

1980 WL 120935 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 20, 1980

*1 Mr. George C. Leventis
Staff Counsel
Education and Public Works Committee
South Carolina House of Representatives
Post Office Box 11867
Columbia, South Carolina 29211

Dear Mr. Leventis:

On behalf of Representative Lewis Phillips, a member of the South Carolina Educator Improvement Task Force (Task Force), you have requested the opinion of this office as to the legality of a provision in a contract into which that body recently entered with National Education Systems (NES). It provides for the development of teacher certification examinations for all areas of teacher certification, even though [§ 59-26-30 of the Code of Laws of South Carolina \(1976\)](#), as amended (Act 187, § 3, Acts and Joint Resolutions of South Carolina, 1979) requires the use of the National Teacher Examinations (NTE) when they are available for a specific area. New examinations are to be developed or selected and used only for those areas not covered by the NTE area examinations. Id. Thus, you have questioned the validity of the contract in its providing for the development of new examinations in areas which are covered by the NTE.

The contract provision for the development of the teaching examinations for areas covered by the NTE appears to violate restrictions in Act 187 of 1979, the teacher training certification and evaluation law now codified as § 59-26-10, et seq. of the Code, as amended. [Section 59-26-30\(b\)\(2\)](#) states that '[t]he teaching examinations shall be developed or selected only for those areas in which area examinations of the National Teacher Examinations are not available.' [emphasis added]. This language clearly indicates that new teachers examinations were not to be developed for areas already covered by the NTE.

Although the Director of the Task Force has stated that the extra examinations would not be administered and that they would be used only for purposes of study and comparison to aid the Task Force in carrying out its duties under the Act (see §§ 59-26-10(a), 59-26-30(a), 59-26-30(b)(2) (validations), 59-26-30(b)(7), and § 59-26-50(c)(5) and (6)), the Act does not appear to permit the development of the extra examinations for these purposes. Development of the extra examinations for the purpose of administering them would be useless and express restrictions on it would be unnecessary because the Act clearly limits the giving of the new examinations to those areas not covered by the NTE. [§ 59-26-30\(i\)](#). Thus, in expressly barring development of the examinations, the legislature must have intended to prevent the development of the examinations for any purpose for which they might be used. The significance of this restriction is further demonstrated by the House of Representatives' rejection of an amendment which would have deleted the restriction and substituted language indicating that the use of the NTE area examinations would be merely permissible. Journal of the House of Representatives of South Carolina, Vol. II, 1979, p. 3322.

*2 The contract made by the Task Force with the test developer should be modified to eliminate development of the extra examinations. If I may be of further assistance to you, please let me know.

Yours very truly,

J. Emory Smith, Jr.
Assistant Attorney General

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