

May 15, 1948

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

L. D. Klemmedson, Superintendent
Department of Public Instruction
Capitol Building
Phoenix, Arizona

Dear Mr. Klemmedson:

In regard to your letter of May 13, 1948, requesting the opinion of this office as to the legality of the Gideon Society distributing free copies of the New Testament to school children at a noncompulsory assembly to be held after the regular school hours, it is our opinion that such practice is legal. We direct your attention, however, to the fact that there is a very definite split of legal authority on this question.

The recent Supreme Court case of Illinois v. The Board of Education, 92 L. Ed. 451, which required our previous opinion denying such distribution of Gideon Bibles during school hours at a compulsory assembly, was carefully confined by the Supreme Court to apply to the use of school buildings during school hours only. For this reason that case would present no obstacle to the present course of action. Various state courts have taken different views on the subject of the use of school buildings after school hours for religious purposes. Illinois, Iowa, Nebraska and Indiana are among those which permit such use, while Kansas, Massachusetts, Missouri and Pennsylvania are aligned on the other side, with Connecticut falling somewhere in between.

However, as there has been no case deciding this question in Arizona, and as Section 54-416, subsection 11, A.C.A. 1939, allows the Board of Trustees of a school district to permit the use of school buildings after school hours as a civic center for moral activities of the district, we believe that the Arizona legislature has shown its intention to align itself with those states which would permit such use. (For a more complete compilation of cases concerned see 5 A.L.R. 886 and following; and 141 A.L.R. 1153 and following).

The Board of Trustees concerned, whose permission must be obtained for such venture, however, might well get themselves into serious trouble should they grant the use of

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such school buildings for the distribution of New Testaments by the Gideon Society, and then later refuse a request for the similar use of these buildings for the distribution of the scriptures of Buddha, the Koran, the Old Testament, the writings of Joseph Smith, Mary Baker Eddy, or any of the other of the multiplicity of religious tracts.

Very truly yours,

EVO De Concini
Attorney General

EDWARD JACOBSON
Assistant Attorney General

EJ:BA