



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

Jed Wright

BRUCE E. BABBITT
ATTORNEY GENERAL

January 23, 1978

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ARIZONA ATTORNEY GENERAL

Ms. Lee Caldwell
Deputy Yavapai County Attorney
Yavapai County Courthouse
Prescott, Arizona 86301

Re: 78 - 8 (R77 - 393)

Dear Ms. Caldwell:

I have reviewed your December 7, 1977, opinion addressed to Dr. Kenneth E. Walker, Superintendent of the Prescott Public Schools, and concur in your conclusion that the Schools "should refrain from any participation or involvement whatsoever in the distribution of Gideon Bibles . . .", based upon the authority you cite and prior Atty. Gen. Op. Nos. 48-83, 61-14 and 69-24-C.

Sincerely,

BRUCE E. BABBITT
Attorney General

David Rich

DAVID RICH
Assistant Attorney General

DR:db



OFFICE OF

County Attorney

YAVAPAI COUNTY COURTHOUSE
PRESCOTT, ARIZONA 86301
445-7450 EXT. 208

December 7, 1977

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STEVEN B. JAYNES
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HOWARD D. HINSON, JR.
DEPUTY
LEE CALDWELL
DEPUTY

*Concurring
R77-393*

BILLY L. HICKS
COUNTY ATTORNEY

Dr. Kenneth E. Walker, Supt.
Prescott Public Schools
P.O. Box 1231
Prescott, AZ 86302

Re: Distribution of Gideon Bibles in Prescott Public Schools

Dear Dr. Walker:

You have asked us to determine the propriety of distribution of Gideon Bibles to fifth grade students in the Prescott Public Schools.

According to our conversation of December 6, 1977, the school board initially gave its permission for distribution of the Bibles in 1973. The distribution procedure required the principals of elementary schools to explain to the fifth grade teachers in a faculty meeting that distribution would take place on a certain date. The teachers then told the students in advance that a voluntary distribution would take place on a given date and explain how it would be organized. The students could mention this to a parent, but no formal notification was sent to parents. The actual distribution would take place on city sidewalks adjacent to the school grounds, not school property. Fifth grade students would be dismissed about five minutes before the final bell, per school board decision, if they wanted a Gideon Bible. Substantially the same procedure has been followed by the schools since 1973.

The leading case to consider the question of Gideon Bible distribution in public schools is Tudor v. Board of Education, 100 A2d 857 (N.J. 1953), cert. denied 348 U.S. 816, 75 S.Ct. 25. In Tudor, Bibles were to be distributed only to those students whose parents signed a request slip which was prepared by the school board. The distribution was to be made after school hours without publicity. The New Jersey Supreme Court held the distribution of the Bibles to public school students was unconstitutional as showing a preference by school officials of one religion over another. The court based the decision on its conclusion that the "school machinery is used to bring about the distribution of these Bibles to the children." Id. at 741.

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The same rationale was followed in the subsequent cases of Brown v. Orange County Board of Public Instruction, 128 S.2d 181 (Fla. App. 1960); Goodwin v. Cross County School District, 394 F.Supp. 417 (E. D. Ark. 1973); Meltzer v. Board of Public Instruction Orange County, 548 F.2d 559 (5th Cir. 1977). On slightly different facts, these cases also found distribution of Gideon Bibles in public schools to be unconstitutional.

In Meltzer, for example, two methods of distribution were used. In the first distribution, the Gideons walked into classrooms and passed out Bibles to students who voluntarily raised their hands. In the second distribution, the Gideons set up a central Bible distribution center on campus, and students who wanted Bibles walked to the distribution center to get them. The Meltzer court noted, at p. 576, "In both methods, however, the distribution took place with the permission of the school board and local schools."

Article II, §12 and Article IX, §10 of the Arizona Constitution, as well as the federal constitutional provisions, prohibit the support or endorsement of any religion by the state. In discussing Article II, §12, the Arizona Supreme Court stated in Pratt v. Arizona Board of Regents, 110 Ariz. 466, at 468, 520 P.2d 514, at 516 (1974):

"The State is mandated by this constitutional provision to be absolutely impartial when it comes to the question of religious preference, and public money or property may not be used to promote or favor any particular religious sect or denomination or religion generally. It does not necessarily follow, however, that the framers of Arizona's constitution intended to entirely prohibit the use by religious groups of public and school property for religious purposes, when it is clear that such use does not infer support or favor by the State of that particular religious group."

Although the actual distribution of Bibles to fifth grade students in Prescott is being done off school property, thus factually distinguishing the present situation from the above-mentioned cases, the distribution procedure actively utilizes the school system. Teachers necessarily must explain the distribution to students. The school dismissed those students who want Bibles five minutes early in order to facilitate distribution. It is important to keep in mind the sensitive and impressionable age of the students involved. These are not mature adults, or even high school students, but vulnerable young children. See Tudor, p. 740.

As the court in Goodwin, supra, so appropriately stated:

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"In the eyes of the pupils and their parents the board of education has placed its stamp of approval upon this distribution and, in fact, upon the Gideon Bible itself . . . This is more than mere 'accommodation' of religion permitted in the Zorach case [Zorach v. Clauson, 343 U. S. 306, 72 S.Ct. 679 (1952)]. The school's part in the distribution is an active one and cannot be sustained on the basis of a mere assistance to religion." Goodwin, supra, at 428, citing Tudor.

This particular question, i.e., propriety of distribution of Gideon Bibles to elementary students has been submitted to the Arizona Attorney General on three previous occasions. The Attorney General in Opinion No. 48-83 ruled that a school assembly could not be held for the purpose of distributing the Bibles; Opinion No. 61-14, citing the Tudor case ruled that school personnel may not advise students as to where Bibles will be distributed, even if distribution is to be carried out off school premises. The Attorney General, in 69-24-C, concurred in an opinion by the Maricopa County Attorney which stated:

"From a reading of these two opinions the general rule appears to be that to allow the distribution of Bibles during the school hours or to use school personnel to directly or indirectly aid in this distribution is a violation of the constitutional separation of church and state.

"Therefore, the first issue can be answered that these Bibles may not be distributed to the students during the school hours on school property. Nor may school personnel be used to publicize or promote this distribution."

For the above-stated reasons, it is the opinion of this office that the Prescott schools should refrain from any participation or involvement whatsoever in the distribution of Gideon Bibles or other religious amterials.

A copy of this opinion is being sent to the Office of the Attorney General for review pursuant to A.R.S. §15-122(B).

Very truly yours,

Lee Caldwell

Lee Caldwell
Deputy County Attorney

OFFICE OF THE YAVAPAI COUNTY ATTORNEY

cc:

Dr. Gene Hunt, Superintendent
Yavapai County Schools

David Rich
Office of the Attorney General
State Capitol Building
Phoenix, AZ 85007
w/incoming correspondence