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DEPARTMENT OF LAW
OFFICE OF THE
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

BRUCE E. BABBITT
ATTORNEY GENERAL

July 23, 1976

Honorable Richard J. Riley
Cochise County Attorney
Post Office Drawer CA
Bisbee, Arizona 85603

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ARIZONA ATTORNEY GENERAL

Dear Mr. Riley:

We have reviewed your letter opinion dated June 15, 1976, addressed to O'Dell L'Heureux, President of the Board of Education of Sierra Vista Public Schools, relating to the grant to students of excused absences for religious purposes. We agree with the results expressed in your letter, but prefer separately to state the reasons for our agreement.

Arizona's compulsory school attendance law is set forth in A.R.S. §§ 15-321 to 15-329, inclusive. It directs (in subsection A of A.R.S. § 15-321) that children between the ages of eight and sixteen years attend a public school "for the full time school is in session." Subsection B of A.R.S. § 15-321 then describes a number of exceptions from the required public school attendance. One exception (contained in paragraph 5 of subsection B) is that:

The child has presented reasons for nonattendance which are satisfactory to a board consisting of the president of the local board of trustees, the teacher of the child and the probation officer of the superior court of the county.

That provision does not further describe what constitutes a "satisfactory" reason, but there is nothing to indicate that a religious reason is not such. But to constitute an excused absence under this provision, all of its terms should be complied with. However, since it would be highly impractical for the probation officer of the superior court, school board president, and the child's teacher to meet with respect to each individual child, compliance may be effected by obtaining the consent of all teachers, school board presidents, and probation officers, on an annual basis, for excused absences for religious purposes.



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In this connection, permitting a child to be absent for religious purposes is constitutionally permissible. In an analogous situation, in the face of an Establishment Clause challenge, a public school district was permitted to release students from school to participate in parochial school religious classes. Smith v. Smith, 523 F.2d 121 (4th Cir. 1975); Zorach v. Clauson, 343 U.S. 306 (1952). Since a grant of an excused absence for religious purposes involves a school district far less in religious affairs than does coordinating a release-time program, it is not constitutionally suspect.

But a school district must determine whether an absence requested for a religious reason is truly for that purpose. If the child is a member of one of the major religions, this does not present any great difficulty. However, if the child is a member of a religious faith which is adhered to by a small number of people, then it will be necessary for the district to determine that the faith requires or strongly urges the student not to participate in the school district program on the particular day or days for which an excused absence is requested. Moreover, the total number of days of excused religious absences must be reasonable in order that the exemption for excused absences not be abused.

Should you have any questions concerning the foregoing, please let us know.

Sincerely,

BRUCE E. BABBITT
Attorney General

Alan S. Kamin/gp

ALAN S. KAMIN
Assistant Attorney General

ASK:gs



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DOUGLAS

June 15, 1976

SCHOOL OPINION

Requested By: O'Dell L'Heureux, President, Board of Education, Sierra Vista Public Schools.

Opinion By: Richard J. Riley, Cochise County Attorney
Robert M. Jarrett, Jr., Civil Deputy

Questions: 1) May a School District excuse student absences for religious purposes?
2) May a School Board recognize religious holidays of a particular Faith?

Answers: 1) Yes. See opinion.
2) No. See opinion.

Dear Mr. L'Heureux:

It is my opinion that if parents of students who are of the Baha'is Faith request that the District excuse their children from classes for religious purposes, that the School District must excuse such absences. The absences should be treated in the same way the District would treat any other absence pursuant to a parental request, where such request is for a legitimate reason or purpose.

In order for the School District to excuse such absences, it is not necessary that the Board recognize the specific religious holy days of the Baha'is Faith. The School Board cannot formally recognize the religious holy days of the Baha'is Faith, because there is no statutory authority allowing such recognition by a School Board and a School Board may only exercise that authority granted by statute and within the limits permitted by such statute.

O'Dell L'Hereux
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June 15, 1976

School District No. 69 of Maricopa County v Altherr 10 Ari-
zona App. 333, 458 P.2d 537 (1969).

Pursuant to A.R.S. § 15-122 (B), this letter is
being forwarded to the Attorney General for his concurrence
or revision.

Sincerely,

RICHARD J. RILEY
Cochise County Attorney



By: ROBERT M. JARRETT, JR.
Deputy County Attorney

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