



STATE OF GEORGIA

OFFICE OF THE GOVERNOR

ATLANTA 30334-0900

Sonny Perdue
GOVERNOR

September 23, 2008

The Honorable Thurbert Baker
Attorney General
Georgia Department of Law
Judicial Building – Room 132
40 Capitol Square
Atlanta, Georgia 30334-1300

Dear Attorney General Baker:

Pursuant to O.C.G.A. § 45-15-3(1), I hereby request that you give your official opinion in writing on the question of law set out below.

The Consortium for Adequate School Funding in Georgia (CASFG) “is a non-profit corporation, which has Georgia school systems as members.” See <http://www.casfg.org/about/> (last visited Sep. 19, 2008). CASFG was formed in 2001 “to obtain additional support from the State in the financing of K-12 education in Georgia.” See http://www.casfg.org/press/general_info_on_lawsuit.html (last visited Sep. 19, 2008). The “purpose of the Consortium is to seek adequate funding for Georgia’s schools,” <http://www.casfg.org/> (last visited Sep. 19, 2008), and CASFG’s primary activities are (1) funding and directing litigation against the State in the hope of obtaining increased State education funding and (2) advertising and public relations in the aid of this goal. See generally <http://www.casfg.org/> (last visited Sep. 19, 2008). Another goal of CASFG is to permit local governments to offset increased state funding by reducing local taxes. See <http://www.casfg.org/press/faq.html> (last visited Sep. 19, 2008). CASFG is funded by dues paid by the Georgia school systems that constitute its membership. See <http://www.casfg.org/about/>. The State Auditor has confirmed that at least a significant portion of these dues have been paid out of the public school funds held by the member systems.

The Georgia Constitution provides that “[s]chool tax funds shall be expended only for the support and maintenance of public schools, public vocational-technical schools, public education, and activities necessary or incidental thereto, including school lunch purposes.” GA. CONST. Art. VIII, Sec. VI, Para. I(b); see also O.C.G.A. § 20-2-411 (requiring public school funds to be kept “separate and distinct from other funds” and used “for educational purposes”). Decisions of the Georgia Supreme Court interpreting these provisions suggest that using state or local school funds to pay dues to CASFG violates Georgia law.

In *Woodham v. City of Atlanta, et al.*, 283 Ga. 95, 657 S.E.2d 528 (2008), the City of Atlanta argued that the BeltLine TAD project was necessary or incidental to education because it would likely increase future revenue for the local school systems by increasing property values, and that funding it with school tax dollars was therefore constitutional. The Court rejected the argument and held that public school funds may not be spent for the purpose of increasing future school revenue: "Although [the City of Atlanta] assert[s] that the BeltLine TAD will likely produce future revenue for the school system, such potential benefit 'will not suffice where the constitutional authorization for such expenditure is lacking.'" 283 Ga. at 97, 657 S.E.2d at 530 (quoting *Wright v. Absalom*, 224 Ga. 6, 8, 159 S.E.2d 413, 415 (1968)).

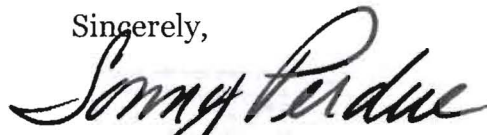
This decision followed logically from two previous decisions of the Court. In *DeKalb Co. School Dist. v. DeKalb Co.*, 263 Ga. 879, 440 S.E.2d 185 (1994), the Court held that road construction was neither necessary nor incidental to education even though the road was the only route to a new school and the increased traffic the school would bring made the improvements necessary for student safety.

In *Wright v. Absalom, supra*, the Court held that providing school lunches to students was neither necessary nor incidental to education. In response, the General Assembly passed a constitutional amendment specifying that school lunches were permissible. The Court's reasoning remained valid, however, and the Court relied on *Wright* in reaching its decision in *Woodham* this February.

A number of previous Attorney General's Opinions may also be relevant. *See, e.g.*, 1995 Op. Att'y Gen. No. 95-2 (public school funds may not be used to provide transportation to students for extracurricular activities by leasing vehicles); 1990 Op. Att'y Gen. No. U90-3 (public school funds may not be used to pay chamber of commerce membership dues of county school superintendent); 1984 Op. Att'y Gen. No. 84-85 (public school funds may not be used to purchase billboard space for the display of public relations advertisements).

Accordingly, I request that you answer the following question: Given the facts stated above, does a Georgia school system's use of state or local public school funds to pay dues to the Consortium for Adequate School Funding in Georgia violate GA. CONST. Art. VIII, Sec. VI, Para. I and/or O.C.G.A. § 20-2-411?

Sincerely,



Sonny Perdue
Governor