees to be paid by students entering or attending State Institutions:

A. Independent persons who reside in and have been domiciled in South Carolina for a period of no less than twelve months with an intention of making a permanent home therein, and their dependents, may be considered eligible for in-state rates.

B. Independent persons who reside in and have been domiciled in South Carolina for fewer than twelve months but who have full-time employment in the State, and their dependents, may be considered eligible for in-state rates for as long as such independent person is employed on a full-time basis in the State.

C. Where an independent person meeting the provisions of Section 2.B. above, is living apart from his or her spouse, or where such person and his or her spouse are separated or divorced, the spouse and dependents of such independent person shall have domiciliary status for tuition and fee purposes only under the following circumstances:

- (1) if the spouse requesting domiciliary status for tuition and fee purposes remains domiciled in South Carolina although living apart or separated from his or her employed spouse;
- (2) if the dependent requesting domiciliary status for tuition and fee purposes is under the legal custody or guardianship, as defined in Section 1. I. above, of an independent person who is domiciled in this state; or if such dependent is claimed as an income tax exemption by the parent not having legal custody but paying child-support, so long as either parent remains domiciled in South Carolina.

D. The residence and domicile of a dependent minor shall be presumed to be that of the parent of such dependent minor.

SECTION 3. When domicile is changed. - When the domicile of a student or of the person upon whom a student is financially dependent changes after enrollment at a State Institution, tuition charges shall be adjusted as follows:

A. Except as provided in Section 2. B. above, when domicile is taken in South Carolina, a student shall not become eligible for in-state rates until the beginning of the next academic session after expiration of twelve months from date of domicile in this state.

B. When South Carolina domicile is lost, eligibility for in-state rates shall end on the last day of the academic session in which the loss occurs;

however, application of this subsection shall be at the discretion of the institution involved.

SECTION 4. Effect of marriage. - Except as provided in Section 2. C. above, marriage shall effect determinations of domicile for tuition and fee purposes only insofar as it operates to evince an intention by the parties to make a permanent home in South Carolina.

SECTION 5. Military personnel and their dependents. - Notwithstanding other provisions of this Act, during the period of their assignment to duty in South Carolina members of the armed services of the United States stationed in South Carolina and their dependents may be considered eligible for in-state rates. When such armed service personnel are ordered away from the State, their dependents may continue for an additional twelve months to have this eligibility at the State Institutions where they are enrolled at the time such assignment ends. Such persons and their dependents may be considered eligible for in-state rates for a period of twelve months after their discharge from the armed services even though they were not enrolled at a State Institution at the time of their discharge, provided they have evinced an intent to establish domicile in South Carolina and provided they have resided in South Carolina for a period of at least twelve months immediately preceeding their discharge.

SECTION 6. Full-time faculty and administrative employees. - Full-time faculty and administrative employees of State institutions, and the spouses and children of such persons, shall be excluded from the provisions of this Act.

SECTION 7. Recipients of scholarship aid. - Notwithstanding other provisions

of this Act, the governing boards listed in Section 1. A. above, are authorized to adopt policies for the abatement of any part or all of the out-of-state rates for students who are recipients of scholarship aid.

SECTION 8. Burden of proof on students. - Each State Institution shall designate an official to administer the provisions of this Act. Students making application to pay tuition and fees at in-state rates shall have the burden of proving to the satisfaction of the aforesaid officials of State Institutions that they have fulfilled the requirements of this Act before they shall be permitted to pay tuition and fees at such rate.

SECTION 9. Penalties for willful misrepresentation of fact. - Where it appears to the satisfaction of officials charged with administration of these provisions that a person has gained domiciliary status improperly by making or presenting willful misrepresentations of fact, such persons will be charged tuition and fees past due and unpaid at the out-of-state rate, plus interest at a rate of 8% per annum, plus a penalty amounting to 25% of the out-of-state rate for one semester; and until these charges have been paid, no such student shall be allowed to receive transcripts or to graduate from any State Institution.

SECTION 10. Commission on Higher Education may prescribe rules. - The Commission on Higher Education may prescribe uniform rules for application of the provisions of this Act and may provide for annual review of such rules.

SECTION 11. Legislation repealed. - The following are repealed:

- A. Section 3, Part II, Act No. 767, 1962.
- B. Section 8, Part II, Act No. 410, 1971.
- C. Act No. 1080, 1974.
- D. Act No 633, 1976.

Comparison of Proposed Legislation

"An Act To Define Domicile For The Purpose Of Paying Tuition And Fees
At State-Supported Postsecondary Educational Institutions;...."

With Current Legislation

Section 1.A. No change in definition of "State Institution".

1.B. No change in definition of "student".

1.C. No change in definition of "residence".

1.D. In definition of "domicile", adds provision that a person can have only one legal domicile, and changes presumption that domicile does not include "housing provided for students" to "housing provided on an academic session basis".

1.E. Adds definition of "in-state" and "out-of-state" rates.

1.F. Adds definition of "independent person".

1.G. Adds definition of "dependent".

1.H. No change in definition of "minor" and "emancipated minor".

1.I. Changes definition of "parent" from "...the unemancipated minor's father; or if he has no father his mother;" to "father or mother".

1.J. Adds definition of "spouse".

Section 2.A. (Basic law) Changes provision extending in-state rates which reads "to persons who have been domiciled in South Carolina (for twelve months) including persons in their majority, emancipated minor and unemancipated parents who have been (so) domiciled"

to read "independent persons who reside in and have been domiciled in South Carolina (for twelve months), and their dependents, . . ."

- 2.B. (Regarding persons with full-time employment but less than twelve months domicile). Adds "independent" and "for as long as the independent person is employed on a full-time basis" and substitutes "dependents" for "emancipated minors" so that "Independent persons who reside in and have been domiciled in South Carolina for fewer than twelve months but who have full-time employment in the State, and their dependents, may be considered eligible for in-state rates for as long as such independent person is employed on a full-time basis in the State." Deletes provision that this authorization does not apply if the person or his spouse is in South Carolina primarily as a student.
- 2.C. (Regarding persons with full-time employment but less than twelve months domicile, and living apart from spouse)
- C.(1) Adds provision extending in-state rate to the spouse if domiciled in South Carolina.
- C.(2) No change in extending in-state rate to a child under legal custody of a parent domiciled in South Carolina.
- Adds provision extending in-state rates to a dependent claimed as an income tax deduction but not in legal custody of a parent domiciled in South Carolina.
- Deletes authorization for officials to require proof of the facts as this is covered in Section 8.

- 2.D. Adds provision that residence and domicile of a dependent minor shall be presumed to be that of the parent.

Section 3. Changes dates when in-state rates begin or terminate from "semester" to "academic session".

Section 4. No change in effect of marriage on determinations.

Section 5. (Regarding member of Armed Services)

Adds authority to extend in-state rates to the member of the Armed Services. Existing law includes authority for his dependents.

Changes authority for dependents to continue to pay in-state rates after member is transferred, from an indefinite period to twelve months.

Deletes specific authority for dependents of Federal employees to pay in-state rates, as this is covered in Section 2.B.

Adds authority for military families to claim in-state rates for a period of twelve months after discharge even if not enrolled at a State Institution provided intent to domicile in South Carolina is shown and they have resided in South Carolina for at least twelve months immediately prior to discharge.

Section 6. No change in exempting from the Act full-time faculty and administrative employees of State institutions and their spouses and children.

Section 7. No change in authority for governing boards to abate tuition

and fees for scholarship recipients.

Section 8. Adds requirement for each State Institution to designate a person to administer Act.

No change in placing on students the burden of proof of eligibility for in-state rates.

Section 9. No change in penalties for misrepresentation.

Section 10. Changes requirement that Commission on Higher Education "shall" prescribe rules to "may" prescribe.