

AG Opinion: Correspondence School Allotments



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What is an AG Opinion?



- ▶ Formal written legal opinion from the Attorney General's Office available to the public.
- ▶ Purpose is to answer questions of law from State agencies or officials about the agency's or official's legal duties.
- ▶ It is advisory in nature and attempts to help a public official or public agency comply with the law.
- ▶ However, in some instances, courts have cited favorably to a formal AG Opinion. It is viewed as **persuasive only—not binding**.

What is the process for an AG Opinion?



- ▶ Department policy requires that the request for an opinion be approved by the Governor before the Attorney General will consider it.
- ▶ The opinion is then vetted by a team of attorneys within the department in consultation with the Attorney General or the Attorney General's designee.
- ▶ Attorney General approves the formal AG Opinion.
- ▶ AG Opinion is delivered to the agency or public official that requested it and then posted on the Online Public Notice System and the Department of Law's web page.

What are appropriate topics for an AG Opinion?

- ▶ Issues relating to state or local agency duties.
- ▶ Issues of statewide importance.
- ▶ Areas where the law is not yet settled and guidance is needed.
- ▶ It is NOT to provide advice to private organizations or individuals, although it may still assist the public in understanding why an agency has implemented a law in a certain way.
- ▶ *Ex: Review of ballot initiatives to assist the Lt. Governor in determining whether a ballot initiative meets constitutional and statutory requirements.*



What was the impetus for this AG Opinion?

- ▶ Ongoing consultation with DEED since allotment program's enactment
- ▶ School districts, DEED, parents, and private schools struggling with how the statute and the constitution fit together
- ▶ Questions around recent U.S. Supreme Court cases on spending on religious schools.





AG Opinion: Use of Correspondence School Allotments

- ▶ Questions addressed
- ▶ Background on correspondence school allotments
- ▶ Background on the education clause
- ▶ Conclusions
- ▶ Implications for school districts



Questions Addressed

- ▶ What is the ability of public correspondence school students to spend public funds in the form of allotment money on services offered by private vendors including classes presented either online or in-person to fulfill the students' public school education?
- ▶ Whether our analysis is affected by recent U.S. Supreme Court decisions on public funding for private religious education and whether those same decisions might invalidate Alaska's statute limiting the use of correspondence allotments to "nonsectarian services and materials."

Questions Addressed



- ▶ What is the ability of public correspondence school students to spend public funds in the form of allotment money on services offered by private vendors including classes presented either online or in-person to fulfill the students' public school education?
- ~~▶ Whether our analysis is affected by recent U.S. Supreme Court decisions on public funding for private religious education and whether those same decisions might invalidate Alaska's statute limiting the use of correspondence allotments to "nonsectarian services and materials."~~
 - ▶ *Spoiler Alert: These decisions have no impact.*

Background on correspondence school allotment program

- ▶ Public correspondence schools (sometimes called distance learning) have been around since statehood.
- ▶ Correspondence schools are public and adhere to State standards:
 - ▶ Subject to State regulatory oversight;
 - ▶ Students held to State educational standards;
 - ▶ Students must be provided with individual learning plans;
 - ▶ Monitored by a certified teacher assigned to the student;
 - ▶ Parents select materials and classes from a list of vendors.



Background on correspondence school allotment program

- ▶ Correspondence school allotment program enacted in 2014:
 - ▶ “Provide an annual school allotment to a parent or guardian of a student enrolled in the correspondence study program for the purpose of meeting instructional expenses for the student.”
 - ▶ May be used to “purchase nonsectarian services and materials from a public, private, or religious organization.”
 - ▶ Services and materials must meet a number of criteria to be eligible for the allotment.



Background on the education clause

*The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions. Schools and institutions so established shall be free from sectarian control. **No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.***

Art. 7, sec. 1

Background on the education clause

Many methods were sought out to provide and protect for the future of our public schools. We had to recognize that the public schools were our responsibility and that it was our duty to provide for all children of the state in matters of education. The Convention will note that in Section 1 that the Committee has kept a broad concept and has tried to keep our schools unshackled by constitutional road blocks. May I draw to your attention further the fact that we have used the words to [“]establish and maintain by general law.” This is a clear directive to the legislature to set the machinery in motion in keeping with the constitution and whatever future needs may arise.

2 Proceedings of Alaska Constitutional Convention
1514 (Jan. 9, 1956).



Background on the education clause

- ▶ *Sheldon Jackson College v. State*, 599 P.2d 127 (Alaska 1979)
 - ▶ The framers “wished the constitution to support and protect a strong system of public schools.”
 - ▶ Sought to do so without incidentally preventing the state “from providing for the health and welfare of private school students, or from focusing on the special needs of individual residents.”
 - ▶ Designed the constitution “to commit Alaska to the pursuit of public, not private education, without requiring absolute governmental indifference to any student choosing to be educated outside the public school system.”



Background on the education clause

- ▶ *Sheldon Jackson College v. State*, 599 P.2d 127 (Alaska 1979)
 - ▶ Three Factors:
 - ▶ “neutrality rather than hostility from the state” toward private schools, and “thus the breadth of the class to which statutory benefits are directed is a critical area of judicial inquiry”
 - ▶ “the nature of the use to which the public funds are to be put” is a major consideration
 - ▶ “the magnitude of the benefit conferred”



Conclusions

- ▶ Using public correspondence school allotments to purchase discrete services or materials is likely constitutional.
- ▶ Using public correspondence school allotments to pay most or all of a private educational institution's tuition is almost certainly unconstitutional.
- ▶ The space in between: there is likely room under the constitution for the correspondence school program to permit expenditure of allotments on individual classes provided by private institutions where the educational experience supports rather than supplants the child's home-based public education.



Implications for School Districts

Range of policy options
that depend on risk
tolerance.



Questions?

Thank you



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