1980 WL 121189 (S.C.A.G.)

Office of the Attorney General

State of South Carolina
April 23, 1980

***1** The Honorable Richard W. Riley
Governor
The State House
Columbia, South Carolina 29211

Dear Governor Riley:
In response to your request for an opinion from my Office regarding the constitutionality of an act of the General Assembly which provides that individuals who wilfully default on certain designated student loans cannot be employed by the State or any of its departments, agencies or subdivisions until such defaults are cured, my opinion is that it is most probably constitutional as hereinafter discussed.

The legislation probably does not violate the equal protection clause of the South Carolina and the United States Constitutions for the reason that, inasmuch as it does not touch upon a fundamental right [Zablocki v. Redhail, 434 U.S. 374 (1978)] nor does it involve a suspect class [Brown v. Board of Education, 347 U.S. 483 (1954)], there must exist simply a rational basis for distinguishing between the individuals who are affected by the legislation and those who are not so affected in order for it to be valid. Lee Optical Co. v. Williamson, 348 U.S. 483 (1955). A debt at least partially owed to the State seems to me to be a reasonable and rational basis for distinguishing between those who can and those who cannot be employed by the State. Cf., 63 AM. JUR.2d Public Officers and Employees § 52 at 661 ('A person may be ineligible to public office by reason of his failure to pay his taxes.'); see also, 15A Am. JUR.2d Civil Service § 65 at 91 ('. . . under the federal [civil service] statute, it has been held that the dismissal of a preference eligible employee-veteran for his failure to pay his debts was for such a cause as would promote the efficiency of the service.'). The fact that there may exist debtors of the State (such as delinquent taxpayers) who are not affected by this legislation does not in itself make the statute violative of the equal protection clause, at least in the absence of a showing of arbitrariness in the classification made [Ponder v. City of Greenville, 196 S.C. 79 (1941)] and in the face of the strong presumption that there exists a state of facts necessary to warrant a distinction in legislation. Williams v. McNair, 316 F. Supp. 134 (D.S.C. 1970), aff'med. 401 U.S. 951; see generally, 16A AM. JUR.2d Constitutional Law §§ 748-749.

Moreover, with respect to the applicability of the legislation's provisions to prospective employees of the State, it does not appear to violate the due process clause of the State and Federal Constitutions. State ex rel. Thompson v. Seigler, 230 S.C. 115 (1956); 63 AM. JUR.2d Public Officers and Employees § 8. However, with respect to present employees of the State, there is probably a procedural due process problem with its retrospective application because, inasmuch as State employees are not terminable at will after six months' employment, they may have a constitutionally protected interest in their continued employment which cannot be infringed upon without affording procedural due process. 16A AM. JUR.2d Constitutional Law § 563; 16A. C.J.S. Constitutional Law § 600; 63 AM. JUR.2d Public Officers and Employees § 8. If the legislation were interpreted to require a period of time for present State employees to cure their defaults before termination, then perhaps the constitutional doubt raised as to its applicability to those individuals would be removed. The proviso contained in the legislation provides for such an opportunity for repayment before termination.
Very truly yours,

***2** Daniel R. McLeod
Attorney General

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