

Opinion No. 2008-173

December 2, 2008

The Honorable Johnny Hoyt
State Representative
15 Country Lane
Morrilton, Arkansas 72110-9784

Dear Representative Hoyt:

I am writing in response to your recent request for my opinion on the following question:

In light of the Supreme Court decision (PARENTS INVOLVED IN COMMUNITY SCHOOLS V. SEATTLE SCHOOL DISTRICT NO. 1 ET AL.) that it is unconstitutional to base admission to schools solely on race, is the current School Choice law in Arkansas constitutional?

RESPONSE

I regret to say that I must respectfully decline to offer an opinion on your question at this time. The constitutionality of the Arkansas Public School Choice Act of 1989 is the subject of pending litigation in a lawsuit captioned *Darrin Hardy et al. v. Malvern School District*, Case No. 08-6094, United States District Court, Western District of Arkansas (Hot Springs Division). Because of the judiciary's independent constitutional role, it would be inappropriate for an executive office such as mine to comment on a matter properly before a judicial body. For this reason, my office has a longstanding policy of declining to render advisory opinions on matters pending before the courts. *See, e.g.*, Ops. Att'y Gen. 2007-273; 2006-204; 2006-198; 2005-031; 2005-003; 2003-182; 2003-302; 99-389; 97-

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329 and 97-105. This policy includes the time period during which appeals may be filed. Accordingly, I must respectfully decline to answer your question at this time.

Assistant Attorney General Jennie Clingan prepared the foregoing opinion, which I hereby approve.

Sincerely,

DUSTIN McDANIEL
Attorney General

DM:JC/cyh