

1973 WL 26764 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 5, 1973

*1 Mrs. Rebecca M. Connelly
Administrative Assistant
State Regional Education Board
Commission on Higher Education
Room 1101
Rutledge Building
Columbia, South Carolina 29201

Dear Mrs. Connelly:

Thank you for your letter of May 29, 1973, in which you inquire:

‘if it is now within the law to make payment to students from South Carolina attending sectarian schools.’

Article XI of the South Carolina Constitution has been amended and the provisions of former § 9 of Article XI are now encompassed in § 4 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.

The Committee to Make a Study of the South Carolina Constitution of 1895 recommended the above quoted language and had the following comments concerning the revised provisions of § 4:

The Committee evaluated this section in conjunction with interpretations being given by the federal judiciary to the ‘establishment of religion’ clause in the federal constitution.

The Committee fully recognized the tremendous number of South Carolinans being educated at private and religious schools in this State and that the educational costs to the State would sharply increase if these programs ceased. From the standpoint of the State and the independence of the private institutions, the Committee feels that public funds should not be granted outrightly to such institutions. Yet, the Committee sees that in the future there may be substantial reasons to aid the students in such institutions as well as instate colleges. Therefore, 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 . . .

It would appear, therefore, that the South Carolina Constitution no longer contains a prohibition against indirect benefit, in the form of tuition payments to South Carolina students, to sectarian schools.

There remains, however, a question as to the constitutionality of the proposed State payment under the ‘establishment of religion’ clause of the First Amendment to the U. S. Constitution. At the present time, there are cases, including [Hunt v. McNair](#), 258 S.C. 97, 187 S.E.2d 645, on appeal to the U. S. Supreme Court which may be dispositive of the question.

I would assume the validity of the legislation unless and until a court shall otherwise declare.

Very truly yours,

Daniel R. McLeod
Attorney General

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