1979 S.C. Op. Atty. Gen. 76 (S.C.A.G.), 1979 S.C. Op. Atty. Gen. No. 79-60, 1979 WL 34736

Office of the Attorney General

State of South Carolina
Opinion No. 79-60
APRIL 2, 1979

***1 SUBJECT: Public funds; Appropriations; Sports; Education, higher;**

SYLLABUS:
The Appropriations Act, section 6, prohibits the use of State funds by any State agency or institution to sponcor or defray the costs of a function which is held at a club or organization which discriminates in its admission of members with regard to race, religion, color, sex or national origin.

Heads of State Agencies and Institutions

A considerable number of inquiries have been received concerning the meaning and application of Section 6 of the General Appropriations Act, Permanent Provisions, adopted by the General Assembly at its last session. As a result of these inquiries, I addressed a letter to the various heads of university and collegiate institutions asking for their comments concerning the problems that they envisage might occur and to submit any views which their legal counsel may have with respect to the application of the statute. A number of responses have been received by me and have been found to be of some assistance.

The legislative enactment is set forth in the underlined portion taken from the 1978 Journal of the House, pp. 2096, 2097:
“Reps. JOHNSON, TOAL, PATTERSON, JIM KINARD, WOODS, WASHINGTON, HAM, MIDDLETON, EARGLE, MATTHEWS, BLANDING, WILSON, MITCHELL, BARKSDALE, BARRINEAU, CAMPBELL and NUNNERY proposed the following amendment (No. 49), which was adopted.

“Reference is to the printed Bill, Printer's No. 389–H.

Amend the Bill, as and if amended, by adding a new section to PART II, Permanent Provisions, to be appropriately numbered to read:

‘SECTION 6

To prohibit State Agencies from using State Funds for a function at a club which practices racial discrimination.

No state funds shall be used to sponsor or defray the cost of any function by a state agency or institution at a club or organization which does not admit as members persons of all races, religions, colors, sexes or national origins.'

Renumber sections to conform.

Amend title to conform.

MR. JOHNSON explained the amendment.

POINT OF ORDER

MR. BRADLEY raised the Point of Order the amendment is not germane to the Appropriations Bill.

The SPEAKER Pro Tem overruled the Point of Order.

The amendment was then adopted."

An amendment was proposed to provide that no State agency or department thereof, nor any agency or department of the General Assembly or the Governor's Office, "shall be authorized to rent any space in any privately owned building, which building also houses a public or private facility, which facility discriminates against members on account of race, color, creed, religion, or sex." This amendment was rejected and Section 6 was incorporated as a statute of this State by virtue of being incorporated as a part of the Permanent Provisions of the General Appropriations Act, 1978–1979. Section 6 was adopted without extended debate on April 19, 1978.

***2** Prior to April 19, 1978, the precipitating cause of the concern which minority interests in the House of Representatives felt was occasioned by an invitation extended to the General Assembly on March 8 to attend a drop-in to be held at a facility in Columbia in honor of an individual who had recently been elected to an official position by the General Assembly. This function was paid for without the use of public monies, but was financed wholly with private contributions. Although the House of Representatives accepted the invitation, some of its Members were offended by the invitation to attend an affair to be held at an apparently segregated facility, with the result that Rule 10.4 of the Rules of the House was adopted on March 15 and is now a fully published Rule of that body. It provides, in language similar to that later used in the wording of Section 6:
"The House shall not accept any invitations to attend functions (social or otherwise) which are to be held at a club or organization which does not admit as members persons of all races, religions, colors, sexes or national origins. All such invitations so received shall be referred to the Committee on Invitations and the three House members on the Committee on Invitations shall have the duty of determining and reporting to the House whether or not the function is to be held at a club or organization which does not admit as members persons of all races, religions, colors, sexes or national origins."

There were apparently other invitations extended to the House which some of its Members considered to be offensive, but this Office has been unable to document such incidents.

The culmination of these events was, in my opinion, the adoption by the House of Section 6 on April 19, 1978. The sponsors of the amendment proposing Section 6 were clearly concerned with the participation by public officials at functions conducted at segregated places; they had adopted a Rule of the House not to accept invitations for events to be held at segregated places, and Section 6 was adopted to prohibit State agencies from using State funds for events to be held at such places. The Act which the Legislature adopted seems clearly to reflect this conclusion.

With this preliminary background of the law, it is my opinion that the law prohibits the use of State funds by any State agency or institution to sponsor or defray the costs of a function which is held at a club or organization which discriminates in its admission of members with regard to race, religion, color, sex or national origin.

This would prevent a State agency or institution from paying the costs necessary in sending its representatives to a function to be held at a segregated facility. The law prohibits the use of State funds to sponsor or defray the costs of a function at a segregated place. If no State funds are involved, there is no violation.

State institutions and agencies similarly may not make payments directly to the entity at which the function is to be held, such as entrance fees.

***3** Receipt of tuition grants from the State by students does not constitute a basis for violation of the law.

The law reaches State institutions and agencies, which are defined below. It does not reach high school activities.

With respect to individual appearances by members, agency heads or employees of State agencies at any functions, it is clear that some officials, such as the Governor and Lieutenant Governor, would not come within the scope of the prohibition, either for First Amendment reasons or because of the separation of powers provisions of the Constitution. I do not think that it is the intent of Section 6 to prohibit individuals from speaking at various functions, whether they are the service clubs, professional organizations or similar entities, and whether or not the facilities at which these events are held are segregated. First Amendment rights are of paramount consideration. Consideration of this question should be undertaken on a case-by-case basis and the normal procedures now in existence should be continued until otherwise determined.

“State funds” means monies which are provided for in the General Appropriations Act of the State. This would include also monies which are appropriated by any other act of the General Assembly of general applicability, such as a supplemental appropriations act. The operation of some agencies is provided for by receipts from fees and licenses and, in such instances, separate consideration will be given if requested.

“State agencies and institutions” are those which receive financial support from State funds. The term would not include political subdivisions, such as counties, service districts, etc. High schools are not considered as coming within the scope of this definition.

“Club or organization which does not admit as members persons of all races, etc.,” means a club or organization which discriminates in its membership with respect to race, etc. If the club in question has no written or officially announced policy with respect to admission to membership and if it has not rejected applications for membership because of race, etc., it cannot be assumed that the club is discriminatory in its membership admissions practice. Such organizations, in the absence of further showing of some evidence of discriminatory practices, must be assumed to have no discriminatory policy. There is no single test in determining whether an establishment is, in fact, a private club, but, rather, a number of variables may exist. It is suggested that in determining whether a club or organization has a restrictive policy of the type prohibited, the following may be considered:

Does the club have a policy with regard to membership and, if so, does it exclude persons because of race, color, sex or religion?

Has the club rejected applications from any members of these categories of persons?

Further inquiry may be made as to any statement which an official of the club has made or is willing to make with regard to whether or not it denies membership because of race, etc.

***4** The foregoing is set forth in an effort to respond to specific inquiries which have been raised by a number of State agencies and institutions. They cannot serve to answer every question which may occur or which could be speculated upon. As legal questions may occur, this Office will be pleased to attempt to be of assistance in reaching a solution. It must be understood, however, that immediate answers are generally not available. This Office cannot undertake to investigate the clubs to determine whether or not they are of the type that may be classified as segregated but, instead, such circumstances must be ascertained by the agency or institution involved.

The Legislature has adopted this act and it must be presumed that it will be carried out in a good faith effort to comply with its mandate.

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