



STATE OF ARKANSAS  
OFFICE OF THE ATTORNEY GENERAL  
JUSTICE BUILDING, LITTLE ROCK 72201

(501) 371-2007

STEVE CLARK  
ATTORNEY GENERAL

OPINION NO. 85-146

June 20, 1985

The Honorable Jerry Daniel King  
Representative, District 29  
State Capitol  
Little Rock, AR 72201.

Dear Representative King:

This is in response to your opinion request wherein you posed the following inquiries:

Does Section 6 under House Bill 4 give equal protection to the special education children in the State of Arkansas with regard to the availability of home school education provided for other children in this act?

Is this act constitutionally sound with regard to the above provision?

In addressing whether Section 6 of House Bill 4 would withstand judicial scrutiny, pertinent to your inquiries is the legal the General Assembly, an Arkansas court bases its decision on whether it is possible to construe all parts of that act as legally valid.

This test has been consistently applied by the Arkansas Supreme Court. See Carter v. State, 255 Ark. 225, 500 S.W.2d 368 (1973), cert. den., 416 U.S. 905, 94 S.Ct. 1611, 40 L.Ed.2d 110 (1974); Jones v. Mears, 256 Ark. 825, 510 S.W.2d 857 (1974); and Handy Dan Imp. Center, Inc. v. Adams, 276 Ark. 268, 633 S.W.2d 699 (1982). In Davis v. Smith, 266 Ark. 112, 583 S.W.2d 37 (1979), the Court recognized:

An act of the General Assembly should be given a construction that meets the test of constitutionality, if possible to do so.

Id. at 121. See also, United States v. Harriss, 347 U.S. 612 74 S.Ct. 808, 98 L.Ed. 989 (1954).

With respect to whether House Bill 4 might be susceptible to an equal protection attack, it is important to note that handicapped is not a suspect classification. Hence, there need only be a rational basis for the classification carved

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out in Section 6 of House Bill 4. Because there are many obvious reasons why the State would be justified in insuring an adequate education for handicapped children, the classification in question would appear to pass constitutional muster.

Hence, for the above reasons this Office is not prepared to conclude that Section 6 of House Bill 4 could not withstand judicial scrutiny.

This opinion, which I hereby approve, was prepared by Assistant Attorney General C. Randy McNair, III.

Sincerely,



STEVE CLARK  
Attorney General

JSC:CRM:jk