



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

December 10, 1996

The Honorable Barbara Stock Nielsen  
State Superintendent of Education  
State Department of Education  
1429 Senate Street  
Columbia, SC 29201

Re: Informal Opinion

Dear Dr. Nielsen:

You have requested the advice of this Office as to whether the Department of Education has the authority to withhold transportation funds from a school district in the amount of monies owed by any such district to the Department for use of the buses for any purposes which are not interpreted by the Department to be required by State law. These activities include extracurricular activities and others that the Department does not interpret as being intended for State funding.

As you know, the State has duties regarding pupil transportation including the direction of the legislature that "[t]he cost of transporting pupils to regularly organized instructional classes...must be borne by the State." S.C. Code Ann. §59-67-420 (1990). Because of this express authority to pay for transportation to the referenced extent, and because of the absence of express authority to withhold monies owed for transportation that is not State funded, I suggest that the Department obtain legislative authorization before attempting withholding action.

This letter is an informal opinion. It has been written by the designated Assistant Deputy Attorney General and represents the opinion of the undersigned attorney as to the specific questions asked. It has not, however, been personally reviewed by the Attorney General nor officially published in the manner of a formal opinion.

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If you have further questions, please let me know.

Yours very truly,



J. Emory Smith, Jr.  
Assistant Deputy Attorney General

JESjr

CC: George C. Leventis, Senior General Counsel, Department of  
Education