1974 S.C. Op. Atty. Gen. 66 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3711, 1974 WL 21230

Office of the Attorney General

State of South Carolina
Opinion No. 3711
February 11, 1974

***1 If Bob Jones University is operated on a racially segregated basis, State-financed tuition grants to its students would violate the U. S. Constitution.**

Chairman
Higher Education Tuition Grants Committee

This is in response to your request of February 4, 1974, for an official opinion from this office concerning the legality of making State-financed tuition grants to students attending Bob Jones University, in light of that institution's recent stipulation that it is operated on a racially segregated basis.

The United States Supreme Court has consistently affirmed decisions enjoining State tuition grants to students attending racially discriminatory private schools. A state's constitutional obligation requires it to steer clear of giving significant aid to institutions that practice racial or other invidious discrimination. *Norwood v. Harrison*, 413 U. S. 455, 37 L. Ed. 2d 723 (1973). The United States Supreme Court has expressly held tuition grants to private school students to be significant aid. *Id.* at p. 730. Furthermore, the South Carolina Supreme Court, in *Hartness v. Patterson*, 255 S. C. 503, 179 S. E. 2d 907 (1971), held that tuition grants made by your committee not only constituted aid to the participating schools, but were also intended as aid to the institutions. In *Griffin v. State Board of Education*, 296 F. Supp. 1178 (1969) a three-judge district court struck down Virginia's system for providing tuition grants to students attending private segregated schools, asserting that 'any assist whatever by the state towards provision of a racially segregated education exceeds the pale of tolerance demarked by the Constitution.' And in *Cooper v. Aaron*, 358 U. S. 1, 19, 3 L. Ed. 2d 5, the United States Supreme Court determined that 'State support of segregated schools through any arrangement, management, funds or property cannot be squared with the [Fourteenth] Amendment's command that no state shall deny to any person within its jurisdiction the equal protection of the laws.'

The United States Supreme Court speaks with such unequivocal clarity and absence of dissent in such matter that it is the opinion of this office that, if Bob Jones University is operated on a racially segregated basis, State-financed tuition grants to students attending Bob Jones University would be illegal.

It is my understanding that grants authorized by the Higher Education Tuition Grants Committee are made on a year-to-year basis. No doubt students matriculated and their parents assumed financial burdens on the understanding that these moneys would be available to help in their education throughout the school year. Consequently, it is also the opinion of this office that the foregoing constitutional principles do not prevent the continuance of tuition payments for the remainder of the 1973–74 session; but renewal of present commitments would not be permissible. [See *Griffin v. State Board of Education*, 296 F. Supp. 1178, 1182 (1969).]

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