

1982 WL 189143 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

January 18, 1982

\*1 The Honorable Charlie G. Williams  
State Superintendent of Education  
State of South Carolina  
Department of Education  
1429 Senate Street  
Columbia, South Carolina 29201

Dear Dr. Williams:

You have requested the opinion of this office as to whether the issuance of a teaching certificate can be denied a person on the ground that the person applying for it has been arrested or involved in a criminal offense other than a minor traffic violation. I regret the great delay in preparing a response to your question.

Section 59-5-60(4) gives the South Carolina State Board of Education (Board) the power to '[g]rant teachers' certificates and revoke them for immoral or unprofessional conduct or evident unfitness for teaching.' [See also §§ 59-5-60\(4\) and 59-25-110 of the Code](#) which give the Board broad authority to formulate regulations for the examination and certification of teachers. Although under a strict grammatical reading of this statute, the references to bad conduct and unfitness apply only to revocation, the intent of the legislature clearly appears to have been otherwise. When the same sentence gives the Board the power to grant and to revoke certificates and then sets forth certain bad conduct and unfitness, the legislature must have intended that the State Board deny or revoke a certificate when sufficient evidence of such matters exists. This conclusion is supported by §§ 59-25-150 and 59-25-160 which give the Board the authority to revoke or suspend certificates for 'just cause' which may include commission of a crime. To interpret the certification laws to permit the revocation of the certificate of a person for 'just cause' under those sections and to require the granting of a certificate to another person exhibiting a similar 'just cause' could lead to absurdly different treatment of individuals that does not appear to have been intended by the legislature. Therefore, the Board may deny a certificate to a person exhibiting immoral or unprofessional conduct or evident unfitness for teaching, including the commission of a crime.

Act 187, Acts and Joint Resolutions of South Carolina, 1979 (codified as § 59-26-10, et seq. of the Code as amended) does not conflict with this conclusion. Even though it has the stated intent of providing for the ' . . . training certification, initial employment and evaluation . . . ' (59-26-10) of public educators in this state, it does not address all aspects of teaching. Part of the law states that the State Board 'shall . . . award a teaching certificate to any person who successfully completes the scholastic requirements for teaching at an approved college or university and the examination he is required to take for certification purposes [emphasis added]' Act 187 § 3(f) (§ 59-26-30(F)).<sup>1</sup> The use of the word 'shall', which generally has a mandatory construction (Sutherland Statutory Construction, Vol. 2A § 57.03 (3rd Ed. 1973)), with reference to awarding a certificate to 'any person' appears to require that only those criteria set out in paragraph (f) be used as a basis for granting or denying a certificate to a person.<sup>2</sup>, <sup>3</sup> However, these criteria purport to address only qualifications which are academic. Their scope is consistent with stated intent of Act 187 which, in addition to that quoted above, is contained in guidelines which appear to pertain only to matters of knowledge and classroom skills. § 59-26-10; see supra. Nowhere, does Act 187 state that these matters are the only ones which may be considered in the certification or employment of teachers. Therefore, Act 187 would not appear to restrict the Board from considering such qualifications as good character and moral fitness prior to awarding a teaching certificate. Thus, the authority of the Board under [§ 59-5-60\(4\)](#) remains unaltered.



\*2 The opinion of this office is that the Board may deny a teaching certificate to a person who exhibits immoral or unprofessional conduct or evident unfitness for teaching, including the commission of a crime. If this office may be of further assistance, please let us know.

Very truly yours,

J. Emory Smith, Jr.  
Assistant Attorney General

Footnotes

- 1 The codification omits the introduction of § 3 of the Act which contains the directive '[t]he [State Board] shall.'
- 2 Although the State Board of Education is not required to begin implementing Act 187 program approval standards for teacher education programs until the Fall of 1982, appropriate certification examinations must be taken now by all prospective classroom teachers. See opinion of this office. February 20, 1981, by J. Emory Smith, Jr. A reasonable inference is that the legislature intended the paragraph (f) requirement to be in effect on the effective date of Act 187, with the Board's following its own rules for approving teacher education programs until Act 187's requirements are implemented. See February 20, 1981 opinion.
- 3 The last paragraph of § 59-26-40 sets forth similar treatment for persons with out-of-state teaching preparation or experience.

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