



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

BOB CORBIN
XXXXXXXXXXXXXXXXXX
ATTORNEY GENERAL

January 10, 1979

LAW LIBRARY
ARIZONA ATTORNEY GENERAL

Mr. James H. Landis
Deputy County Attorney
Yavapai County Attorney's Office
Yavapai County Courthouse
Prescott, Arizona 86301

Re: I79-12 (R78-323)

Dear Mr. Landis:

We have reviewed your November 2, 1978 opinion addressed to the Assistant Superintendent of the Prescott Unified School District and concur with your conclusion that it is permissible for the school district to accept copies of the Gideon Bible for placement of a single copy in each school district library and that other bibles, the Koran and similar works and even treatises on agnosticism or atheism - then may not be excluded from the school libraries.

Sincerely,

Bob Corbin
BOB CORBIN
Attorney General

BC:mm



Rick

R78-323

DAVE L. HICKS
COUNTY ATTORNEY

County Attorney

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

November 2, 1978

CARL H. COAD
DEPUTY
STEVEN B. JAYNES
DEPUTY
HOWARD D. HINSON, JR.
DEPUTY
WILLIAM J. PEARLMAN
DEPUTY
JAMES H. LANDIS
DEPUTY

RECEIVED
NOV 3 9 09 AM '78
ATTORNEY GENERAL
PHOENIX, ARIZONA

Dr. Robert L. Browne
Assistant Supt.
Prescott Unified School District
P.O. Box 1231
Prescott, AZ 86302

Re: Whether a Single Copy of the Gideon Bible Can
Be Accepted in Each School Library Within the
District

Dear Bob:

As I indicated to you over the phone, it is permissible to accept the offered copies of the Gideon Bibles for placement of a single copy in each library within the district. While A.R.S. Section 15-450 (B)(2) specifically prohibits the inclusion of books of a denominational or sectarian nature into a public school library, Attorney General Opinion 72-27-L states the following:

"The courts have held that copies of Bibles used by different Christian faiths or copies of the Talmud or Koran are not sectarian books and may be placed in the school library."

Consequently, there is no prohibition against accepting the Gideon Bibles.

If you should decide to include a copy of the Gideon Bible in the school libraries, you must not exclude other Bibles or similar works if offered to the school libraries. (See our prior opinion dated December 7, 1977, concurred in by the Attorney General at 78-8 (R77-393) and the authorities cited therein.) To do so would constitute a preference by school officials of one religion over another. (Id.) To avoid

R 78-323

Dr. Robert L. Browne
November 2, 1978
Page Two

even the appearance of favoritism, it may be adviseable to also place copies of other Bibles and similar texts in your libraries. Another option you have, of course, is to refuse to accept the Gideon Bible and exclude all other Bibles and similar texts. This does not mean, however, that the schools should ignore religion completely; only the direct teaching or sponsoring of religion by a public school is prohibited. (A.G.O. 72-27-L; See Arizona Constitution Article 2, §12; Article 9, §10; Article 11, §7; and Article 20, par. Seventh).

Enclosed please find a copy of Attorney General Opinion 72-27-L, as well as A.R.S. Section 15-450. Pursuant to A.R.S. Section 15-122(B), a copy of this letter will be sent to the Attorney General for review.

If you have any further questions, please call me.

Very truly yours,

James H. Landis
Deputy County Attorney

JHL:j

cc:
Dave Rich
Office of the Attorney General

Gene Hunt, Superintendent of Schools
Yavapai County Courthouse

GARY K. NELSON, THE ATTORNEY GENERAL
STATE CAPITOL
PHOENIX, ARIZONA

Religion

R78-323

July 28, 1972

DEPARTMENT OF LAW LETTER OPINION NO. 72-27-L (R-60)

REQUESTED BY: THE HONORABLE BOB STROTHER
Arizona State Representative

- QUESTIONS:
1. Does current Arizona state law prohibit adoption by the State Board of Education, or any governing board, of textbooks containing any matter which reflects adversely upon persons because of their race, color, creed, national origin or ancestry?
 2. Do the Arizona Revised Statutes anywhere prevent or exclude references to religion or use of religious literature, art or music, when such references or uses do not constitute instruction in religious principles or aid to any religious sect, church, creed or sectarian purpose and when such references are incidental to or illustrative of matters properly included in the course of study?
 3. Do the Arizona Revised Statutes anywhere prohibit any sectarian or denominational doctrine being taught, or instruction being given, directly or indirectly in any common school?
 4. Are there now penalties for infractions of any of the above three points found in the Arizona Revised Statutes?
 5. Would such provisions as 1, 2 or 3 above, if in existing law, then apply to parochial schools given parochial aid, should such a bill pass?

ANSWERS: See body of opinion.

In the above questions four separate issues are raised--religion, discrimination, penalties and "parochial aid". Because each of these issues is complex, and a simple yes or no answer to each of the questions could be seriously misleading,

72-27-L

R78-3²3

Opinion No. 72-27-L
(R-60)
July 28, 1972
Page Two

we have chosen to cover each question as a separate category and explore each as it relates both to textbook selection and school curriculum.

1. Religion. The United States Supreme Court has prohibited the enforced exercise of religious worship in the public schools. This includes both the denominational or non-denominational prayer or ceremony from being included as a part of the daily school activity. The fact that a child is not required to participate in such activities does not exempt such activities from the First Amendment prohibition against the establishment of a religion. Engel v. Vitale, 370 U.S. 421 (1962).

The selection of textbooks is, by statute, delegated to the State Board of Education. A.R.S. § 15-102.18. The choice of textbooks is therefore within the sole discretion of the State Board. State v. Hendrix, 56 Ariz. 342, 107 P.2d 1078 (1940).

The Board is limited only by specific prohibition or flagrant abuse of discretion. The Board is specifically precluded from choosing texts which are sectarian or denominational or whose purpose is to advance a specific religious belief. Article 11, Section 7, Constitution of Arizona School District of Abington Township v. Schempp, 374 U.S. 203 (1963).

This prohibition against books of a denominational or sectarian nature is further imposed upon the local school boards. These boards are under an affirmative duty to remove any such book from the school libraries pursuant to A.R.S. § 15-450. A school district is further prevented from religious instruction by the cases cited above. A.R.S. § 15-203 prohibits teachers from instructing students on sectarian doctrine or conducting religious exercises. This prohibition against religious exercises or instruction is specifically prohibited by both statutory and case law.

The problem of what constitutes denominational or religious instruction is less rigorously defined than the ban against such activities. Consideration of the question of textbooks has occurred remarkably seldom. Without going into a detailed analysis, the courts have held that copies of Bibles used by different Christian faiths or copies of the Talmud or Koran are not sectarian books and may be placed in the school

library. Further, the courts have stated that the First Amendment does not preclude a bona fide study of comparative religion or any other course in which religion is a reasonable or integral part of the subject matter being studied.

Religion is not a forbidden word in our schools. Courses which require a knowledge of religion are not prohibited. It would be foolish to believe that man's knowledge and history must be ignored because it in some way deals with religious beliefs. If this were true, the subjects of history, literature, art, humanities, psychology, sociology and even the physical sciences would be reduced to a meaningless absurdity. Any course which has as its goal a true academic understanding of man and his works is permissible. A book or course to be prohibited must have as its basic purpose either the establishment of religious belief or the promotion of one religious faith at the expense of others. Within this framework the subjects taught and the books used are within the sound discretion of the appropriate educational agencies of the state.

2. Discrimination. Since Brown v. Board of Education, 349 U.S. 294, in 1954, there has been no question that the Fourteenth Amendment of the United States Constitution prohibits unequal treatment of persons for reasons of race, color or national origin. This doctrine has been refined by numerous federal statutes and case decisions. In spite of this, there are few cases or statutes which deal directly with either textbooks or curriculums and racial bias. There are none whatsoever in the State of Arizona. One can only hope that this is due to the good judgment of the educational institutions of our state.

While there is no specific statutory authority in this state, it is our opinion that a course of study or textbook which intentionally promotes racial bias is prohibited. We believe that such conduct or texts would constitute a flagrant violation of the Fourteenth Amendment, and would therefore be abuse of discretion by any agency permitting such actions.

Once again, while the general principle is clear, the operation within its perimeters is not. The mere fact that racial or national differences are noted or commented upon does not contravene an individual's civil liberties. As long as books are written by men, they will appear biased to other men.

In one of the few cases considered, the New York court in Rosenberg v. Board of Education, 92 N.Y.S.2d 344 (1949), stated:

Except where a book has been maliciously written for apparent purpose of promoting and fomenting a bigoted and intolerant hatred against a particular racial or religious group, public interest in a free and democratic society does not warrant suppression of any book in public schools merely because a character described in such book as belonging to a race or religion is portrayed in a derogatory or offensive manner. . . .

It should be noted that the books which were on trial in this case were Oliver Twist, by Charles Dickens, and A Merchant of Venice, by William Shakespeare. We believe that this case correctly states the law and clearly indicates the inherent danger of censorship. When two of English literature's classics are subject to attack and the matter is seriously considered worthy of prolonged litigation by a person who felt aggrieved, the possibility of thought suppression and a total paucity of creative reasoning is apparent. Therefore, the selection of books and curriculum is left to the agency charged by the Legislature with the duty to provide and select them, subject only to gross abuse of that duty.

3. Penalties. The only statutory penalty in Arizona concerning the subject matter herein is contained in A.R.S. § 15-204, which provides that a teacher who gives religious instruction in the public school system is guilty of unprofessional conduct and is subject to the revocation of his teaching certificate.

No other specific penalties are set forth in the statutes concerning any of the questions asked. This does not mean that no remedies exist. Civil action against specific behavior is possible. In a particularly aggravated fact situation, a complaint under one of the various federal civil rights acts might be appropriate.

R78-323

Opinion No. 72-27-L
(R-60)
July 28, 1972
Page Five

4. "Parochaid". This question cannot be answered except in the broadest of terms. A bill granting support to private schools would be unlikely to speak directly to the above issues. Any bill which attempted to impose religious standards on private schools would probably be unconstitutional. Lemon v. Kurtzman, 403 U.S. 602 (1971).

Tax aid to the parents of children in private schools would not impose religious bans upon the schools. Questions dealing with taxes and the Fourteenth Amendment are most likely to be answered by the Internal Revenue Service at the federal level. It is therefore not possible to theorize on the impact of "parochaid" on private schools at this time.

Respectfully submitted,

Gary K. Nelson
GARY K. NELSON
The Attorney General *eyjm*

GKN:REW:ell

SECOND REGULAR SESSION—1978 Ch. 188

Sec. 8. Section 15-448, Arizona Revised Statutes, is amended to read:
§ 15-448. Kindergartens and special departments; special teachers

A. The board of trustees may:

- 1. Establish departments of manual training industrial arts and household economies consumer education and homemaking.
- 2. ~~Either by itself or in cooperation with another district or districts establish departments for the education and improvement of students afflicted with specific learning disabilities and purchase the necessary supplies for such departments.~~
- 3. ~~2. Employ special teachers in drawing, music, domestic science, manual training, kindergarten, commercial work, agriculture and other special subjects.~~

B. ~~Such program under subsection A of this section, shall conform to conditions and standards formulated by the board of directors of the Arizona school for the deaf and blind and approved by the state board of education.~~

C. B. Each common school district shall establish a kindergarten program, unless the governing body of such common school district files an exemption claim with the state department of education. A district is exempt from establishing a kindergarten program if it files, with the state department of education, an exemption claim which states that the establishment of kindergarten will interfere with the work of, or maintenance of efficiency in, the grades and that the kindergarten is not¹ the best interests of the district.

D. C. For the purpose of maintaining a kindergarten program a common school district board may rent or lease such buildings as may be necessary as provided by law.

¹ So in original. Probably should read "is not in".

Sec. 9. Section 15-450, Arizona Revised Statutes, is amended to read:
§ 15-450. Libraries; use of school money for library facilities

A. The board of trustees of a school district may establish and maintain a district library which shall be located in the school house libraries. The library Such libraries shall be under control of the board. The board shall be accountable for the care of the library libraries, but it may appoint district librarians, or it may put the library libraries under direct charge of a teacher or other qualified person. When requested, the board shall report on the library libraries to the county superintendent on forms supplied by the superintendent of public instruction.

B. The board of trustees shall:

- 1. Enforce the rules prescribed for government of school libraries.
- 2. Exclude from school libraries all books, publications and papers of a sectarian, partisan or denominational character.

C. A district library shall be free to all pupils of suitable age who attend the school. Residents of the district may become entitled to library privileges by payment of fees and compliance with regulations prescribed by the board. The trustees may enter into a contract or agreement with the proper authorities of a county free library or other public library possessing facilities for rendering the desired service, for the procurement of reference or other library books or the extension services of such library. The amount so expended shall not exceed two per cent of the total school district budget for the school year during which the services are utilized.

Sec. 10. Section 15-475, Arizona Revised Statutes, is amended to read:
§ 15-475. Notice of special election

A. The county school superintendent shall cause notices of a special election to be posted at least ninety days previous to the date of the election. The deletions by strikeouts