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R75-509
75-12

April 24, 1974

APR 1974
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The Honorable Peter Kay
Arizona State Representative
House Wing, State Capitol
Phoenix, Arizona 85007

Dear Representative Kay:

This is in answer to your opinion request of April 15, 1974, in which you asked:

1. Can money be constitutionally appropriated for bilingual education?

2. If so, can money be appropriated without the Legislature specifically mandating its use to the Department of Education?

Article 20 of the Arizona Constitution is entitled "Ordinance", and constitutes a binding agreement with the United States Government much as does the Enabling Act. Provisions of Article 20 may not be amended without the consent of the United States Congress. With this background it is easier to understand the intent of Section 7 of this article:

> Seventh. Provisions shall be made by law for the establishment and maintenance of a system of public schools which shall be open to all the children of the State and be free from sectarian control, and said schools shall always be conducted in English.
>
> The State shall never enact any law restricting or abridging the right of suffrage on account of race, color, or previous condition of servitude.

We believe that Section 7 must be read in context with Section 8 of the Ordinance. It is obvious that this was an assurance on the part of the Territory of Arizona to the federal government that, upon becoming a state, Arizona

would adopt or use English as its official language. This would preclude the type of language difficulties which presently plague Canada, where both English and French are considered the official language. Thus the literal terms of Section 7, when viewed in light of this purpose, become clear: ". . .[S]chools shall always be conducted in English."

This does not mean that, as it was once feared, schools in Arizona could teach no foreign language classes; nor does it mean that every course offered in the school must be taught only in English. It requires only that the school shall be organized to allow its students to become totally proficient in the English language in order that they may participate in all facets of our society and English will be perpetuated as the official language of the United States of America.

Within this framework of constitutional purpose we believe that bilingual education courses, as envisioned by the present Legislature, are not unconstitutional. The purpose of bilingual education is to allow a child who does not speak English, or speaks it badly because it is not his home language, to acquire English proficiency while retaining his proficiency in his original language. Additionally, it allows these children to keep up with their age group in other subjects during the period they are acquiring sufficient English skills to participate in the normal courses, which courses are conducted in English. The school itself is being conducted in English, and at the end of a bilingual course the student should be learning entirely in that language. Thus, the bilingual education courses concern only the individual and not the conduct of the school. These courses have as their ultimate goal the instruction of the student which will ultimately give him the ability to read, write, speak and understand the English language, thus fulfilling the purpose of Article 20, Sections 7 and 8.

In addition to the word and intent of our own Constitution, the United States Supreme Court held in Lau v. Nichols, ___ S.Ct. ___ (1974), that some method of compensatory or remedial program such as bilingual education may will be constitutionally required in most Arizona schools. We cannot state categorically that Lau would apply to every Arizona school, because the Court decided the case on the basis of the rules and regulations of the Department of Health, Education and Welfare promulgated pursuant to the Civil Rights Act, and applying to any school which receives federal funds.

However, it is our opinion that, should there be a district in this state which receives no federal funds, the courts would reach the same conclusion by a different route.

The question presented in the Lau case is a mirror image of Question 1 in your letter. In the Lau case a California school district refused to provide a compensatory English or bilingual program for approximately 1,800 students whose home language was Chinese. The United States Supreme Court held that, in spite of the fact that California provided equal opportunity to take English courses to all of its students, in the case of these 1,800 students, this did not in effect provide equal educational opportunity in accordance with Health, Educaion and Welfare regulations, and was therefore a violation of the Civil Rights Act. It is interesting to note that the Court took judicial notice of the California law requiring that all classes must be taught in the English language.

For these reasons it is our opinion that the bilingual education program, as presently contemplated by the Arizona Legislature does not contravene the Arizona Constitution.

We have checked with the Department of Education and have been assured that no funds which were not specifically appropriated for bilingual education have been spent for that purpose. In order for the Department to spend funds for that purpose, it is necessary that the Legislature either appropriate funds yearly specifically for the purpose of bilingual education or that it provide a continuing appropriation which gives adequate direction to the Department as to the amount of the funds and the purpose for their distribution.

Sincerely,

GARY K. NELSON
The Attorney General

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REW:lf
cc: Mr. G. W. Harrell