

Attorney General Strengthens ACHE's Hand.

The state Attorney General has issued an opinion solidifying the authority of the Alabama Commission on Higher Education (ACHE) over productivity standards for academic programs. 271 Op. Att'y Gen. 116 (2003). Two questions were posed to the Attorney General by the ACHE Chair. The first asked whether ACHE could condition its approval of a new program for an institution upon compliance with certain post-implementation requirements. Specifically, ACHE inquired about its authority to approve a proposed academic program but with the condition that it maintain a sufficient enrollment and sufficient number of graduates. After reviewing the statutory requirement that a new unit or program of instruction be established only after it has been reviewed, evaluated, and approved by ACHE (Section 16-5-8(c), *Alabama Code*), the Attorney General concluded that ACHE's authority over new programs was broad enough to include the kind of conditional approval suggested. The opinion further stated that, if those conditions were not satisfied, ACHE is authorized to direct that the program cease operation.

A second, related question was directed to the Attorney General. Assuming the first question was answered in the affirmative, could ACHE establish as a post-implementation condition for the program a graduation level that exceeded the minimum degree productivity standards for existing programs issued by ACHE? The Attorney General responded by finding that the latter "viability" standards did not limit ACHE if it wished to set a higher graduate level as a condition for approving a new program.

This opinion, while not breaking new ground, certainly provides ACHE a stronger position in its approach to new program approval issues.