Opinion

Christine O. Gregoire — Attorney General of Washington

PUBLIC FUNDS - SCHOOLS - RELIGION - EMPLOYERS AND EMPLOYEES - Constitutionality of proposed legislation providing background checks for private school employees at public expense.

1. It would not be a gift of public funds or lending of state credit to require fingerprint-background checks of current employees of private schools, and to appropriate state funds to pay for such checks.

2. A proposed bill which would appropriate state funds to pay for fingerprint-background checks on all employees of private schools would not, as written, violate the state constitutional prohibitions against applying public funds or property in support of religion.

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July 30, 1998

The Honorable Harold Hochstatter
State Senator, 13th District
The Honorable Rosemary McAuliffe
State Senator, 1st District
Senate Committee on Education
219 John A. Cherberg Building
PO Box 40482
Olympia, Washington 98504-0482

Cite As:
AGO 1998 No. 8

Dear Senators Hochstatter and McAuliffe:

By letter previously acknowledged, you requested our opinion on two questions we have paraphrased as follows[1]:

1. **Legislation was proposed in the 1998 legislative session which would have required fingerprint-background checks on all employees of private schools with**

[1] In your opinion request, you asked first for an informal opinion to be provided before the end of the 1998 legislative session, and then for a formal opinion when we had time to fully research the issues. We provided the informal opinion in the form of a letter (Letter to Senator Harold Hochstatter and Senator Rosemary McAuliffe from James K. Pharris, Sr. Assistant Attorney General, dated March 3, 1998). This formal opinion expands on the analysis in the March 3 letter.

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regular unsupervised access to children. The proposal included an appropriation of state funds to pay for part of the cost of these checks. Would such legislation constitute a gift of public funds or lending of state credit in violation of the State Constitution?

2. **Some of the private schools covered by the legislation mentioned in Question 1 are affiliated with churches or religious institutions and offer religious instruction or conduct religious services. Would paying for fingerprint-background checks for the employees of such schools violate article I, section 11, or article IX, section 4, of the State Constitution?**

BRIEF ANSWER

For the reasons stated in the analysis below, we answer both of your questions in the negative. Our answer is limited to the particular proposed bill attached to your request.

ANALYSIS

Your questions are asked in the context of a specific bill proposed in the 1998 Session of the Legislature.[2] The bill was not enacted. The bill in question consisted of three sections. Section 1 would: (1) require all private schools approved under chapter 28A.195 RCW to require fingerprint-background checks on all employees who have regularly scheduled, unsupervised access to children and were hired before July 1, 1998; (2) include a record check through the state patrol criminal identification system and the federal bureau of investigation; (3) also include a fingerprint check; (4) exempt certificated employees who have already had such a check under RCW 28A.410.010 and (5) provide that private schools are not obligated to pay for these checks. Section 2 of the bill would impose a similar requirement for fingerprint and background record checks on *future* employees of private schools, and would provide that the private school or hiring contractor would decide who would pay the costs associated with the record check. Section 3 would appropriate money to the superintendent of public instruction to pay for the record checks required by section 1.

1. **Legislation was proposed in the 1998 legislative session which would have required fingerprint-background checks on all employees of private schools with regular unsupervised access to children. The proposal included an appropriation of state funds to pay for part of the cost of these checks.**

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[2] You attached the proposal to your request, and we attach it to this Opinion. A similar bill was introduced in the 1998 Legislature as Senate Bill 6573. However, there are significant differences between the proposal attached to your request and Senate Bill 6573, which was eventually replaced by Substitute Senate Bill 6573. Our analysis is confined to the proposal attached to your request.

Would such legislation constitute a gift of public funds or lending of state credit in violation of the State Constitution?

Article VIIII, § 5 of the State Constitution provides as follows:

> The credit of the state shall not, in any manner be given or loaned to, or in aid of, any individual, association, company or corporation.

Const. art. VIII, § 5.

This provision is commonly read as co-extensive with article VIII, § 7, a parallel provision for local governments which reads:

> No county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and infirm, or become directly or indirectly the owner of any stock in or bonds of any association, company or corporation.[3]

CLEAN v. State, 130 Wn.2d 782, 797, 928 P.2d 1054 (1996).

The most useful recent analytical framework for analyzing a law in light of article VIII, §§ 5 and 7, can be found in CLEAN v. State, 130 Wn.2d 782, 928 P.2d 1043 (1996). The CLEAN case was a challenge to a bill authorizing the expenditure of public funds on a new baseball stadium. The challengers alleged that the primary beneficiary of the stadium was not the public but the major league baseball team expected to be the stadium's primary tenant. In upholding the constitutionality of the statute, the Court engaged in a two-step analysis:

> . . . First, the court asks if the funds are being expended to carry out a fundamental purpose of the government? If the answer to that question is yes, then no gift of public funds has been made. The second prong comes into play only when the expenditures are held to not serve fundamental purposes of government. The court then focuses on the consideration received by the public for the expenditure of public funds and the donative intent of the appropriating body in order to determine whether or not a gift has occurred.

Id., 130 Wn.2d at 797-798.[4]

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[3] Despite the differences in wording between these two sections of the Constitution, the courts have construed them to be identical. See, e.g. Tacoma v. Taxpayers, 108 Wn.2d 679, 743 P.2d 793 (1987). Thus, cases construing either section are of equal utility in interpreting the other.

[4] In CLEAN, the Court found that building a stadium was not a *fundamental* governmental purpose and, therefore, reached the second prong of the analysis. However, the Court went on to find that (1) building the

Applying this two-prong analysis to the attached proposed bill, we note, first of all, that the bill's express purpose is to protect young children, as stated in the bill's opening sentence. Evidently, the drafters of the bill have identified private schools as one place where young children spend time under the supervision of adults other than their parents or guardians and are, therefore, at potential risk to their safety and welfare. Record checks are already required for public school employees. RCW 28A.400.303. Furthermore, all certificated school employees must be checked in order to obtain their certificates. RCW 28A.410.010.

The evident purpose of requiring record checks on private school employees is not to confer some benefit on the private school but to protect the safety of the children who attend the school. Absent a statutory requirement, private schools might not choose to inquire into the backgrounds of the employees they hire. With the required checks, the state obtains some measure of assurance about the welfare of children during the time when the children are away from their parents and are engaged in an activity—education—that is mandated by state law.

We think the protection of children, especially in the course of their education, would likely be held by the courts to be a fundamental governmental purpose. The State Supreme Court came close to saying so explicitly in Johnson v. Johnson, 96 Wn.2d 255, 634 P.2d 877 (1981), in which the Court upheld a statute directing the Department of Social and Health Services to collect unpaid child support from non-custodial divorced parents. The Court found that this practice, while incidentally benefiting private parties (the child and the other parent) served a clear public purpose—keeping children off the public welfare rolls and helping to assure their adequate support. Although the Johnson opinion spoke in terms of "recognized governmental function" rather than using the term "fundamental governmental purpose," the analysis suggests that, had it used the two-prong analysis used in CLEAN fifteen years later, the Johnson court would have found a fundamental purpose served by the legislation in question.

However, even if the courts were to find that the bill did not serve a fundamental public purpose, we think the proposed bill attached to your request would also meet the second prong of the CLEAN test. As noted earlier, the beneficiaries of the bill are the public and the children in the schools, not the schools themselves. The "benefit" received by a private school from having its employees checked is relatively minor and incidental compared to the public benefit.[5] Furthermore, we see no evidence of donative intent in the language of the bill. Accordingly, we

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stadium did serve a public purpose, albeit not a fundamental one; (2) the public would receive constitutionally adequate consideration; and (3) there was no evidence of donative intent behind the authorizing of the expenditure.

[5] We note that the bill would result in no transfer of public funds or property to any private school, nor would the bill result in relieving the schools of a pre-existing financial obligation. Under current law, private schools have no such obligation.

reach the opinion that it would not be unconstitutional for the state to pay for the background checks of certain private school employees.[6]

2. **Some of the private schools covered by the legislation mentioned in Question 1 are affiliated with churches or religious institutions and offer religious instruction or conduct religious services. Would paying for fingerprint-background checks for the employees of such schools violate article I, section 11, or article IX, section 4, of the State Constitution?**

Article I, section 11, of the State Constitution provides in relevant part as follows:

> Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state. *No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment. . . .*

Const. art. I, § 11. (Emphasis added.)

Article IX, section 4 provides as follows:

> All schools maintained or supported wholly or in part by the public funds shall be forever free from sectarian control or influence.

The proposal you ask about would appropriate public funds to the Superintendent of Public Instruction to reimburse the Washington State Patrol for the costs of conducting the background and fingerprint checks required for private school employees under section 1 of the bill. However, we do not believe that public funds would thereby be "appropriated" or "applied" to religious worship, exercise or instruction, or in support of any religious establishment, simply because some of the employees checked by the State Patrol might work for sectarian institutions. As with the analysis on gift of public funds, the primary beneficiary of the appropriation would be the State itself, acting in protection of the State's children. Any benefit to the school, much less to its sectarian parent organization, is incidental and slight.

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[6] Although it does not change our analysis, we note that the proposal attached to your request would only provide public funds for the initial "one time" cost of conducting background checks on current private school employees. As to future employees, the bill contains no appropriation, and instructs the schools and their hiring contractors to determine who would pay for these checks.

Our courts have interpreted article I, section 11 very strictly to prohibit the use of public funds to support sectarian schools, but the cases are distinguishable from the subject of your questions. In Mitchell v. Consolidated School Dist. No. 201, 17 Wn.2d 61, 135 P.2d 79 (1943), the State Supreme Court struck down a statute granting students at private schools bus transportation on the same basis as available to public school students, holding that transportation was a direct benefit to the school and that, as to sectarian schools, such a benefit would violate article 1, section 11, among other provisions. In Weiss v. Bruno, 82 Wn.2d 199, 509 P.2d 973 (1973), the Court struck down a statute granting tuition assistance to needy and disadvantaged students at public and private schools, on much the same basis. More recently, in Witters v. Commission for the Blind, 112 Wn.2d 363, 771 P.2d 1119, *cert. denied* 493 U.S. 850, 110 S. Ct. 147, 107 L. Ed. 2d. 106 (1989), the Court found that it would violate article 1, section 11, to grant vocational assistance to a blind student who wished to use the money for a Bible studies degree to assist him in becoming a minister. In each of these cases, however, the public funds in question would have directly supported sectarian education and training. Even the closest case factually to your questions—bus transportation—would have directly facilitated the activities of sectarian schools by delivering the students to the classroom at public expense.

The recent case of Malyon v. Pierce County, 131 Wn.2d 779, 935 P.2d 1272 (1997) supports our analysis that an incidental benefit to a religious institution, in and of itself, does not render a state program unconstitutional. In Malyon, a citizen challenged a program which supplied counselors to employees in the sheriff's office. The counseling was primarily secular in purpose and in content, but some of the counselors were clergymen, and if requested by the employee, religion was sometimes discussed in the counseling sessions. The counselors (also called "chaplains") were not paid from public funds, but did use public space for their counseling and were reimbursed for certain expenses. The State Supreme Court upheld this program, finding that any benefit to religion was slight and incidental, and that the program did not amount to an "appropriation" of public resources for a religious purpose. The proposed bill would, if enacted, have a secular purpose and function: protecting children by checking the backgrounds of those caring for them. Religiously-affiliated private schools would benefit from the program only tangentially.

Article IX, section 4, also seems inapposite to the facts you have described. This section applies only if the state's willingness to pay for some of the background checks on school employees is defined as "support" or "maintenance" of the school. As noted earlier, the background checks are primarily for the benefit of the students, and only incidentally "benefit" the school. Since the background checks were not historically required, the bill could not be interpreted as relieving the schools of a pre-existing obligation. Once an employee's background check has been completed, it is useful primarily to (1) the students under the employee's care, and to (2) the employee, and then secondarily to (3) the employee's current employer and to potential future employers. Thus, the cost of the background check is not "support" to the school except in the incidental way that the school will be able to assure parents that its employees have been properly checked, without having to pay for the checking.

We think the proposal to pay for background checks on certain employees is also somewhat analogous to the facts considered in AGLO 1980 No. 7 (copy attached). In that opinion, we analyzed an appropriation which permitted the disbursement of state funds to private (including church-related) schools for the administration of a mandatory school immunization program. We found that it would not be constitutional to disburse funds to private schools, partly because of an absence of statutory authority for such a practice and partly because it would violate article VIII, section 7[7] (gifts of public funds) and article IX, section 4 of the State Constitution.[8] However, we went on to suggest that a different result would be obtained if the funds were disbursed to a public agency rather than directly to the private schools:

> Conceivably, however, the legislature could amend the law so as to provide that, in the case, of private schools, a public agency such as the local health department, or, perhaps, the Department of Social and Health Services—or any other public agency for that matter—would be responsible for administering the immunization law. Funds could then be disbursed to that public agency to defray the administrative expenses involved (assuming that such disbursements were statutorily authorized) without running afoul of any of the above-cited constitutional provisions, state or federal.

AGLO 1980 No. 7 at pp. 3-4.

In our opinion, conducting background checks on those with frequent contact with children is closely analogous to immunizing children against disease—both are conducted to protect the public health and welfare. Furthermore, in both cases the state is acting to reach the children where they happen to be—in private school—but is not acting to benefit or support the activities of the private schools, sectarian or otherwise.[9]

We conclude that the proposed bill, in appropriating state funds for background checks for certain employees of private schools, would not operate to support or facilitate sectarian instruction or other sectarian activity, except in the most incidental, attenuated way. Thus, we conclude that the bill as written would not be inconsistent with article I, section 11, or article IX, section 4, of the State Constitution.[10] In closing, we again emphasize that our analysis is limited

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[7] It would probably have been more technically correct to cite article VIII, section 5 since a state appropriation was involved. See discussion above.

[8] AGLO 1980 No. 7 did not find that the appropriation under consideration would violate article I, section 11.

[9] Note also AGO 1997 No. 4, in which we found that including church-related educational institutions in a statewide school computer network would not in itself violate article I, section 11 or other provisions of the Constitutions. However, the Opinion reserved judgment on possible *uses* of the computer network.

[10] The United States Constitution, in Amendment 1, also prohibits laws "..respecting an establishment of religion...." None of the cases construing this language appear to call into question practices as indirectly connected

to the specific provisions of the bill you asked us to review, and any changes in the facts would substantially change our answer. As we noted above, the courts construe article I, section 11, and article IX, section 4 very strictly; any bill which would benefit religious institutions or religious education, even indirectly, would be scrutinized very closely. Furthermore, our analysis of the constitutionality of the bill should not be construed as either support or opposition to the proposal on its merits.

We trust the foregoing will be of use to you.

Very truly yours,

CHRISTINE O. GREGOIRE
Attorney General

JAMES K. PHARRIS
Sr. Assistant Attorney General

:jkp
Enclosures: AGLO 1980 No. 7
Bill Proposal

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to the establishment of religion as Senate Bill 6573. See, e.g. Zobrest v. Catalina Foothills School Dist., 509 U.S. 1, 113 S. Ct. 2462, 125 L. Ed. 2d 1 (1993), in which the Supreme Court held that a state could constitutionally provide a sign-language interpreter for a deaf student attending classes at a sectarian high school. The practice upheld in Zobrest, which directly facilitates the school's instructional program, is far closer to an "establishment" of religion than conducting background checks on school employees. Thus, we think it is highly unlikely that Senate Bill 6573 would be found to violate the federal Constitution.

Citation
Wash. AGLO 1980 NO. 7
1980 WL 99841 (Wash.A.G.)

Search Result

Rank 1 of 20

Database
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State of Washington

AGLO 1980 No. 7
January 28, 1980

DISTRICTS--SCHOOLS--HEALTH--IMMUNIZATION--CHURCHES--RELIGION--FUNDING CERTAIN ADMINISTRATIVE FUNCTIONS OF CHURCH-RELATED PRIVATE SCHOOLS

Funds appropriated by §§ 14 and 15 of chapter 118, Laws of 1979, 1st Ex. Sess., for administration of the mandatory school immunization program thereby established may not be disbursed to private, church-related schools (a) because of a lack of statutory authority and (b) because of the constitutional prohibitions in Article IX, § 4 and Article VIII, § 7 of the Washington Constitution; the legislature, however, could make certain suggested amendments to the law which, if enacted, would establish a constitutionally permissible contractual basis for such payments.

Honorable Rod Chandler
State Rep., 45th Dist.
434 House Office Building
Olympia, Washington 98504

Dear Sir:

By recent letter you made note of a certain memorandum opinion written to the Office of the Superintendent of Public Instruction by Assistant Attorney General Thomas L. Anderson on October 4, 1979. You then requested our formal review of that opinion and, in addition, you asked whether, in the event of our confirmation of Mr. Anderson's advice, ". . . there is anything the Legislature can do to rectify this situation by amending . . ." the subject statute.

ANALYSIS

Question (1):

The statute referred to in your letter is chapter 118, Laws of 1979, 1st Ex. Sess. By that enactment the legislature established (with certain exemptions) a mandatory immunization program for children attending both public and private schools in this state. Accord, AGO 1979 No. 6, copy enclosed, in which this office extensively reviewed and then upheld the constitutionality of this legislation while it was still pending before the 1979 legislature.

The term "school," for purposes of the law, is defined by § 2(4) to mean and include both public schools and ". . . any private school or private institution subject to approval by the state board of education . . ." Another defined term in the law is "chief administrator" which, under § 2(1), means,

". . . the person with the authority and responsibility for the immediate

supervision of the operation of a school or day care center as defined in this section or, in the alternative, such other person as may hereafter be designated in writing for the purposes of sections 1 through 12 of this act by the statutory or corporate board of directors of the school district, school, or day care center or, if none, such other persons or person with the authority and responsibility for the general supervision of the operation of the school district, school or day care center."

Sections 7 and 8 (which are quoted in full on pp. 4 and 5 of AGO 1979 No. 6) then require each such "chief administrator" to compile and maintain immunization records pertaining to all children enrolled in their respective schools and to perform certain other related administrative functions in connection with the immunization law. It is the funding of those record keeping and administrative functions with which our October 4, 1979, memorandum opinion, supra, was concerned.

By §§ 14 and 15 of the law, the legislature made the following two appropriations for the 1979-81 biennium:

Sec. 14:

"There is hereby appropriated from the state general fund to the superintendent of public instruction for the biennium ending June 30, 1981, the sum of one hundred thousand dollars, or so much as necessary, to carry out the purposes of this act."

Sec. 15:

"There is hereby appropriated from the state general fund to the department of social and health services for the biennium ending June 30, 1981, the sum of two hundred forty thousand dollars, or so much as necessary, to carry out the purposes of this act."

The question posed was whether any portion of those appropriated funds could be distributed to private churchrelated schools for the purpose of funding their performance of the record keeping and other administrative functions required by §§ 7 and 8 of the act, supra. In response, Assistant Attorney General Thomas L. Anderson of our Education Division said:

"In conclusion, depending upon the entanglement associated with its implementation, a reimbursement program to fund administrative costs associated with state mandated immunization paid directly to private church related schools may violate the First Amendment of the federal Constitution. It is almost certain that the program, if challenged, would be held to violate the Washington State Constitution. There is no such thing as a 'de minimus' violation of Article 9, section 4. Such a direct reimbursement program would benefit private, church-related schools by relieving them of the financial burden associated with the record-keeping requirements of the immunization. Such direct reimbursement would in all probability violate the strict dictates of the Washington State Constitution."

We have, since receiving your request, carefully reviewed both the content and reasoning of Mr. Anderson's opinion and the above conclusion stated therein. It is our considered judgment that the advice there given was correct.

Specifically, it is first our opinion that any disbursement of state funds appropriated by §§ 14 and 15 of chapter 118, Laws of 1979, 1st Ex. Sess., supra, to private parochial schools for the purpose of funding their performance of the administrative obligations imposed upon them by §§ 7 and 8 of that law

would (as Mr. Anderson indicated) be violative of Article IX, § 4 of our state constitution, which reads, in full, as follows:

"All schools maintained or supported wholly or in part by the public funds shall be forever free from sectarian control or influence." (Emphasis supplied)

Accord, Weiss v. Bruno, 82 Wn.2d 199, 509 P.2d 973 (1973).

Second, as was also indicated by Mr. Anderson, there could all be (depending upon all of the factual circumstances) a serious problem under the First Amendment to the United States Constitution as well. See, Lemons v. Kurtzman, 403 U.S. 602, 29 L.Ed.2d 745, 91 S.Ct. 2105 (1971) in which the United States Supreme Court invalidated a Pennsylvania statute providing reimbursement to non-public primary and secondary schools for teachers' salaries and instructional materials used in teaching secular subjects.

Third, although this further issue was not discussed in Mr. Anderson's memorandum opinion, we would also have to conclude that any distribution of the subject funds to a private school, church-related or otherwise, would (under the law as it is now written) result in an unconstitutional gift of state funds in violation of Article VIII, § 5 of the Washington Constitution. Cf., Washington State Highway Commission v. Pacific Northwest Bell Telephone Co., 59 Wn.2d 216, 367 P.2d 605 (1961); and compare, Anderson v. O'Brien, 84 Wn.2d 64, 524 P.2d 390 (1974) which upheld grants of state funds to federally-recognized Indian tribes only because those tribes were regarded by the legislature as "other governmental agencies" rather than private entitles.

And finally, aside from any of the foregoing constitutional prohibitions, we further agree with the conclusion reached by Mr. Anderson on the basis of a simple lack of statutory authority. Both the State Superintendent of Public Instruction and the Department of Social and Health Services, to which the respective appropriations were made, are subject to the well-established principle that state agencies have only those powers which have been granted to them by the legislature, either expressly or by necessary implication. State ex rel. Holcomb v. Armstrong, 39 Wn.2d 860, 239 P.2d 545 (1952). There is, however, nothing in chapter 118, supra, or in any other existing statute, which authorizes either of the two agencies to fund the performance, by a private school, of those administrative functions which the legislature has required them to perform in connection with the immunization law here in question.

Question (2):

In the event of the foregoing response to your first question, you have further asked ". . . if there is anything the Legislature can do to rectify this situation by amending this statute."

As above indicated, a principle reason for our disposition of your first question is that the law, as it is now written, requires the schools themselves (through their chief administrative officers) to perform the record keeping and other administrative functions involved. And, since the obligation of those schools to perform those functions is in no way dependent, statutorily, upon state funding, it necessarily follows that any payment voluntarily made by the state to the private schools involved would be an unconstitutional gift. Likewise, this same factor is of legal significance insofar as the constitutional question raised by Article IX, § 4, supra, is concerned.

Conceivably, however, the legislature could amend the law so as to provide that, in the case of private schools, a public agency such as the local health

department, or, perhaps, the Department of Social and Health Services--or any other public agency for that matter--would be responsible for administering the immunization law. Funds could then be disbursed to that public agency to defray the administrative expenses involved (assuming that such disbursements were statutorily authorized) without running afoul of any of the above-cited constitutional provisions, state or federal. Then, in turn, given the further statutory authority to do so, the public agency or agencies involved could contract with those private schools covered by the immunization law to have the schools carry out certain functions with respect to the law, as agents of the public agency, for the expenses of which the schools could be reimbursed pursuant to that contract.

In essence, this suggested approach is comparable to one which was upheld by this office a number of years ago in the context of House Bill 419 (1971) authorizing contract purchases of "secular educational service" from non-public schools by the State Superintendent of Public Instruction. See, letter opinion dated March 3, 1971, to then State Representative Dale E. Hoggins, copy enclosed. Unquestionably, however, it would require substantial amendments to the existing law. [FN1]

It is hoped that the foregoing will be of assistance to you.

Very truly yours,

Slade Gorton
Attorney General

Malachy R. Murphy
Deputy Attorney General

FN1 In addition, while approving of this suggested approach from a constitutional standpoint, we would leave to the legislature the further question of whether or not it would be administratively practical.

Wash. AGLO 1980 NO. 7, 1980 WL 99841 (Wash.A.G.)
END OF DOCUMENT

AN ACT Relating to record checks of private school educational employees; adding new sections to chapter 28A.195 RCW; making an appropriation; and providing an expiration date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec. 1.** A new section is added to chapter 28A.195 RCW to read as follows:

(1) The legislature finds additional safeguards are necessary to ensure safety of school children attending private schools in the state of Washington. In order to ensure this goal, by June 30, 1999, private schools approved under this chapter shall require that all employees who have regularly scheduled unsupervised access to children and were hired before July 1, 1998, undergo a record check through the Washington state patrol criminal identification system under RCW 43.43.830 through 43.43.838, 10.97.030, and 10.97.050 and through the federal bureau of investigation. The record check shall include a fingerprint check using a complete Washington state criminal identification fingerprint card. Certificated employees who have completed a record check in accordance with RCW 28A.410.010 are not required to undergo the record check required by this section. The

superintendent of public instruction shall provide a copy of the record report to the employee. Once an employee has a record check as required under this section, additional record checks shall not be required of the employee unless required by other provisions of law.

(2) Private schools under this chapter and their employees shall not be required by the state patrol or superintendent of public instruction to pay for the record check required in subsection (1) of this section.

(3) The record checks required in this section shall be in process no later than June 30, 1999.

(4) This section expires March 31, 2000.

NEW SECTION. **Sec. 2.** A new section is added to chapter 28A.195 RCW to read as follows:

Approved private schools and their contractors hiring employees who will have regularly scheduled unsupervised access to children shall require a record check through the Washington state patrol criminal identification system under RCW 43.43.830 through 43.43.834, 10.97.030, and 10.97.050 and through the federal bureau of investigation before hiring an employee. The record check shall include a fingerprint check using a complete Washington state criminal identification fingerprint card. The requesting entity shall provide a copy of the record report to the applicant. When necessary, applicants may be employed on a conditional basis pending completion of the investigation. If the applicant has had a record check within the previous two years, the approved private school or contractor may waive the requirement. The approved private school or contractor hiring the employee shall determine who shall pay costs associated with the record check.

NEW SECTION. **Sec. 3.** The sum of five hundred thousand dollars, or as much thereof as may be necessary, is appropriated for the fiscal year ending June 30, 1999, from the general fund to the superintendent of public instruction for the purpose of section 1 of this act.

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