

95-003

STATUTES CITED

ARS 15-253

ARS 15-701.01



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX 85007-2926

GRANT WOODS
ATTORNEY GENERAL

MAIN PHONE : 542-5025
TELECOPIER : 542-4085

February 7, 1995

Candyce B. Pardee
Chief Deputy County Attorney
Gila County Attorney
1400 East Ash Street
Globe, Arizona 85501

Re: I95-003 (R94-35)

Dear Ms. Pardee:

Pursuant to A.R.S. § 15-253, we have reviewed your opinion to Dr. Michael Martinez, Superintendent, Globe Unified School District No. 1. We concur with your conclusion that the District cannot grant any academic credit to students for attending religious seminary classes during release time without violating the Establishment Clause of the United States Constitution.

We revise the portion of your opinion, however, that concludes that the District may continue its practice of granting credits for attendance at off-campus seminary classes for students who are currently juniors or seniors. You rely upon the authority of *Lanner v. Wimmer*, 662 F.2d 1349 (10th Cir. 1981), to reach this conclusion. We find significant distinctions between the facts outlined in your opinion and the facts in *Lanner v. Wimmer*; and thus, find that that case does not provide the requisite authority.

In *Lanner v. Wimmer*, 463 F. Supp. 867, 884 (D. Utah 1978), *aff'd* 662 F.2d 1349 (10th Cir. 1981), the court held that the school's release-time program which granted credit to students for attending religious classes off-campus violated the Establishment Clause of the First Amendment to the United States Constitution. The court held that the judgment would not apply retroactively because it would be grossly unfair and inequitable to invalidate already earned academic credit and possibly prevent timely graduation from high school. The court found that students participated in the release-time program in good faith expectation of receiving academic credit and that the school officials justifiably relied on the policy of the Utah State Board of Education, which permitted them to grant credit.

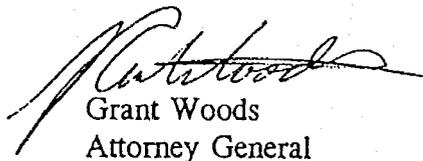
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Although your opinion indicates that one of the District's high schools has been awarding credits to students attending seminary off-campus during school release time, we understand that this practice was not pursuant to a written policy and was in violation of the Globe School Board policy prohibiting this practice. Because the high school's unwritten practice was in violation of its Board's own written policy and in violation of now well-settled law, we do not agree that the District may rely on the authority in *Lanner v. Wimmer* to phase out the granting of credits.

The District may be able to alleviate the hardship to students who may have difficulty making up credits in time to graduate, however, by reducing the number of credit requirements for graduation for all students. The District must not waive any credits necessary to meet the requirements for graduation from high school set by the Arizona Board of Education. A.R.S. § 15-701.01. You indicate, however, that "none of the graduation requirements set by the State Board of Education were waived by any of the release-time students." Therefore, reduction of the total number of credit requirements for all students may be a reasonable alternative to phasing out the current practice.

We decline to review the remainder of your opinion.

Sincerely,



Grant Woods
Attorney General