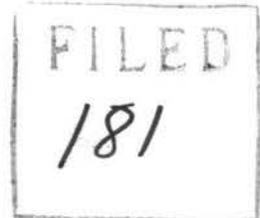


May 4, 1973

OPINION LETTER NO. 181

Answer by Letter - Burns

Honorable Vic Downing  
State Representative, District 162  
303 State Capitol Building  
Jefferson City, Missouri 65101



Dear Representative Downing:

This is in answer to your opinion request dated May 2, 1973, asking whether the student financial assistance program enacted by Senate Bill No. 613 of the Second Regular Session of the 76th General Assembly violates any of the provisions of Sections 5 or 7 of Article I, Sections 36 or 38(a) of Article III or Section 8 of Article IX of the Constitution of Missouri. In your letter transmitting such opinion request you state, "Last year you [Attorney General] explained that it would be improper to give an opinion on this law because you [Attorney General] thought that it would be challenged in court."

On August 30, 1972, Opinion Letter No. 237 was rendered to you and the fourth paragraph of such opinion letter did state that the Attorney General anticipated that the Act would probably be challenged in the courts. However, your attention is directed to the fact that the opinion letter stated, "We have examined the Act in question and we find no clear violation of the Constitution." The opinion letter also pointed out the established principle of constitutional construction, which is, a statute will be held to be unconstitutional only when there is a clear conflict between such legislative enactment and the Constitution. It is clear that Opinion Letter No. 237, 1972 specifically holds that the Attorney General finds no violation of the Constitution of Missouri in the provisions of Senate Bill No. 613 of the 76th General Assembly, Second Regular Session, providing for student financial assistance.

Honorable Vic Downing

We are enclosing a copy of Opinion Letter No. 162, rendered April 18, 1973, to Dr. Jack L. Cross, in which we reiterated our holding as to the constitutionality of Senate Bill No. 613 of the Second Regular Session of the 76th General Assembly.

We are also enclosing Opinion No. 80, rendered March 22, 1961, to J. W. Schwada, and Opinion No. 71, rendered April 3, 1951, to Elmer L. Pigg. As such opinions point out the rule is well settled in this state that a public officer has no standing or right to refuse to carry out the duties imposed upon him by a statute on the ground that he believes such statute is unconstitutional except in the case where the Attorney General of the state has advised such public official that the statute is unconstitutional. Such cases hold that it is the duty of a public official to carry out the duties imposed upon him by statute unless the statute is declared to be unconstitutional by the Attorney General or by a court of competent jurisdiction.

Very truly yours,

JOHN C. DANFORTH  
Attorney General

Enclosures: Op. Ltr. No. 162  
4/18/73, Cross  
  
Op. No. 80  
3/22/61, Schwada  
  
Op. No. 71  
4/3/51, Pigg