

Attorney General of Missouri

POST OFFICE BOX 899

JEFFERSON CITY, MISSOURI 65102

JOHN ASHCROFT
ATTORNEY GENERAL

(314) 751-3321

February 25, 1982

OPINION LETTER NO. 51

Dr. Arthur L. Mallory
Commissioner of Education
Department of Elementary and Secondary Education
Jefferson State Office Building
Jefferson City, Missouri 65101

FILED

51

Dear Dr. Mallory:

This opinion letter is issued in response to your request for a ruling on the following questions:

- I. May the Department of Elementary and Secondary Education or the public school districts of Missouri use funds available to them under Chapter 2 of the Education Consolidation and Improvement Act of 1981 to provide, directly or through other arrangements, each of the following services to children attending non-public schools and their teachers:
 - (1) the loaning of library resources, textbooks, instructional materials, instructional equipment, and testing materials for use by students and teachers on nonpublic school premises;
 - (2) the provision of training for teachers or special or regular instructional services, including but not limited to remedial, diagnostic, enrichment, and guidance and counseling services by publicly paid persons on the premises of nonpublic schools.

Dr. Arthur L. Mallory

- II. May the Department of Elementary and Secondary Education provide in its Application for Funds under Chapter 2 of the Education Consolidation and Improvement Act of 1981, the assurance that it will comply with all provisions of Chapter 2, including section 586 relating to the participation of pupils and teachers in nonpublic elementary and secondary schools, as required by section 564(a)(7) of that Act.

The questions you have presented are similar to the questions we answered with respect to the Elementary and Secondary Education Act of 1965 in Opinion No. 102, Mallory, May 16, 1977. Although Opinion No. 102 answered a request concerning predominantly the provision of materials to children attending nonpublic schools, it concluded that under Missouri law, the public school districts of Missouri could not use funds available to them under Part B of Title IV of the Elementary and Secondary Education Act of 1965, as amended by Public Law 93-380, to provide either materials or services to children attending nonpublic schools. It concluded, further, that under Missouri law the Department of Elementary and Secondary Education could not provide the assurances required by Section 406 of that Act.

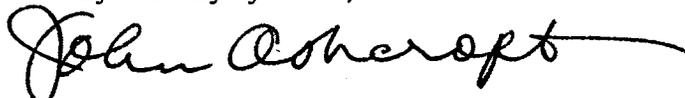
Chapter 2 of the Education Consolidation and Improvement Act of 1981, 20 U.S.C §§ 3811-3863, provides, in part, for a grant of benefits to children enrolled in private schools similar to the benefits provided for in Part B of Title IV of the Elementary and Secondary Education Act of 1965, as amended by Public Law 93-380, 20 U.S.C. § 1821. In addition, both laws call for the provision of assurances by the state that the funds will be used to benefit children attending nonpublic schools. Compare Section 403(a)(3) of the Elementary and Secondary Education Act of 1965, 20 U.S.C. § 1803(a)(3), with Section 564(a)(7) of the Education Consolidation and Improvement Act of 1981, 20 U.S.C. § 3814(a)(7).

Based on the rationale of Opinion No. 102, which we hereby affirm, it is clearly impermissible for either the Department of Elementary and Secondary Education or the public school districts in this state to use funds available to them under Chapter 2 of the Education Consolidation and Improvement Act of 1981 to provide the materials or services described therein to nonpublic school children on nonpublic school premises. Whether dispersed by the Department of Elementary and Secondary Education, or by the public school districts, the funds in question are paid into the state

Dr. Arthur L. Mallory

treasury, where they become public funds of the state which may not be spent for purposes prohibited by the Missouri Constitution. See Section 563(a) of the Education Consolidation and Improvement Act of 1981, 20 U.S.C. § 3813. Neither may the Department of Elementary and Secondary Education provide assurances pursuant to Section 564(a)(7) of that Act, 20 U.S.C § 3814(a)(7), that the funds will be used to benefit children attending nonpublic schools as required by Section 586, 20 U.S.C § 3862.

Very truly yours,

A handwritten signature in cursive script that reads "John Ashcroft". The signature is written in dark ink and is positioned above the typed name and title.

JOHN ASHCROFT
Attorney General

Enclosure: Opinion No. 102 (1977)