

Community college tenure is illegal, opinion contends

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A new state attorney general's opinion repeats earlier contentions that tenure, or job privilege, for community college instructors is illegal.

Western Piedmont Community College revoked its tenure policy last November.

The new opinion was a response to a similar action by Craven Community College in New Bern in 1979.

In the opinion, the attorney general said state law does not give local college trustees the right to confer tenure, and that revoking college tenure policy does not violate the U.S. Constitution.

At WPCC, tenure was granted to experienced faculty members after five years' employment and upon recommendation by the tenured faculty. It required the college to state a cause for a dismissal and a 12-month notice.

The WPCC trustees, however, promised still to abide by the special dismissal requirements for tenured instructors employed at the time. But new instructors would not be eligible.

After the WPCC trustee action, the college's faculty senate appointed a committee to study the issue. "The committee investigated the issue and found the (WPCC) board's action was, indeed, legal and justifiable," said Tom Eller, president of the senate.

Eddie Speaks of the attorney general's office said there are no judicial challenges to the tenure issue in North Carolina.

Public school teachers and university system professors are granted tenure under special state law. No such law has been enacted for community college instructors, although

one would be possible, Speaks added.

In the attorney general's opinion, "the board of trustees of Craven Community College did not have the authority to adopt this policy (of tenure)." It added that state law "delegates specific powers and duties to the boards of trustees of community colleges. Those powers do not include the authority to adopt a tenure system."

Also, the trustees' "power to elect or employ personnel" does not include authority to grant job privilege, the ruling explained. It added that tenure is a matter of public policy that can only be granted by the General Assembly.

"The State Board (of Community

Colleges) has not adopted any regulations establishing a system of tenure for employees of institutions with the community college system nor has it delegated such authority to local boards of trustees," the ruling added.

Community colleges are able to revoke existing tenure policies because "it is evident that 'continuing contract' (tenure) is a special statutory term to which the accepted, common law definition does not apply.

"The system established in this case simply conferred a special status upon qualified employees," the opinion added. "That status did not create any contract rights which would be subject to the protections of Article 1, Section 10 of the United States Constitution."