



**THE ATTORNEY GENERAL
OF TEXAS
AUSTIN, TEXAS**

**PRICE DANIEL
ATTORNEY GENERAL**

July 31, 1948

The Board of Directors
The Texas State University for Negroes
2007 Petroleum Building
Houston 2, Texas

Attention: Mr. John H. Robertson,
Executive Assistant

Opinion No. V-645

Re: Whether a white applicant may be admitted to The Texas State University for Negroes.

Gentlemen:

You write that Mr. Jack Coffman, a white citizen of Houston, who represents that he is a social science major from Penn College, Oscaloosa, Iowa, desires to be admitted to The Texas State University for Negroes for the purpose of taking courses in social science. You request an opinion as to whether he may legally be admitted.

Section 7 of Article VII and related Articles of the Texas Constitution provide that separate schools shall be provided for the white and colored students and that impartial provision shall be made for both.

The legislative act creating The Texas State University for Negroes¹ provides that:

"It is the purpose of this Act to establish an entirely separate and equivalent university of the first class for Negroes
..."

¹

Section 1, Senate Bill 140, Acts 50th Leg., Ch. 29, p. 36, carried as Art. 2643b, V.A.C.S.

With regard to which persons would be eligible for enrollment, the Act further provides in Section 12:

"The term 'qualified applicant' as used in this Act shall mean any colored person who meets the educational requirements The term 'colored person' (means) . . . a negro or person of African descent."

The Act is plain and unambiguous. It shows without question that the Legislature intended to create, and did create, an entirely separate university for Negroes. Under that Act, only Negroes may be admitted to The Texas State University for Negroes.

The sole remaining question is the constitutionality of the provisions of the Texas Constitution and the legislative Act creating the Negro University in the light of the Fourteenth Amendment to the Constitution of the United States, which provides that:

"No state shall make or enforce any law which shall . . . deny to any person within its jurisdiction the equal protection of the laws."

In February 1948, the Austin Court of Civil Appeals held in the case of Sweatt v. Painter that the State could constitutionally provide separate facilities for the education of Negroes and white students, so long as the facilities offered both groups were substantially equal.² That opinion followed a long line of cases by the Supreme Court of the United States to the same effect.

Thus in Plessy v. Ferguson, 163 U.S. 537, the Supreme Court of the United States said:

"The object of the (14th) Amendment was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based upon color, or to enforce social, as

²

210 S.W.(2d) 442. The case is now pending on application for writ of error in the Supreme Court of Texas.

distinguished from political equality, or a commingling of the two races upon terms unsatisfactory to either. Laws permitting, and even requiring, their separation in places where they are liable to be brought into contact do not necessarily imply the inferiority of either race to the other, and have been generally, if not universally, recognized as within the competency of the state legislatures in the exercise of their police power. The most common instance of this is connected with the establishment of separate schools for white and colored children, which has been held to be a valid exercise of the legislative power even by courts of States where the political rights of the colored race have been longest and most earnestly enforced. . . ."

Similarly in Cummings v. Board of Education, 175 U.S. 262, that Court stated:

"We may add that while all admit that the benefits and burdens of public taxation must be shared by citizens without discrimination against any class on account of their race, the education of the people in schools maintained by state taxation is a matter belonging to the respective states, and any interference on the part of Federal authority with the management of such schools cannot be justified except in the case of a clear and unmistakable disregard of rights secured by the supreme law of the land. . . ."

And the opinion of the U. S. Supreme Court in Gong Lum v. Rice, 275 U.S. 78, reads:

"The question here is whether a Chinese citizen of the United States is denied equal protection of the laws when he is classed among the colored races and furnished facilities for education equal to that offered to all, whether white, brown, yellow or black. Were this a new question, it would call for very full argument and consideration, but we think

that it is the same question which has been many times decided to be within the constitutional power of the state legislature to settle without intervention of the federal courts under the Federal Constitution. . . .

" . . . The decision is within the discretion of the State in regulating its public schools and does not conflict with the Fourteenth Amendment. The judgment of the Supreme Court of Mississippi is affirmed."

In the recent case of Missouri (Gaines) v. Canada, (1938) 305 U.S. 337, the Supreme Court of the United States again recognized the state's right to provide separate facilities for Negro and white students. Its decision reiterates:

"The State has sought to fulfill that obligation by furnishing equal facilities in separate schools, a method the validity of which has been sustained by our decisions. . . ."

The Gaines case was cited with approval in 1948 in Sipuel v. The University of Oklahoma, 68 S.Ct. 299. There are no cases from the U. S. Supreme Court to the contrary.

Under these decisions, it is unquestionably now the law that the states may constitutionally provide separate facilities for the education of Negro and white students so long as the facilities offered both groups are substantially equal.

The people of Texas in their Constitution, and the Legislature in its enactments, have adopted the policy that white and Negro students should be educated separately. The law operates to prohibit a white person's entrance to the Negro University as well as prohibiting the entrance of a Negro to the white University. The law is and must be applicable equally to both white and Negro citizens.

The University of Texas offers a wide variety of social science courses. The physical facilities and scholastic opportunities offered to white students at

that institution, and other State supported colleges for white students, are substantially equal to those offered Negro students at The Texas State University for Negroes. You are therefore advised that Mr. Coffman may not legally be admitted to The Texas State University for Negroes.

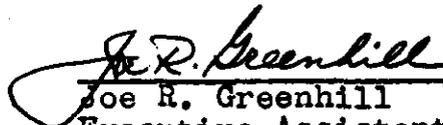
SUMMARY

Since the Texas Constitution and laws provide that white and Negro students shall be educated separately, and since substantially equal courses of study and physical facilities are offered for white students at The University of Texas and other State colleges, a white student may not legally be admitted to The Texas State University for Negroes. Constitution of Texas, Article VII, Section 7; Sweatt v. Painter, 210 S.W.(2d) 442.

Yours very truly,



Price Daniel
Attorney General of Texas



Joe R. Greenhill
Executive Assistant