

1982 WL 189433 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

September 22, 1982

***1 RE: Charge for Bus Transportation to Public Schools**

The Honorable Virginia L. Crocker
S. C. House of Representatives
Box 975
Clinton, SC 29325

Dear Representative Crocker:

Some months ago you sent a letter to our office requesting an opinion on whether or not a school board or the State Department of Education may charge students for bus transportation to the public schools. You indicated in your letter that recent funding cutbacks for state agencies and other political subdivisions had generated a great deal of creative thinking in regards to methods for bridging the funding gap, one of which was to provide for a bus transportation charge on all students using such transportation in attending the public schools.

This proposal presents for consideration two questions. The first is whether there is at present any statutory authority for such an action and secondly whether such a provision would be constitutionally sound.

In response to the first question your attention is directed to [§ 59-67-420, S. C. Code](#) of Laws, 1976, as amended which provides in pertinent part:

. . . The cost of transporting pupils to regularly organized instructional classes in the district or attendance area for which school credit is given shall be borne by the State. . . . (Emphasis added)

Under this statute the State has the burden of the cost of bus transportation. Therefore a proposal to charge for bus transportation would require a repeal of this part of § 59-67-420.20.

In the case of a repeal of [§ 59-67-420](#) the primary question which remains is whether a charge on bus transportation would be consistent with the free public education provisions of the [South Carolina Constitution, Art. XI § 3](#) of the South Carolina Constitution reads as follows:

The General Assembly shall provide for the maintenance and support of a system of free public schools open to all children in the state and shall establish, organize and support such other public institutions of learning as may be desirable. (emphasis added)

The term 'free public schools' has never been given its unbounded literal meaning by the Court or Legislature in South Carolina. In fact there are several statutory provisions which allow school authorities to charge and collect matriculation, incidental and attendance fees, where proper, as well as textbook rentals from pupils, (See [Sections 59-19-90\(8\), \(10\), 59-31-210, 1976 South Carolina Code](#) of Laws, as amended.)

In a previous opinion, 1975 Ops. Att'y Gen., No. 4002, this office concluded that [Art. XI, § 3](#) does not mandate totally free public education and that school authorities can legally charge matriculation and incidental fees from pupils when authorized by an act of the General Assembly. The author of that opinion reconciles the apparent conflict between the literal language of the Constitution and the statutes allowing for charges to pupils with the following statement:

*2 The economic realities of the State have long been such that totally free education could not be arrived at without drastic sacrifices in other areas of the state budget. Therefore, the need to allow alternative partial funding for the public schools must have been in the public mind when [Art. XI, Section 3](#) was ratified. 1975 Ops. Att'y Gen., No. 4002 p. 158

In the area of transportation there is general authority for the proposition that in the absence of express statutory provision, school authorities are not bound or authorized to furnish free transportation to pupils. 68 Am Jur 2d Schools, § 234. This proposition is more fully stated in the following excerpt from [Mills v. School Directors of Consolidated Dist. 154 Ill App 119 \(1909\)](#): The statutory power 'to secure for all such children the right and opportunity to an equal education in such free schools' does not include the power of furnishing transportation, since to secure the right and opportunity of equal education does not require that the children should be hauled to school, any more than it would require that the directors should clothe them or furnish meals.

In view of the above stated general authority it appears that [Art XI, Sec. 3 of the South Carolina Constitution](#) would not prohibit the General Assembly from promulgating legislation that would impose a charge for school bus transportation. This is not to say that the legislation would be exempt from constitutional challenge in the application. However, where it can be shown that there is a statutory authorization for the fee, a reasonable purpose for the fee and that such fee is necessary in order to meet expenses of the school, the fee is more likely to be upheld. 41ALR3d 752, Validity of Public School Fees.

In conclusion, it is the opinion of this office that legislation to charge pupils for bus transportation will require a repeal of the statute which presently requires the State to bear the cost of bus transportation. If that statute is repealed, it is the opinion of this office that [Art XI, Sec. 3 of the South Carolina Constitution](#) would not prohibit the legislation.

However, it would be helpful before such action is taken to contact the various states and inquire as to whether any such action has been taken by any other legislature and what if any problems were encountered.

I hope this information will be beneficial to you and I apologize for the extended delay in getting it to you.

Sincerely,

B. J. Willoughby
Assistant Attorney General

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