

1984 WL 249869 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 25, 1984

*1 Mr. Frank B. Sanders
Director
Public Safety Programs Division
Office of the Governor
1205 Pendleton Street
Columbia, South Carolina 29201

Dear Frank:

You have requested the advice of this Office as to three questions which were referred to you from Patricia K. Seaman, FEMA (Federal Emergency Management Agency) Public Assistance Officer, who has been assigned to the South Carolina Disaster Relief Office. The questions arise from the application of Richard Winn Academy (Winn) for disaster assistance from FEMA. The questions are set out below with discussion following each question.

I

Whether Winn has been granted tax exemption by the Internal Revenue Service (IRS) under [Section 501\(c\)\(3\), \(d\), or \(e\) of the Internal Revenue Code](#) of 1954 or that it is a non-revenue producing organization or entity and is a non-profit one organized or doing business under State law?

We have been advised by John McLeod, Attorney for Winn, that the school has been granted tax exempt status by IRS under 20 USC § 501(c)(3). If you desire documentation, I suggest that you contact him in Winnsboro.

II

Whether Winn meets the criteria of an educational institution as defined by the Elementary and Secondary Education Act of 1965?

The attachments sent indicate that Ms. Seaman is referring to definitions contained in [20 USC § 881](#). Of those definitions, two appear applicable here and are set out as follows:

[20 USC § 881\(c\)](#). The term 'elementary school' means a day or residential school which provides elementary education as determined under school' means

[20 USC § 881\(h\)](#). The term 'secondary school' means a day or residential school which provides secondary education as determined under State Law, except that it does not include any education provided beyond grade 12.

These definitions do not limit the application of these terms to public schools only. [See 42 USC § 5172\(b\)](#). They refer to State law for guidance, but South Carolina Law does not expressly define these terms as they apply to private schools; however, the State law definitions for these terms as they apply to public schools merely refer to schools providing grades 1 through High School and should apply by analogy to private schools offering similar grades. [See § 59-1-150 of the Code of Laws of](#)

[South Carolina \(1976\)](#). Because enrollment at private schools which are members of the South Carolina Independent Schools Association satisfies state compulsory school attendance requirements ([§ 59-65-10 of the Code](#)), such private schools providing education at some or all of the above State recognized grade levels should satisfy the federal definitions for elementary and secondary schools.

Mr. McLeod has advised this office that Winn is a member of the above association and provides education from grades kindergarten through 12. Therefore, at least as to grades 1-12, Winn appears to be a school providing elementary and secondary education under the above federal definitions.

III

***2** Whether Winn is in compliance with Section 311 Public Law 93-288 and with Title VI of the Civil Rights Act of 1964 (P.L. 83-352)?

Section 311, now codified as 20 USC § 5151, attaches conditions to the provision of disaster relief under 20 USC § 5172, which we have been advised is the relief in question here. These conditions include compliance with non-discrimination regulations found at 44 CFR Part 7 and 44 CFR §§ 205.16 and 205.39. Section 205.16 expressly requires ‘ . . . a written assurance of . . . intent to comply with regulations relating to non-discrimination . . . ’ [See also](#) § 205.39(e)(2). To effectuate the purposes of Title VI ([42 USC & 2000d et seq.](#)),¹ [44 CFR 7.5](#) contains specific non-discrimination requirements for recipients of federal disaster assistance. [See 44 CFR §§ 7.1 and 7.4](#). It also requires submission of an assurance of compliance with the requirements of part 7 as a condition to receiving federal financial assistance.

A plain reading of the above requirements makes clear that Winn would have to submit the specific assurances of compliance with non-discrimination requirements before receiving relief. [See Sutherland Statutory Construction](#), Vol. 2A & 46.01. Of course, compliance with the substance of the non-discrimination regulations is required as well as the submission of the assurances of compliance, and the consequences of a finding of non-compliance can include termination of funding. [See 44 CFR part 7 and 44 CFR § 205.16](#); however, we have been advised by counsel for FEMA that FEMA normally requires no investigation of compliance before awarding relief if the assurances are received, unless complaints are made or evidence presented as to discrimination by a recipient.² This office has been advised of no such complaints or evidence as to Winn. In addition, we note that Winn has been granted tax exempt status by IRS pursuant to [26 USC § 501\(c\)\(3\)](#), suggesting that no evidence of discrimination has been found by that agency. [See, Bob Jones Univ. v. Simon](#), 461 U.S. 574, 76 L.Ed. 2d 157 (1983). Thus, based on the foregoing discussion, this office has not independently investigated the matter, and we are able to express no opinion beyond that stated above as to whether Winn is in compliance with the referenced standards of non-discrimination.

CONCLUSION

In conclusion, as to questions 1 and 2 regarding the tax exempt status and the nature of Winn as a school, the information provided to this office indicates that Winn meets these conditions.

As to question 3, these standards appear to permit Winn's receiving the assistance in question provided that Winn submits to FEMA the required assurances of compliance with non-discrimination requirements. Of course, Winn must also comply with the substance of non-discrimination regulations, as well as submitting the required assurances of compliance. However, we have been advised that investigation of compliance is normally not required before awarding disaster relief, absent evidence or complaint of discrimination. No such evidence or complaints have been presented to this office and we further note that the IRS has granted tax exempt status to Winn, suggesting that no evidence of discrimination has been found by that agency. Thus, based on the foregoing discussion, this office has not independently investigated the matter, and we are able to express no opinion beyond that stated above as to whether Winn is in compliance with the referenced standards of non-discrimination.

*3 I hope that the above advice will be of assistance to you. If we can be of other help with the provision of disaster relief, please do not hesitate to contact us.

Yours very truly,

J. Emory Smith
Assistant Attorney General

Footnotes

- 1 Title VI prohibits discrimination on the grounds of race, color or national origin in programs or activities receiving federal financial assistance.
 - 2 We have also reviewed the agreement for disaster assistance in a letter dated March 31, 1983 and found nothing in it inconsistent with these conclusions herein; however, we have not reviewed [Executive Order 12148](#) to which reference is made in the agreement.
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