



State of North Carolina
Department of Justice

LACY H. THORNBURG
ATTORNEY GENERAL

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12 March 1986

Mr. Samuel A. Wilson, III
Legal Counsel to the Governor
Administration Building
Raleigh, North Carolina 27611

RE: PRIVATE SCHOOLS; HEALTH CERTIFICATES FOR TEACHERS

Dear Mr. Wilson:

In a letter dated March 4, 1986 to the Attorney General you ask whether private elementary and secondary school teachers must have health certificates before being hired.

Chief Deputy Attorney General Andrew A. Vanore, Jr. and I have discussed this issue at some length and we are of the opinion that the law cannot reasonably be interpreted to require private elementary and secondary school teachers to have health certificates before employment, or at any other time. Nevertheless, we believe that private school officials, as a matter of sound policy, should require teachers and other employees to have health certificates in order to protect the health of students and other employees, and in order to protect themselves against possible liability for failure adequately to protect the health of children.

As you are aware, the State's policies and requirements for private elementary and secondary schools are set forth in Article 39, Parts I and II, Chapter 115C of the General Statutes. G.S. § 115C-554 and 562 provide that private schools which comply with the provisions of Parts I and II shall not "be subject to any other provision of law relating to education except requirements of law respecting fire, safety, sanitation and immunization." There is nothing in Parts I and II of Article 39 which establishes any requirement in regard to private school teachers. Therefore, if private school teachers are required to have health certificates that requirement exists, if at all, under those parts of G.S. § 115C-554 and 562 which make private schools subject to laws "respecting fire, safety, sanitation and immunization." While it is possible to argue that G.S. § 115C-323 which requires public school teachers to have health

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certificates is a law "respecting safety" -- that is, a law protecting the safety of students and other employees from communicable diseases through the health certificate requirement -- we do not think such an argument is viable. Viewed in context, we think that the reference to laws "respecting safety" refers to laws respecting the safety of private school facilities. Furthermore, the manifest purpose of the General Assembly in enacting Article 39 was to deregulate private education, and in view of that purpose we do not think the Legislature intended to establish any requirement for private schools not set forth in clear terms.

Very truly yours,

LACY H. THORNBURG
ATTORNEY GENERAL

Edwin M. Speas, Jr.
Special Deputy Attorney General

EMSjr/ch
cc: Andrew A. Vanore, Jr.
Dr. A. Craig Phillips