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The State of South Carolina

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The Honorable Robert W. Hayes, Jr.
Chairman, York County Legislative Delegation
Post Office Box 31
Clover, South Carolina 29710

Dear Senator Hayes:

By your letter of October 2, 1992, on behalf of the York County Legislative Delegation, you have asked whether prayer before football games of public schools would still be legal in light of the recent United States Supreme Court decision in Lee v. Weisman, 60 U.S.L.W. 4723 (decided June 24, 1992).

This issue decided in Lee v. Weisman was as follows:

> whether including clerical members who offer prayers as part of the official school graduation ceremony is consistent with the Religion Clauses of the First Amendment, provisions the Fourteenth Amendment makes applicable with full force to the States and their school districts.

60 U.S.L.W. at 4723. To generally state the facts relevant to the court's decision, the following is helpful:

> These dominant facts mark and control the confines of our decision: State officials direct the performance of a formal religious exercise at promotional and graduation ceremonies for secondary schools. Even for those students who object to the religious exercise, their attendance and participation in the state-sponsored religious activity are in a

> fair and real sense obligatory, though the school district does not require attendance as a condition for receipt of the diploma.
>
> ....
>
> ... The government involvement with religious activity in this case is pervasive, to the point of creating a state-sponsored and state-directed religious exercise in a public school. Conducting this formal religious observance conflicts with settled rules pertaining to prayer exercises for students, and that suffices to determine the question before us.

60 U.S.L.W. at 4725. Thus, the practice of that public school system of inviting clergymen to deliver an invocation and benediction at public school graduations and providing guidelines for the clergymen for such occasions was deemed by the Court violative of the Religion Clauses of the First Amendment, which is made applicable to the states through the Fourteenth Amendment.

As is seen from the above quotation, the decision in Lee v. Weisman was narrowly drawn to address the specified factual situation. A number of differences may be seen in the scenario of a prayer being offered before a football game involving public school teams: certainly attendance of students is not required or compelled in the usual sense, so that attendance is voluntary. The decision in Lee v. Weisman did not address prayer prior to football games. In fact, the Court expressly refused to do so, stating:

> We do not hold that every state action implicating religion is invalid if one or a few citizens find it offensive. ... But, by any reading of our cases, the conformity required of the student in this case was too high an exaction to withstand the test of the Establishment Clause. The prayer exercises in this case are especially improper because the State has in every practical sense compelled attendance and participation in an explicit religious exercise of an event of singular importance to every student, one the objecting student had no real alternative to avoid.

60 U.S.L.W. at 4728. In short, the United States Supreme Court, the final authority in constitutional questions, has not yet addressed, and thus not yet prohibited, the specific

factual circumstances posed in your letter. Therefore, based upon the Weisman case, we cannot conclude that such a practice is unconstitutional. Thus, this would be a matter for the policy making body, in this instance the local school board, which would, of course, act in consultation with the school district attorney.

With kindest regards, I am

Sincerely,

T. Travis Medlock
Attorney General

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