



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

September 22, 1977

ATTORNEY GENERAL OPINION NO. 77-305

Mr. Terry Jay Solander
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Garnett, Kansas 66032

Re: Schools--Compulsory Attendance--Religious Objections

Synopsis: A portion of K.S.A. 1976 Supp. 72-1111 authorizes the State Board of Education to approve alternative programs of instruction which are proposed by recognized churches and religious denominations which hold religious objections to formal secondary education programs, participation in which shall constitute compliance with the compulsory school attendance law of this state. The statutory provisions authorizing this approval, and establishing the guidelines for such programs, are not on their face unconstitutional, and entail no necessary compromise of religious beliefs such as those articulated in *Wisconsin v. Yoder*, 406 U.S. 205, 32 L. Ed. 2d 15, 92 S. Ct. 1526 (1972), of the Old Order Amish religion and the Conservative Amish Mennonite Church.

* * *

Dear Mr. Solander:

I have your letter of September 13, 1977. You advise that shortly after September 1 of this year, the superintendent of U.S.D. 365 notified your office of the absence of certain students from the enrollment of the school district for the 1977 fall term. You thereafter wrote the parents of each of the children, advising them of the Kansas compulsory attendance law, and asking that they contact your office. The responses indicate that many, if not all, of the children and their parents are members of either the Mennonite Church or the German Baptist Church, commonly known

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as the Dunkard Church. Some of the parents have indicated that they believed they were exempt from compulsory attendance law insofar as it required attendance at high school classes, because such education was contrary to their religious teachings. Several indicated they believed they were automatically exempted from compliance by the decision of the United States Supreme Court in *State of Wisconsin v. Yoder*, 406 U.S. 205, 32 L. Ed. 2d 15, 92 S. Ct. 1526 (1972).

As you indicate, in an opinion dated August 11, 1972, addressed to C. Taylor Whittier, then Kansas Commissioner of Education, Attorney General Vern Miller discussed the effect of *Yoder* on K.S.A. 1971 Supp. 72-1111. In response to your question, this office is not aware of any Kansas litigation involving this statute and holding any of its provisions unconstitutional since *Yoder* was decided. Nor are we aware of any reported state or federal court cases involving the question whether the religious beliefs of the German Baptist Church are analogous to those Amish beliefs discussed in that opinion.

More importantly, your question that portion of the 1972 opinion of the Attorney General which concludes that the provisions of K.S.A. 1971 Supp. 72-1111 for alternative instruction by religious bodies is not consistent with the principles set out in *Yoder*.

The third paragraph of K.S.A. 1976 Supp. 72-1111 provides that religious denominations whose beliefs include objection to a "regular public high school education" may offer a "regularly supervised program of instruction" which is approved by the State Board of Education for children of compulsory school attendance age who have completed the eighth grade, and participation in such a program shall be deemed to satisfy the general compulsory attendance law of Kansas. Each participating child is required, during each day that public school attendance is required, to engage in at least "five (5) hours of learning activities appropriate to the adult occupation he or she is likely to assume in later years." The term "acceptable learning activities" is broadly defined, to include parent- or guardian-supervised projects, such as in agriculture and home-making, correspondence courses, work-study programs in cooperation with local business and industry, all activities which do not entail exposure to conventional formal secondary educational programs. Each student is required to devote at least fifteen hours per week of classroom work

"at which time students shall be required
to file written reports of the learning

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activities they have pursued since the time of the last class meeting, indicating the length of time spent on each one, and the teacher shall examine and evaluate such reports, approve plans for further learning activities, and provide necessary assignments and instruction"

Regular attendance reports are required, and teachers are required to maintain records of instruction provided, assignments made and work provided. The "teacher shall be capable of performing competently the functions entrusted to him or her, but shall be required to hold a valid teaching certificate issued by the state of Kansas."

In his 1972 opinion, the Attorney General rejected this statutory format, stating thus:

"We are of the opinion that the provisions of K.S.A. 1971 Supp. 72-1111, so far as they apply to programs of instruction offered by recognized churches or religious denominations that object to regular public high school education, are not consistent with the principles set out in *Yoder*. Kansas, by requiring the sponsors of an instructional program to provide for a substantial amount of classroom work, taught by an accredited teacher, accompanied by the requirement of being approved by the State Board every two years, all under the threat of sending their children to public schools if the requirements are not met, has violated the First Amendment rights of those who oppose public high school education for religious reasons."

Accordingly, the Attorney General concluded that the third paragraph of K.S.A. 1971 Supp. 72-1111 was "invalid and unenforceable for the reason that it violates the free exercise clause of the First Amendment of the United States Constitution"

In *Yoder*, the Court reviewed the religious beliefs of the Old Order Amish religion and the Conservative Amish Mennonite Church, and the basis of their objections to formal secondary education.

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The Court found their beliefs characterized by a "fundamental belief that salvation requires life in a church community separate and apart from the world and worldly influence," by a "devotion to a life in harmony with nature and the soil," and a requirement that members make their living by farming or closely related activities. The Court reiterated their religious objections to secondary education thus:

"Amish objection to formal education beyond the eighth grade is firmly grounded in these central religious concepts. They object to the high school, and higher education generally, because the values they teach are in marked variance with Amish values and the Amish way of life; they view secondary school education as an impermissible exposure of their children to a 'worldly' influence in conflict with their beliefs. The high school tends to emphasize intellectual and scientific accomplishments, self-distinction, competitiveness, worldly success, and social life with other students. Amish society emphasizes informal learning-through-doing; a life of 'goodness,' rather than a life of intellect; wisdom, rather than technical knowledge; community welfare, rather than competition; and separation from, rather than integration with, contemporarily worldly society.

Formal high school education beyond the eighth grade is contrary to Amish beliefs, not only because it places Amish children in an environmental hostile to Amish beliefs with increasing emphasis on competition in class work and sports and with pressure to conform to the styles, manners, and ways of the peer group, but also because it takes them away from their community, physically and emotionally, during the crucial and formative adolescent period of life. During this period, the children must acquire Amish attitudes favoring manual work and self-reliance and the specific skills needed to perform the adult role of an Amish farmer or housewife. They must learn to enjoy physical labor. Once a child has learned basic reading, writing and elementary mathematics, these traits, skills, and attitudes admittedly fall

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within the category of those best learned through example and 'doing' rather than in a classroom In short, high school attendance with teachers who are not of the Amish faith -- and may even be hostile to it -- interposes a serious barrier to the integration of the Amish child into the Amish religious community." 406 U.S. at 210-212.

The alternative education provisions of K.S.A. 1976 Supp. 72-1111 appear to me to respond to each of these objections to formal secondary education. Children of Old Order Amish families, e.g., are permitted to remain within their respective communities; acceptable learning activities include generally vocational instruction in agriculture and domestic homemaking skills, toward which their religious beliefs generally impel them; the required 15 hours of classroom work per week appears to entail a minimum of individualistic academic competition, for it is devoted to the preparation of written reports regarding learning activities by students, receipt of assignments, and the like. With one exception, I find nothing in this statutory scheme authorizing an alternative to formal public secondary schooling for persons holding religious objections thereto such as those outlined in *Yoder* which comprises those religious convictions. The requirement that teachers of such programs of instruction hold valid teaching certificates issued by the state may compel such religious denominations to resort to teaching personnel who do not share their beliefs and indeed who may be entirely unfamiliar with them. This requirement very readily may interfere with the continuing vocational education under parental and church guidance by the religious denomination which the Court sanctioned in *Yoder*. General Miller's objections to this portion of K.S.A. 1976 Supp. 72-1111 stated in substantially general terms, and upon reviewing the alternative education provisions of that section in some detail, in the light of *Yoder*, I cannot find any provisions in the statutory scheme which, on their face, entail a necessary compromise of the religious beliefs and convictions outlined in *Yoder*, with the exception noted above, regarding certificated teaching personnel.

Thus, in my view, the third paragraph of K.S.A. 1976 Supp. 72-1111 is on its face constitutional, and entails no necessary violation of the free exercise of religion and no affront to religious beliefs such as those outlined in *Yoder*. Thus, in my view, the State Board of Education is free to promulgate standards for regularly supervised programs of instruction which are proposed

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by religious denominations and recognized churches whose beliefs entail objection to formal public secondary education, and participation in which is proposed as "acceptable school attendance" within the meaning of the section. This office will be pleased to assist the Board in any fashion it may require, in order to assure that those standards which it deems appropriate are designed to avoid any unnecessary affront to the religious beliefs of those affected students and families. The conflicting portion of the August 11, 1972, opinion from this office to Commissioner Whittier is hereby withdrawn.

Yours truly,



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