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OFFICE OF THE
Attorney General
STATE CAPITOL
Phoenix, Arizona 85007

BRUCE E. BABBITT
ATTORNEY GENERAL

June 14, 1977

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Mr. Jay V. Flake, Esq.
Navajo County Attorney
300 Navajo Boulevard
Holbrook, Arizona 86025

Re: Opinion Request No. 77-135 (R77-120)

Dear Mr. Flake:

We have reviewed your March 25, 1977, opinion to Mr. Larry B. Brewer, Superintendent of the Snowflake Unified School District No. 5, concluding that a high school is required to grant a student release time for religious education when requested by the student's parents.

We informally concur in the result reached by your opinion with the caveat that the question of the number of academic credits necessary for graduation has not been treated in your opinion. This informal concurrence has no precedential value.

Thank you for forwarding the opinion to the Attorney General for review as required by A.R.S. §15-122.B. If you have any questions, please call me.

Sincerely,

BRUCE E. BABBITT
Attorney General

David Rich

DAVID RICH
Assistant Attorney General

DR:dsw

Kick

RECEIVED NAVAJO COUNTY ATTORNEY

JAY V. FLAKE
COUNTY ATTORNEY

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PHOENIX, ARIZONA

March 25, 1977

R77-120

Mr. Larry B. Brewer
Superintendent
Snowflake Unified School District. #5
P. O. Box 1100
Snowflake, Az 85937

Dear Mr. Brewer:

I am in receipt of your letter of March 18, 1977, and the purpose of this letter is to answer the question posed by you in that communication. Your question is as follows:

"Is a high school required to grant a student released time for religious education where requested by the parents?"

The answer to your question is "yes".

There appears to be no Arizona Statutes relating to the subject of released time for school for the purpose of religious education or religious training.

The first Amendment to the Constitution of the United States, made applicable to the states by the 14th amendment, provides that a "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; . . .". The Constitution of the State of Arizona provides that the Constitution of the United States is the supreme law of the land. (Constitution of the State of Arizona, Article 2, Section 3). The Arizona Constitution also provides as follows:

Perfect toleration of religious sentiment shall be secured to every inhabitant of this state, and no inhabitant of this state shall ever be molested in person or property on account of his or her mode of religious worship, or lack of the same. (Article 20, Section 1, Arizona Constitution).

One of the leading cases concerning release time from school for religious instruction is Zorach, et. al., vs. Clauson, et. al., 343 U.S. 306, 72 S.Ct. 679. That case upheld the practice in the New York City schools of releasing students upon written request of the parents to leave the

school buildings and school grounds to go to religious centers for religious instruction or devotional exercises. The students not released were required to stay in classrooms, and the churches made weekly reports to the schools of children who had been released from public school but had not reported for religious instruction. Their "released time" program involved neither religious instruction in public school classrooms nor the expenditure of public funds. A released time program must be on a voluntary basis. The court stated as follows:

No one is forced to go to the religious classroom, and no religious exercise or instruction is brought to the classrooms of the public schools. A student need not take religious instruction. He is left to his own desires as to the manner or time of his religious devotions, if any. There is a suggestion that the system involves the use of coercion to get public school students into religious classrooms. There is no evidence in the record before us that supports that conclusion. The present record indeed tells us that school authorities are neutral in this regard and do no more than release students whose parents so request.

*Compare
Parents
desires*

The court further states:

There cannot be the slightest doubt that the first amendment reflects the philosophy that Church and State should be separated. And so far as interference with the "free exercise" of religion and an "establishment" of religion are concerned, the separation must be complete and unequivocal. The first amendment within the scope of its coverage permits no exception; the prohibition is absolute. The first amendment, however, does not say that in every and all respects there shall be a separation of Church and State. Rather, it studiously defines the manner, the specific ways, in which there shall be no concert or union or dependency one on the other. That is the common sense of the matter. Otherwise, the state and religion would be aliens to each other--hostile, suspicious and even unfriendly. Churches could not be required to pay even property taxes. Municipalities would be permitted to render police or fire protection to religious groups. Policemen who helped parishioners into their places of worship would violate the Constitution. Prayers in our legislative halls; the appeals to the Almighty in the messages of the Chief Executive; the proclamations making Thanksgiving Day a holiday;

"So help me God" in our courtroom oaths--these and all other references to the Almighty that run through our laws, public rituals, our ceremonies would be flouting the First Amendment.

Generally speaking attendance at high school, is not mandatory, and students attend on a voluntary basis. A.R.S. §15-321. Therefore, it stands to reason that students, with the parents permission could be excused from school, with the parents consent for legitimate specified purposes. In Zorach, the Supreme Court approved the release of students from school, whether it be on a one time basis, an occasional basis or on a regular basis for legitimate religious purposes. The court stated:

A Catholic student applies to his teacher for permission to leave the school during hours on a Holy Day of Obligation to attend a mass. A Jewish student asks his teacher for permission to be excused for Yom Kippur. A Protestant wants the afternoon off for a family baptismal ceremony. In each case the teacher requires a report from the priest, rabbi, or the minister. The teacher in other words cooperates in a religious program to the extent of making it possible for her students to participate in it. Whether she does it occasionally for a few students, regularly for one, or pursuant to a systematized program designed to further the religious needs of all the students does not alter the character of the act.

We are a religious people whose institutions presuppose a Supreme Being. We guarantee the freedom to worship as one chooses. We make room for as wide a variety of beliefs and creeds as the spiritual needs of man deem necessary. . . .When the state encourages religious instruction or cooperates with religious authorities by adjusting the schedule of public events to sectarian needs, it follows the best of our traditions. For it then respects the religious nature of our people and accommodates the public service to their spiritual needs. To hold that it may not would be to find in the Constitution a requirement that the government show a callous indifference to religious groups. That would be preferring those who believe in no religion over those who do believe.

The schools may not participate in the religious training program. The schools may not coerce anyone to attend the religious instruction. Government may not finance religious groups, nor undertake religious instruction, nor blend secular and sectarian

education, nor use secular institutions to force one or some religion on any person. It may not coerce anyone to attend church, to observe a religious holiday or to take religious instruction. But it can close its doors or suspend its operations as to those who want to repair to their religious sanctuary for worship or instruction. See Zorach. On the other hand, it would be just as improper for school officials to judge the quality of religious instruction. The schools cannot make a determination as to whether or not it is in the child's best interest to receive such instruction. This is the prerogative of the parent. The school has no more right to make a determination as to whether or not a student should receive religious instruction than it would to force or coerce a student to receive such instruction or training.

It is clear that the school does have the right to schedule the release time at the convenience of the school, so long as this right is exercised reasonably. The school cannot act arbitrarily nor can it impose unreasonable conditions in acting upon request for release time. Dilger vs. School District 24, 352 P.2d 564 (Ore. 1960). In Zorach, the Supreme Court approved of public school accommodating their schedules to a program of outside religious instruction, and approved the making of adjustments of schedules to accommodate the religious needs of the people by public institutions. See also Smith, et. al vs. Smith, et. al., 523 F.2d 121 (1975).

It is clear that the schools cannot turn over the school buildings for the purpose of religious instruction. McCollum vs. Board of Education, 333 U.S. 203, 68 S.Ct 461.

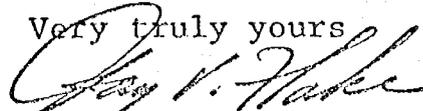
On October 30, 1963, the Maricopa County Attorney's Office wrote an opinion on this same subject, which reached the same conclusion, which opinion was concurred in by the Arizona Attorney General in opinion 64-22-C. In that opinion it was stated:

In view of the foregoing decisions, the Constitution of the State of Arizona, and the Constitution of the United States, it is our opinion that a school board must release a student to attend religious instructions under reasonable rules and regulations promulgated by the Board in conformity with the general principles set forth in the case of Dilger vs. School District, supra.

In conclusion, it appears to be very clear from the available authority that the answer to your question is "yes", a high school is required to grant a student release time for religious education where it is requested by the parents; and where so requested, the school must allow the student release time from school for religious education and training.

A copy of this letter is being sent to the Attorney General's Office for their concurring opinion.

Very truly yours



Jay V. Flake, County Attorney

JVF/mj