

1978 S.C. Op. Atty. Gen. 77 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-51, 1978 WL 22533

Office of the Attorney General

State of South Carolina

Opinion No. 78-51

March 16, 1978

*1 The Honorable E. P. Riley

Attorney

Greenville County School District Messrs. Riley and Riley

Attorneys at Law

Post Office Box 10084

Greenville, South Carolina 29603

Dear Ted:

I regret the delay in responding to your inquiry of December 15, 1977, which was occasioned by an excessive amount of work being placed upon this Office, particularly by virtue of the implementation of the Educational Finance Act of 1977.

Your letter recites:

'The School District of Greenville County is proposing the adoption of a policy providing in substance that a student enrolled as a student in a private school or in a school other than the School District of Greenville County for special courses be charged a tuition fee for such services. My inquiry is can the School District charge tuition fees for students to receive part-time or special courses such students not being regularly enrolled students of Greenville public schools but of a private school or school other than a public school. It is my understanding that such a part-time student or student enrolled in special courses would not permit the School District to receive state aid for such a student.'

It is my view that charges may be imposed for special students, which would encompass those students enrolled in private schools but who wish to attend special courses in the public schools. I think that the provisions of [Section 59-19-90\(10\), 1976 Code](#) of Laws, provides authority for this conclusion. This subsection reads, in part:

((T)he board of trustees) is 'empowered to prescribe conditions and a schedule of charges based on cost per pupil as last determined, for attendance in the public schools of the school district for

(d) all other children specially situated and not meeting the eligibility requirements of § 69-63-30, but who shall have petitioned the trustees in writing seeking permission to attend the public schools of the school district.'

This subsection was added to the school law in 1964 (64 Acts 2171), the title to the amending act reciting that its purpose was 'to further define pupil eligibility and the powers of trustees of school districts with respect thereto.' I think that its language authorizes the boards of trustees to admit pupils to the public schools and to fix a schedule of charges for such attendance to meet the conditions set forth in your letter. This seems to be in accordance with the basic mission of trustees, which is to manage and control the educational interests of the district within the scope of the authority granted them by statute. Nor do I feel that the reception of students of sectarian schools in the public schools for the purposes of receiving part-time or special courses necessarily violates the religious freedom clauses of the Constitution unless it

be shown that the result is excessive involvement of the State in sectarian areas. The recent decisions by the United States Supreme Court, which were sharply divided, recognize the difficulty of ascertaining at what point the blurred and indistinct barrier separating church and state may be transgressed. Unless there is a showing that the State has furnished substantial aid to the educational functions of sectarian schools, I do not feel that the provision for special courses by the public schools would be offensive to First Amendment protection. See [Wolman v. Walter](#), 53 L.ed.2d 714, 97 S. Ct. 2593; [New York v. Cathedral Academy](#), 54 L.ed.2d 346, 98 S. Ct. 340; 70 Op. Att'y Gen. 31; 75 Op. Att'y Gen. 156.

*2 With best wishes,
Cordially,

Daniel R. McLeod
Attorney General

Student not enrolled in school district of Greenville county may be charged tuition to attend special course in public school; no violation of religious freedom clause is involved unless excessive involvement of the State in sectarian areas is shown.

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