

1975 S.C. Op. Atty. Gen. 156 (S.C.A.G.), 1975 S.C. Op. Atty. Gen. No. 4082, 1975 WL 22489

Office of the Attorney General

State of South Carolina

Opinion No. 4082

August 18, 1975

*1 The South Carolina Constitution, Article XI, Section 3, does not mandate totally free public education for every child in the state. Whether a fee may be charged depends on the nature of the fee and the authority under which it was created.

TO: E. P. Riley, Esquire
Greenville County
School District Attorney

QUESTION PRESENTED:

Can the Greenville County School District charge students materials fees?

STATUTES, CASES, ETC. INVOLVED:

South Carolina Constitution, Article 11, Section 3; Code of Laws of South Carolina, 1962, as amended, Sections 21–230, 21–471, 21–476, 21–486, 21–752.1; [41 ALR 3d 752](#); [Holler v. Rock Hill School District](#), 60 S. C. 41, 38 S. E. 220; [Felder v. Johnson](#), 127 S. C. 215, 121 S. E. 54.

DISCUSSION OF ISSUES:

The Greenville County School District has attempted to provide additional revenues to operate the public schools through imposition of 'materials fees' upon students. The question has been raised as to whether this can be done in harmony with the South Carolina Constitution and Statutes.

Article 11, Section 3 of the South Carolina Constitution reads as follows:

The General Assembly shall provide for the maintenance and support for a system of free public schools open to all children in the State and shall establish, organize and support such other public institutions of learning as may be desirable.

A similar provision appeared in the 1868 and 1895 constitutions, but was repealed in 1954. The current Article 11 Section 3 was ratified in 1973.

It has never been assumed by the Court or Legislature in South Carolina that 'free education' is to be given its unbounded literal meaning. This is demonstrated by the fact that statutory textbook rental provisions, Sections 21–471 *et seq.*, 1962 Code of Laws of South Carolina, and authority for districts to charge students fees were both enacted while the free education Section was in the Constitution. Also see [Holler](#) and [Felder](#), *supra*.

The next question is whether all the pre-existing, and at one time co-existing, statutes allowing book rental and other fees, were repealed by implication when current Article 11, Section 3 was ratified. Sutherland, [Statutes and Statutory](#)

Construction § 23.20 appears to answer this question negatively, indicating courts will presume against a repeal by implication:

In every instance where the repeal is one arising by implication, the constitutional provision or amendment must predicate an irreconcilable conflict and also must clearly show that it was intended to affect existing legislation as well as to operate prospectively upon future legislation.

Although there is a conflict between the literal language of the Constitution and the statutes, in my opinion such conflict is not irreconcilable. The economic realities of the State have long been such that totally free education could not be arrived at without drastic sacrifices in other areas of the state budget. Therefore, the need to allow for alternative partial funding for the public schools must have been in the public mind when Article 11 Section 3 was ratified.

*2 In [41 ALR 3d 752](#), Validity of Public School Fees, it indicates that charges for ‘free’ public education are held valid only half as often as they are held invalid. Major facts of upholding the fees have been statutory authorization for such fees, reasonable purpose for the fee and necessity for meeting expenses of the school. Also, distinctions have been drawn between optional and mandatory expenses as they relate to completing required courses of study, with optional charges more likely to be allowed.

In [Holler v. Rock Hill School District](#), 60 S. C. 41, 38 S. E. 220, the South Carolina Court held that a statute providing for tuition fees did not violate the Constitutional provision for free schools since the legislature had not yet provided for a system of free schools. In [Felder v. Johnson](#) 127, S. C. 215, 121 S. E. 54, the Court held that at school district could validly enact a fee under the statutory predecessor of 21–230(8). Even though general school financing laws had been later passed, they were held not to repeal by implication a special law allowing trustees to charge a matriculation fee. It is interesting to note that an argument against fee validity, based the constitutional predecessor of Article 11 Section 3, was not even raised in the [Felder](#) case

Based on the minority view point recognized in [41 ALR 3d 752](#) and the above South Carolina cases, it is my opinion that school districts can charge certain fees, at least where authorized by statute. The question of what kind of fees and what kind of authorization presents another area for consideration.

1970 Atty. Gen. Op. 31 discusses the relationship of Code Sections 21–230(10) and 21–752.1 as those sections relate to imposition of tuition fees. Section 21–752.1 allows children within certain ages to attend school without charge if they meet certain requirements. Section 21–230(10) empowers school trustees to schedule charges per pupil for attendance in the public schools in certain circumstances. Reading the two sections together it was determined in the Opinion that, where certain residential requirements are met, no charge for attendance at a public school can be made.

However, Section 21–230(8) empowers trustees to charge matriculation and incidental fees when allowed by any special act of the General Assembly. The distinction between 21–230(10)/21–752.1 and 21–230(8) apparently depends on the kind of fee charged. An attendance fee can be charged only for those few individuals covered by 21–230(10)/21.752.1. But matriculation and incidental fees could apparently be charged to all students if allowed by any special act of the General Assembly.

In our view, the fees contemplated by the Greenville School District would be considered matriculation or incidental fees. However, absent statutory authorization to make such charges, their validity is in doubt.

CONCLUSION:

Article XI, Section 3 of the South Carolina Constitution does not mandate totally free public education for every child in the state. Whether or not a fee may be charged a student depends on the nature of the fee and the authority under which it was created.

*3 (See also 1970 Atty. Gen. Op. 31).

George C. Beighley
Staff Attorney

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