

1974 S.C. Op. Atty. Gen. 126 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3757, 1974 WL 21272

Office of the Attorney General

State of South Carolina

Opinion No. 3757

April 22, 1974

***1 Re: Ownership of Church Property**

Senator T. Travis Medlock
1340 Pickens Street
Columbia, South Carolina 29201

Dear Senator Medlock:

You have requested an opinion from this office concerning the constitutionality of a proposed act which, if enacted, will require that certain criteria be considered in the resolution of intra-church real property disputes.

As Deputy Attorney General C. Tolbert Goolsby, Jr., advised you orally, preliminary research pointed to the constitutionality of the proposed act. Since then, further research has not revealed any conclusive authority that would reverse the preliminary opinion rendered. On the contrary, a fairly recent United States Supreme Court decision contains language tending to support the validity of such legislation as the proposed act. In a separate opinion by Mr. Justice Brennan, and concurred in by Mr. Justices Douglas and Marshall, the following language occurs:

A third possible approach [to the resolution of church property disputes] is the passage of special statutes governing church property arrangements in a manner that precludes state interference in doctrine. Such statutes must be carefully drawn to leave control of ecclesiastical polity, as well as doctrine, to church governing bodies. [Maryland and Virginia Eldership of the Churches of God, et al. v. Church of God at Sharpsburg, Inc., et al.](#), 396 U.S. 367, 24 L.Ed.2d 582, 585, 90 S.Ct. 499 (1970).

In the Sharpsburg, case, the Supreme Court affirmed the decision of the Maryland Court of Appeals, which decision had been based on four grounds: (1) Maryland statutory provisions governing the holding of property by religious corporations; (2) language in the deeds conveying the properties in question to the local churches; (3) the terms of the charters of the incorporated local churches; and (4) provisions in the eldership's constitution pertaining to the ownership and control of church property. The Court upheld the Maryland Court's decision to dismiss the complaint inasmuch as the latter court's resolution of the dispute involved no inquiry into religious doctrine.

Similar to the first ground of the Sharpsburg decision, Section 3 of the proposed act contains the following language: In the resolution of actions involving church property, no religious doctrine or ecclesiastical practice shall be proved or considered.

Moreover, in Section 2(i), (v) and (vi) of the proposed legislation, the same elements as those constituting the second, third and fourth grounds, respectively, of the Maryland Court of Appeals decision are required, if existing, to be considered.

It appears clear, therefore, that the proposed act would be constitutional under the First Amendment to the United States Constitution. As far as Article I, Section 2 of the South Carolina Constitution is concerned, the courts have held that the same rights that are protected by the First Amendment to the federal Constitution are fully protected by this section, [Rock Hill v. Henry](#), 244 S.C. 74, 135 S.E.2d 718 (1963), reversed on other grounds in 376 U.S. 776, 84 S.Ct.

1042, 12 L.Ed.2d 79 (1964); furthermore, the language of the First Amendment and of this section is, for all intents and purposes, the same. Hunt v. McNair, 258 S.C. 97, 187 S.E.2d 645 (1972), aff'd., — U.S. —, 93 S.Ct. 2868, 37 L.Ed.2d 923 (1973).

*2 In Hunt v. McNair, the United States Supreme Court reaffirmed the principles governing a consideration of challenges to statutes as violative of the Establishment Clause as follows:

First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion, . . .; finally, the statute must not foster ‘an excessive entanglement with religion.’ Lemon v. Kurtzman, supra, 403 U.S. at 612–613. (Slip Op. at 6.)

Upon applying this threefold test to the proposed act, the secular legislative purpose is apparent: the act attempts to supply directions whenever religious controversies collide with legal doctrines in the matter of title to real property. The primary effect of the act is not to advance or inhibit religious doctrine but rather to discount it in the determination of land disputes. Finally, the act does not effect excessive entanglement with religion; on the contrary, it requires the court to steer clear of religious considerations in deciding title questions.

Relying upon the above cited authority as well as that listed below, this office is of the opinion that the proposed act is constitutional.

Kind regards,

Karen LeCraft Henderson
Assistant Attorney General

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