

1973 WL 26706 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 18, 1973

**\*1 Re: Amendment to Bill No. H-1508, Section 33, Item II**

Honorable Joseph P. Kiley, Jr.  
Member  
House of Representatives  
Charleston County  
State House  
Columbia, South Carolina 29211

Dear Mr. Riley:

The proposed amendment to H-1508 would provide \$20,000 for 'Medical Assistance to Children in Orphanage type custodial care.' Following our conference today with Mr. Robert Floyd, Deput. Commissioner of the Department of Social Services, you requested that I write you concerning the proposed amendment and the legal objections thereto.

First, the appropriation would not qualify for federal matching funds under Title XIX of the Social Security Act (Medicaid). Basically in South Carolina in order to be eligible for Medicaid assistance, you must first qualify for some form of categorical assistance. In the AFDC group a child can receive assistance only when it is maintained by a caretaker relative specified in the federal statutes or in a foster home. More specifically, Vol. IV, Policies and Procedures in Public Assistance, South Carolina Department of Social Services, Chapter V, G, i(e), provides as follows:

'The State Department of Public Welfare will make no payment, either directly or indirectly, to or for any child placed in a child care institution, public or private.'

The proposed amendment could create a violation of Art. 11, § 9 of the South Carolina Constitution which provides in part that the property or credit of the State cannot be used, directly or indirectly, in aid or maintenance of an orphan house, or other institution, which is under the direction or control of any church or religious or sectarian denomination. If an orphanage were a sectarian institution and applied for 'Medicaid Funds' for a child, this provision of the Constitution would apparently be violated.

For the foregoing reasons the proposed amendment to Bill No. H-1503 cannot be sustained and in the opinion of this Office the funds could not be expended under the present state plan for Title XIX of the Social Security Act nor could the Department of Social Services secure any form of federal matching funds.

With my kindest personal regards,  
Very truly yours,

Raymond G. Halford  
Assistant Attorney General

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