

1981 WL 158113 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 20, 1981

*1 James R. 'Rudy' Brown
Research and Administration
Corrections and Penology Committee
Gressette Senate Office Building
Post Office Box 142
Columbia, South Carolina 29202

Dear Mr. Brown:

You have requested the opinion of this office as to the relationship between certain proposed legislation and the Education Finance Act (Finance Act) (§ 59-20-10, [et seq. of the Code of Laws of South Carolina \(1976\)](#), as amended). The proposed legislation sets up a school district within the Department of Corrections. The Finance Act establishes a system of funding a minimum program of education in this state the formula for which apportions state and local funding shares according to the relative wealth of the various school districts. Specifically, you wish to know how the passage of the proposed legislation would affect the Finance Act and whether the Department of Corrections school district would be entitled to funds under that act. Because the proposed district and the students it would serve would be fundamentally different from those to which the Finance Act applies, the district would not appear to come within the scope of the Finance Act or be eligible to receive funding under it.

The 'foundation program' for funding under the Finance Act expressly excludes 'adult education'. § 59-20-20(1) and (2)(d). The latter is defined as '... public education dealing primarily with students above eighteen years of age not enrolled as full-time public school students and not classified as students of technical schools, colleges or universities of the state.' The educational program in question here certainly deals primarily with those over eighteen years of age. The Corrections students would also not appear to be 'full-time public school students . . .' (§ 59-20-20(2)(d)) within the contemplation of the definition. Because students above age twenty-one have very limited access to public schools (§ 59-63-20, as amended), this phrase probably refers to students between the ages of eighteen and twenty-one who have not graduated. Thus, the proposed program for the Corrections students should come within the terms of 'adult education' under the Finance Act and be excluded from the funding. This conclusion is supported by one of the Act's stated purposes which is to ensure that '... adequate programs serve all children of the state . . .' (§ 59-20-30(7)), by its provision for parental representation on school advisory councils, and by its requirement that summaries and analyses of schools' annual reports be distributed to the parents of the children in the district.

A main purpose of the Act is to equalize funding of education among the school districts by balancing state funding with a local effort which is based on the districts' ability to pay taxes. This purpose is not only expressly set out (§ 59-20-30), it is manifest in the funding formulas of the Act (§§ 59-20-20(3) and 59-20-40). These formulas could not apply to the Corrections school district because that district has no taxation power or other revenue sources from which it could make a required 'local effort' to fund the Finance Act's program. Although the Act does apply to 'school districts' ([see](#) 59-20-30(6), merely giving the Corrections schools that name would not be enough to bring them within the terms of the Act when the Act was intended to apply only to traditional school districts which have revenue raising power. Accordingly, that the Corrections schools might come within the term 'public schools' which is mentioned in the Act ([see](#) § 59-20-30(a), and which is defined in § 59-1-120 ([see](#) Opinion of this Office, April 4, 1979 (by Paul S. League, Assistant Attorney General))) would not be sufficient to include these schools within the Finance Act when the Act limits those public schools to which it applies.

*2 An opinion of this Office dated October 29, 1980 (by Paul S. League, Assistant Attorney General) concluded that the Department of Youth Services was eligible to receive money under the Finance Act provisions for strengthening instructional

staffs; however, although Youth Services schools do not constitute a traditional school district like those to which the Finance Act applies, Express provisions in the 1980 Appropriations Act (Act 517, § 28, Acts and Joint Resolutions Act, 1980), give Youth Services Schools Finance Act money. Here, no special provision in the proposed legislation or elsewhere would bring the Correction Schools within the Finance Act. In addition, Youth Services Schools serve those age groups to which the Finance Act was intended to apply.

Because funding the proposed Corrections school district would conflict with the express purposes and mechanism of the Finance Act, the opinion of this office is that the Act would not apply to the proposed legislation. If this office may be of further assistance to you, please let us know.

Yours very truly,

J. Emory Smith, Jr.
Assistant Attorney General

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