

1979 WL 43460 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

July 11, 1979

*1 Walter D. Smith
President
Francis Marion College
Florence, South Carolina 29501

Dear President Smith:

Please accept my apologies for my delay in responding to your letter of May 30, 1979.

In your letter you asked:

'Is Francis Marion College fully in compliance with state law in maintaining a continuing agreement to use the facilities of an area country club for the college varsity golf program if that club has no black members, if de facto segregation does exist, in a region with a high percentage of black citizens even though de jure segregation does not exist?'

While you have asked for an unqualified affirmative or negative answer, I can only state that this type of response is not possible. Disinclination to ask whether membership is restricted to one race does not aid in determining whether or not a facility is or is not segregated as to membership; this determination can only be made either by specific inquiry or by concluding from the de facto circumstances that segregation does or does not exist. The statute itself does not define 'segregated as to membership.' In view of the fact that private facilities are rarely subject to de jure determination of status, it is reasonable to conclude that de facto segregation must be considered.

One solution may offer some hopeful guidance in your determination, and this is that inquiry may be made as to whether a black applicant has ever been rejected on racial grounds from a club which consists of totally white membership. Aside from this, I know of no means, short of precise questioning, to ascertain whether or not segregation as to membership exists.

Very truly yours,

Daniel R. McLeod
Attorney General

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