

1978 WL 34964 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

June 28, 1978

*1 Honorable James B. Stephen
Senator
Chairman
Committee on Mental Health & Mental Retardation
220 N. Church Street
Spartanburg, SC 29301

Dear Senator Stephen:

You have requested an opinion from this Office concerning the legality of House Bill 4181 which authorizes certain school districts in Spartanburg County to charge matriculation and other incidental fees.

I am attaching a copy of Opinion No. 4082 which supports the principle that some fees can be charged provided there is statutory authorization for the collection of such fees. The nature and type of fee was not discussed in that opinion.

A majority of the decisions invalidating such fees have pointed out that the fee was charged as a condition of attendance and that the state had a constitutional or statutory provision establishing 'free' public schools. See cases cited in [41 ALR 3rd 752](#), [Validity of Public School Fees](#). Although there is a provision for 'free' public schools in the South Carolina Constitution, our Supreme Court has upheld the authority to exact such fees upon the theory that such fees were essential to the operations of public schools until the Legislature made provisions for a truly free education, and the constitutional provision was not mandatory upon the Legislature. [Heller v. Rock Hill School District](#), 60 S.C. 41, 38 S.E. 220. [Felder v. Johnson](#), 127 S.C. 215, 121 S.E.54.

There is no authority in South Carolina to indicate upon what conditions fees can be charged. [Section 59-19-90 of the 1976 Code](#) of Laws provides the statutory authority for school trustees to charge matriculation and other incidental fees pursuant to special act of the Legislature. It seems clear that House Bill 4181 would not be a special act prohibited by Art. III, Section 34 and [Art. VIII, Section 6 of the South Carolina Constitution](#). [Moye v. Caughman](#), 217 S.E.2d 36.

The various states that have upheld these fees have imposed these legal requirements upon the fees:

- (1) the purpose for the fee was reasonable;
- (2) the fee is necessary to meet the expenses of the school;
- (3) the item for which the fee is charged is a necessary element of any school's activity or is a essential part of a system of public schools, and there are no funds available for such items.
- (4) persons financially unable to pay such fees are excepted.

I would recommend that the proposed legislation be drafted to incorporate, generally, the above principles. The districts can provide more specific provisions when they implement such fees. Failure to provide exceptions for persons unable to pay fees will certainly run afoul of the equal protection clause of the U.S. Constitution. It is the opinion of this Office that school districts of the state may charge matriculation and incidental fees provided special legislation by the Legislature

is enacted granting such power. Furthermore, that House Bill 4181, if amended as recommended, should withstand constitutional and legal attack in the South Carolina courts.

Respectfully submitted.

*2 Frank H. DuRant
Assistant Attorney General

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