

1974 S.C. Op. Atty. Gen. 234 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3831, 1974 WL 21335

Office of the Attorney General

State of South Carolina

Opinion No. 3831

August 1, 1974

***1 A school district may lease facilities owned by a religious organization for education of handicapped children without violating the United States Constitution or State laws.**

Director

Office of Programs for the Handicapped

You have requested an opinion from this Office as to the legality of the leasing by York School District #1 of a building and facilities owned by the Episcopal Church Home for the purpose of carrying out programs for emotionally disturbed pupils.

Pursuant to Section 21–295.15 of the South Carolina Code of Laws, 1962 as amended, the local school districts as well as State educational agencies are authorized to cooperate with other agencies, *both public and private*, in providing for the education and training of handicapped children. As I understand the application of York School District #1 for your Office's approval of its proposal to lease already existing Episcopal Church Home facilities, the District does not have existing facilities to house an ED program. The District, therefore, has the statutory authority to cooperate with the Episcopal Church Home; the only question remaining is that of a possible constitutional conflict.

Article XI, Section 4 of the South Carolina Constitution of 1895 was amended in 1973 as follows:

No money shall be paid from public funds nor shall the credit of the State or any of its political subdivisions be used for the *direct* benefit of any religious or other private educational institution. [Emphasis added.]

The drafters of revised Section 4 of Article XI intentionally deleted the word ‘indirectly’ in reference to benefit to any religious or other private educational institution, saying:

... the Committee proposes a prohibition on direct grants only and the deletion of the word ‘indirectly’ currently listed in Section 9. *By removing the word ‘indirectly’ the General Assembly could establish a program to aid students and perhaps contract with religious and private institutions for certain types of training and programs. Final Report of the Committee to Make a Study of the South Carolina Constitution of 1895.* Comment to Section D at 101. [Emphasis added.]

Upon considering the intent of the drafters and the actual language used in the revised Constitutional provision, this Office is of the opinion that the proposed contract between York School District #1 and the Episcopal Church Home does not violate the South Carolina Constitution.

As to a possible conflict with the Establishment Clause of the First Amendment to the United States Constitution, our further opinion is that since the proposed contract would be between the District and the Episcopal Church Home in its proprietary capacity, the agreement would not violate the Federal Constitution. See, [Hunt v. McNair](#), 413 U.S. 734, 37 L. Ed. (2d) 923, 93 S. Ct. 2868 (1973).

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