The State of South Carolina

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The Honorable Charlie G. Williams
State Superintendent of Education
State Department of Education
Rutledge Building
Columbia, South Carolina 29201

Dear Dr. Williams:

You have requested the opinion of this office as to the duties imposed on the South Carolina High School League (League) to enforce the academic eligibility requirements for participation in interscholastic athletics, under §59-39-160 of the Code of Laws of South Carolina, 1976, as amended. This statute, which was included in the Education Improvement Act (EIA - Act 512, Part II §9, Acts and Joint Resolutions of South Carolina, 1984), contains the following pertinent provisions:

> "To participate in interscholastic activities, students in grades nine through twelve must have passed at least four academic courses, including each unit the student takes that is required for graduation, with an overall passing average in the preceding semester. Academic courses must be defined as those courses of instruction for which credit toward high school graduation is given. These may be required or approved electives. All activities currently under the jurisdiction of the South Carolina High School League shall remain in effect. The monitoring of all other interscholastic activities is the responsibility of the local boards of trustees.... Any local school Board of Trustees in its discretion is authorized to improve more stringent standards than those contained in this section for participation in interscholastic activity students in grades 9-12. (Emphasis added)."

REQUEST LETTER

Our review of this statute leads us to conclude that compliance with its provisions for interscholastic athletes is the responsibility of the student, the school district board of trustees (district) and the League and that the face of the statute indicates no unconstitutional delegation of authority to the League.

"To participate [in interscholastic activities] ...students...must have passed at least four academic courses..." Section 59-39-160. Thus, the student is placed on notice that he must meet these requirements if he desires to participate in interscholastic activities.

As to the League, the statute states that "...[a]ll activities currently under the jurisdiction of the South Carolina High School League shall remain in effect." Section 59-39-160. The South Carolina Supreme Court in Bruce v. South Carolina High School League, 258 S.C. 546, 189 S.E.2d 817 (1972), recognized that the League is a voluntary organization comprised of public high schools, and some private schools, and its rules regulate interscholastic athletic contests among its members including student eligibility. In naming the League, §59-39-160 appears to have recognized this role of the organization. Because the purpose of the statute is to establish academic eligibility requirements for interscholastic activities, the legislature must have intended that the League observe these standards as to athletics. This conclusion is supported by references to the League's "jurisdiction" and the district's "monitoring" of "other" activities; however, the League is not given exclusive enforcement authority.

The school district must follow the standards set by the law by not placing on their teams students who are ineligible under §59-39-160. Districts are in possession of the academic records of their students and thus, can directly verify eligibility. To conclude that the districts may ignore the requirements of §59-39-160 would place any such districts in the position of contributing to the violation of this law by students unaware of or intending to evade its requirements. Moreover, inaction of the districts would be inconsistent with their responsibilities for the educational interests of the students residing therein. See §59-19-60 of the code. Such an absurd result was surely not intended by the legislature. See Sutherland Statutory Construction, Vol. 2A §45.12. The intent that the districts observe, at least, the minimum standards set by the statute is further supported by §59-39-160's authorization for the districts to impose "more stringent standards". Therefore, even though districts are expressly given monitoring authority only "...of all other

interscholastic activities," they clearly have a duty to comply with §59-39-160 just as does the League and the individual student.

The duties of the League under this statute do not appear to constitute an improper delegation of authority. The general rule is that the legislature may not delegate legislative functions to private groups (State v. Watkins, 259 S.C. 185, 191 S.E.2d 135 (1972); 16 Am. Jur.2d Constitutional Law §347); however, no such function appears to have been delegated under §59-39-160. This statute clearly sets out the academic standard to be observed, and the standard was found to be effective this Fall in an Order of the Supreme Court on a petition of the League for Writ of Supersedeas Hardee v. Watts, (April 10, 1985). Additional guidance as to the standard is provided by a State Board of Education regulation under the EIA. South Carolina State Register, Vol. 8, Issue 12, p. 188; §59-5-69, as amended. As noted above, adherence to the statutory standards is the duty of the students and the districts as well as of the League. Nothing on the face of the law suggests that this compliance includes more than a valid administrative duty to ensure that ineligible students do not participate. See Am. Jur.2d Administrative Law §81; U.S. v. Chamberlin, 219 U.S. 250, 55 L.Ed. 204, 31 S.Ct. 155 (1910). "While it is true that strictly governmental powers cannot be conferred upon a corporation or individual..., it has been held by a long line of decisions that such corporations may function in a purely administrative capacity or manner." ASPCA v.City of New York, 199 NYS 728, 733 (1933).

No courts have expressly considered the same delegation question presented here (see Anderson v. South Dakota High School Activities Association, 247 N.W.2d 481 (SD.,1976); Bunger v. Iowa High School Athletic Association, 197 N.W.2d 555 (Iowa, 1972)); however, the above conclusions are further supported by the recognition given to the existence of high school interscholastic athletic leagues in this State and in other jurisdictions. See Bruce, supra. See also, Alabama High School Athletic Association v. Medders, 456 So.2d 284 (Ala., 1984); State ex rel. Missouri State High School Activities Association v. Schoenlaub, 507 S.W.2d 354 (Mo. 1974); Tennessee Secondary School Athletic Association, et al. v. Cox, et al., Tennessee, 221 Tenn. 164, 425 S.W.2d 597 (1968); Morrison v. Roberts, 183 Okl. 359, 82 P.2d 1023 (1938); Robinson v. Illinois High School Association, 45 Ill. App.2d 277, 195 N.E.2d 38 (1963); State ex rel. Ohio High School Athletic Association v. Judges of the Court of Common Please, 173 Ohio St. 239, 181 N.E.2d 261 (1962); Sult v. Gilbert, 148 Fla. 31, 3 So.2d 729 (1941); State

ex rel. Indiana High School Athletic Association v. Lawrence Circuit Court, 240 Ind. 114, 162 N.E.2d (1959); Starkey v. Board of Education of Davis County School District, 14 Utah 2d 227, 381 P.2d 718 (1963); Cf. Hardee v. Watts, supra. "While a longstanding widespread practice is not immune from constitutional scrutiny, neither is it to be brushed aside. Payton v. New York, 445 U.S. 573, 63 L.Ed.2d 639 (1980); see also Scroggie v. Scarborough, 162 S.C. 218, 233-234, 160 S.E. 596 (1931))." Ops. Atty. Gen. (January 24, 1984). The imposition on the League of the duty of compliance with the statutory eligibility standard should also be weighed with regard to the recognition by the Supreme Court of this State, as well as in numerous other jurisdictions, that participation in interscholastic athletics is a privilege, not a right. See e.g. Bruce, 189 S.E.2d at 817 and cases annotated in Bailey v. Truby, 321 S.E.2d 302, 314 and 315 (WVa. 1984). Finally, the entire statute must be reviewed under the direction that "[a]ll statutes are presumed constitutional and will, if possible, be construed to render them valid." Craft v. State of South Carolina, ____ S.C. ____, 314 S.E.2d 330 (1984).

Applying these principles to the above analysis of the statute supports the conclusion that §59-39-160 contains no unconstitutional grant of legislative authority to the League. Our conclusions are confined to the validity of the face of the statute. We have not addressed matters of policy or practice in the application of the statute to particular individuals and circumstances. Ops. Atty. Gen. (December 12, 1983).

If we may be of further assistance to you, please do not hesitate to contact me.

Yours very truly,

J. Emory Smith, Jr.
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JESjr/srcj

REVIEWED AND APPROVED BY:

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