

1984 WL 249917 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 26, 1984

*1 The Honorable Charlie G. Williams
State Superintendent of Education
South Carolina Department of Education
Rutledge Building
1429 Senate Street
Columbia, SC 29201

Dear Dr. Williams:

You have asked for the advice of this Office as to what role the Department of Education should have in governing foundations established to support vocational student organizations such as the Future Homemakers of America (FHA) and Future Farmers of America (FFA). According to the information provided to this Office, the foundations were established solely to provide financial support for student organizations through assets and income held in tax exempt status. This letter addresses only the Department's relationship to the foundations rather than to the organizations.

Direct authority exists for State assistance to the vocational student organizations. Federal rules provide for a state's using grant money to support activities of vocational education student organizations described in the state's approved five year state plans and annual program plans. 34 CFR § 400.513. See also § 400.512. The South Carolina State Plan, Administrative Provisions Vocational-Technical Education provides for vocational education student organizations' functioning as an integral part of the instructional program of their service areas. Somewhat similar statements are contained in U.S. Department of Education policy for these organizations.

Because the foundations are funded only by private donations rather than through Department of Education grants, they do not appear to be covered by 34 CFR § 400.513. Moreover, the foundations engage in none of the programmatic functions contemplated by that regulation for the organizations. Therefore, no direct authority appears to exist for Department supervision or control of these foundations. This conclusion is consistent with the nature of the foundations as funding sources.

Because of this absence of direct authority for the Department of Education's assisting the foundations, the Department should not supervise or control the foundations. These foundations hold large sums of money for which Department officials could be held responsible if they placed themselves in a position of control of it. In particular, individuals who are employees or officials of the Department of Education and serve as members of the foundations, potentially could find themselves in a conflict of interest if their duties to the foundations were inconsistent with their duties to the Department of Education.

To outline all potential problems that could arise from a close relationship between the Department of Education and the foundations would require fact finding that is beyond the province of this Office in the issuance of opinions, Ops. Atty. Gen. (November 2, 1983); however, if you so desire, I will be happy to meet with you and other Department of Education officials to discuss this matter further.

Yours very truly,

*2 J. Emory Smith, Jr.
Assistant Attorney General

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