

1974 WL 27710 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 11, 1974

***1 Re: No. 263—Schools**

Honorable Cyril B. Busbee
Superintendent of Education
Rutledge Building
Columbia, South Carolina

Dear Dr. Busbee.

You informed us that on April 7, 1967, the South Carolina State Board of Education adopted its 'Statement of Educational Philosophy,' which states in part:

The Board believes that to discharge its responsibility for upholding quality and ensuring equal educational opportunity there must be an accreditation of all public and private elementary and secondary schools.

In November, 1973, the Board, you state, reviewed its 'Statement of Educational Philosophy' with particular consideration being given to the study of the Board's authority and responsibility for protecting the public's interest through the accreditation of private schools at the elementary and secondary levels; and at the regular meeting of the Board on December 18, 1973, the following resolution, we are told, was adopted:

The State Board of Education reaffirms that the Statement of Educational Philosophy originally adopted on April 7, 1967, reflects the current educational beliefs, of the Board and provides a fundamental base for carrying out major public responsibilities stipulated by State statute.

On March 7, 1974, the Policy Committee of the State Board of Education met; and on March 8, 1974, the Board approved that committee's recommendation:

[T]hat the State Board of Education direct the State Department of Education to request the Attorney General's Office to review the South Carolina Code of Laws to determine the authority of the State Board of Education in establishing minimum standards for the operation of non-public schools in South Carolina. [sic]

Accordingly, you have inquired as to whether or not the South Carolina State Board of Education possesses the authority to establish minimum standards for the operation of private schools in this State.

We have been requested by the State Department of Education twice before to advise it as to whether or not the Board could lawfully prescribe minimum standards to which private schools in this State would be required to adhere. On each occasion we have advised the Department that the State Board of Education only possesses the authority to establish minimum standards with which private schools might comply in order to obtain the Board's approval for the purpose of the Compulsory Attendance Act. See, Letter from C. Tolbert Goolsby, Jr., to W. E. Ellis, January 20, 1970; Letter from C. T. Goolsby, Jr., to Cyril B. Busbee, July 26, 1968; compare, W. E. Ellis, James L. Graham, 'Public Control of Private Schools.' We should have added that the Board also has the authority to adopt rules and regulations with which school buses owned and operated by private schools must comply. See 55 STAT. Act No. 454 at 651 (1967).

Since we last advised the Department on the subject of minimum standards for private schools, there has been no statute enacted by the General Assembly, which, in our judgment would authorize the Board to establish minimum standards which private schools in this State would be required to observe.

*2 The only statute relating to private schools which has been enacted is that contained in Act No. 876 of 1974; and it merely defines the term 'private school.' See, 58 STAT. Act No. 876 § 1 at 1934 (1974).

Until a statute is adopted similar to either of those which are enclosed [see South Dakota Code §§ 13-4-1 et seq.; Revised Code of Washington §§ 284.02.200 et seq.] the State Board of Education is without authority to prescribe minimum standards for private schools in South Carolina except insofar as those standards relate to compulsory attendance laws and to private school buses.

Kind regards,

C. Tolbert Goolsby, Jr.

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