

1977 S.C. Op. Atty. Gen. 182 (S.C.A.G.), 1977 S.C. Op. Atty. Gen. No. 77-245, 1977 WL 24587

Office of the Attorney General

State of South Carolina

Opinion No. 77-245

AUGUST 8, 1977

*1 The South Carolina High School League may require that all high school athletes have physical examinations prior to competing in interscholastic contests.

TO: Lawrence B. Graves
Executive Secretary
South Carolina High School League

QUESTIONS PRESENTED:

1. May the South Carolina High School League require that all high school athletes have physical examinations prior to competing in interscholastic contests?
2. If the League may require such examinations, may the Executive Committee exempt certain athletes from having the examination because of their religious beliefs?

Authorities:

Constitution of the South Carolina High School League; [Bruce v. S. C. High School League](#), 258 S.C. 546, 189 S.E.2d 817 (1972); [Sherbert v. Verner](#), 374 U.S. 398, 83 S.Ct. 1790, 10 L.Ed.2d 965 (1963); [Cantwell v. Connecticut](#), 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed. 1213 (1940); [Sturup v. Mahan](#), 290 N.E.2d 64 (Ind., 1972).

DISCUSSION:

The South Carolina High School League is a voluntary organization composed of various public and private schools throughout the State. The stated purpose of the League is:

. . . to formulate and maintain policies that will safeguard the educational values of interscholastic competition, to cultivate high ideals of sportsmanship, to develop and direct a program which will promote, protect and conserve the health and physical welfare of all participants, and to promote uniformity of standards in all interscholastic competition.

Constitution of the South Carolina High School League, Art. II, § 1.

Pursuant to Article VIII, Section 12, of the League's Constitution, each student participating in the League must undergo a physical examination performed by a licensed doctor of medicine. The initial question that you have raised is whether the League may require all participants to have such an examination in order to be eligible for League play.

In a 1972 decision, our State's Supreme Court determined that the League was a voluntary association and that it would not interfere with such an association's internal affairs unless there was some form of mistake, fraud, illegality, collusion, or arbitrariness. The question before the Court in this case involved the eligibility of a student who had transferred from one school to another. In refusing to interfere with the League rule, the Court observed that:

The rule in question does not infringe upon any constitutionally guaranteed right of respondents. Interscholastic athletics form a part of the extracurricular activities of the school and, as such, are promoted under the discretionary powers of the various boards for schools. They are not a part of the regular school curriculum and it is generally held that participation in such activities is a privilege which may be claimed by students only in accordance with the eligibility standards prescribed for participation.

*2 [Bruce v. S. C. High School League](#), 258 S.C. 546, 551, 189 S.E.2d 817 (1972).

Applying the Court's rationale to the question presented, the League's rule of requiring all athletes to be physically examined would be proper as an internal regulation of the League, for athletic eligibility, which is not the result of mistake, fraud, illegality, collusion, or arbitrariness.

The rule could also withstand an attack by students claiming that it infringed upon their First Amendment rights of freedom of religion by forcing them to undergo examinations that would be contrary to their religious beliefs. The United States Supreme Court has determined that a distinction must be made between the freedom of religious belief and the free exercise of that belief under the First Amendment. The Court delineated these two aspects of religious freedom in the following passage from [Cantwell v. Connecticut](#), 310 U.S. 296, 303, 60 S.Ct. 900, 84 L.Ed. 1213 (1940):

The constitutional inhibition of legislation on the subject of religion has a double aspect. On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of that chosen form of religion. Thus the Amendment embraces two concepts—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be. Conduct remains subject to regulation for the protection of society.

The Court has also held that, absent a compelling state interest, a State may not constitutionally withhold benefits from an individual because of a requirement that the person refuses to satisfy on religious grounds. [Sherbert v. verner](#), 374 U.S. 633, 83 S.Ct. 1790, 10 L.Ed.2d 965 (1963).

Indiana's Supreme Court has found that their State had such a compelling state interest in regard to the Indiana High School Athletic Association's rules on player eligibility and their effect on an individual's exercise of his constitutional right to travel. [Sturup v. Mahan](#), 290 N.E.2d 64 (Ind., 1972). While the Court in [Sturup](#) determined the League rule was overly broad, it found that Indiana had a compelling interest in preventing recruiting and school jumping. The Court observed that: Schools are for education. There is no doubt that extracurricular athletic competition may add to the educational process, but the extracurricular activities should not take precedence over the curricular activities of the school. The sideshow may not consume the circus. The prevention of recruiting and school jumping are both fitting and proper goals by which the IHSAA maintains the amateur standing of high school athletics. This we deem to be a compelling State interest. [Sturup v. Mahan](#), *supra* at 68.

South Carolina would have an even more compelling state interest in the situation at issue. Here, the physical examination is required in order to determine which students have physical problems that would increase the likelihood of their sustaining injuries while participating in athletic activities. Many of these problems or defects, such as heart murmurs or high blood pressure, could only be discovered by qualified medical examiners. An injury to a student not only affects that student's health, but also potentially interferes with his or her education. As previously observed, it is the stated purpose of the League not only to 'safeguard the educational values of interscholastic competition,' but also to 'protect and conserve the health and physical welfare of all participants.' The rationale behind the examination requirement is in accordance with those goals and serves as a compelling state interest in the face of a challenge by a student based on the First Amendment.

*3 The other question presented is whether the Executive Committee could exempt certain athletes from this requirement because of their religious beliefs. The Executive Committee has the power to ' . . . decide in difference to the Constitution on

eligibility cases taking into consideration hardships.’ Constitution of the South Carolina High School League, Art. IV, § 8. However, the interpretation which follows this Section makes it clear that such decisions are to be made on a case by case basis and are not to have the effect of setting precedent. Thus, an exemption for all students with religious objections would appear to be beyond the Executive Committee’s powers. Further, under Article VIII, Section 12, each member school is required to keep on file each student’s physical examination sheet ‘ . . . properly completed by a licensed doctor of medicine.’ To exempt students and schools from this rule would violate the League’s Constitution. It would therefore appear that a Constitutional amendment would be necessary. Such an amendment would have to be made by the Legislative Assembly, in accordance with Article V of the Constitution. Thus, any action by the Executive Committee in this regard would be improper.

CONCLUSION:

It is the opinion of this Office that the South Carolina High School League may require all athletes to undergo physical examinations prior to competing in interscholastic contests. This rule is appropriate regardless of any student’s objection on religious grounds. Any action taken by the League to exempt athletes with religious objections from undergoing such an examination should be undertaken by the Legislative Assembly of the League and not by its Executive Committee.

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