



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

February 2, 1988

MAIN PHONE: (913) 296-2215  
CONSUMER PROTECTION: 296-3751

ATTORNEY GENERAL OPINION NO. 88- 12

The Honorable Fred W. Rosenau  
State Representative, Thirty-Ninth District  
State Capitol Bldg., Room 281-W  
Topeka, Kansas 66612

Re: Constitution of the State of Kansas -- Bill of Rights -- Religious Liberty; Prohibition Against Limiting Students' Free Exercise of Religion

Synopsis: Section 7 of the Kansas Bill of Rights and the First Amendment to the United States Constitution guarantee free exercise of religion. Students do not shed these rights when they enter school grounds. Absent a compelling state interest, a student may not be prohibited from reading a Bible or other religious text during free reading periods or unstructured recesses. Cited herein: Kan. Const. Bill of Rights, § 7; U.S. Const., Amend. I.

\* .. \* \*

Dear Representative Rosenau:

As Representative of the Thirty-Ninth District, you request our opinion regarding the free exercise of religion in public elementary schools. Specifically, you ask whether a student may be prohibited from bringing a Bible to school to read during recess or a free reading period without violating the First Amendment freedom of religion clause.

The free exercise of religion is a liberty guaranteed by Section 7 of the Kansas Bill of Rights and by the First Amendment to the United State Constitution. This right is not shed by students when they enter school grounds. Goss v. Lopez, 419 U.S. 565; 42 L.Ed.2d 725 (1975). It should be noted that the religious liberty guaranteed by the Kansas Bill of Rights preceded the First Amendment as applied to the states through the Fourteenth Amendment, and therefore is independent of the First Amendment. In addition, Section 7 is more detailed than the First Amendment respecting religious freedom. State v. Smith, 155 Kan. 588, 594 (1942). The same test is generally applied, however, in determining whether the liberty guaranteed by either document has been denied. See e.g., State ex rel., Pringle v. Heritage Baptist Temple, Inc., 236 Kan. 544 (1985).

When conflicts arise between the liberty to freely exercise religious beliefs and the power of the state to legislate for the protection of society, a three part analysis is to be applied. First, a genuine religious liberty must exist which is burdened by the state. Wisconsin v. Yoder, 406 U.S. 205, 32 L.Ed.2d 15 (1972). Second, to overcome the burden on free exercise of religion, the state needs to demonstrate a compelling state interest. Sherbert v. Verner, 374 U.S. 398, 10 L.Ed.2d 965 (1963). Finally, the compelling state interest must be furthered by the least restrictive means. Thomas v. Review Board of the Indiana Employment Security Division, 450 U.S. 707, 718, 67 L.Ed.2d (1981).

The United States Supreme Court has described the type of interests which are compelling as those involving an endangered paramount interest, 374 U.S. at 406, or those which pose "some substantial threat to public safety, peace, or order," Braunfeld v. Brown, 366 U.S. 599, 66 Ed.2d 563 (1966). The parameters of limitations on the free exercise clause in the school environment were stated in Pliscou v. Holtsville Unified School District, 411 F. Supp. 842, (S.D. Cal. 1976):


"The latitude afforded students can be circumscribed by reasonable rules and regulations necessary to the orderly administration of the school system. Students may exercise their First Amendment rights provided they do so without 'materially and substantially interfer[ing] with the requirements of appropriate discipline in the operation of

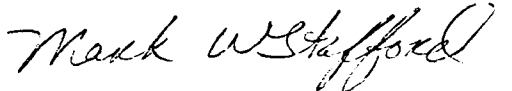
the school and without interfering with the rights of others.' [quoting Tinker v. Des Moines School District, 393 U.S. 503, 513 (1969)]." 411 F.Supp. at 847

If children are generally free to pick their own activities at recess, or at a free reading period where children are free to pick their own books, then there must be a compelling justification to infringe on the fundamental personal liberty. If the child is reading only during times when not otherwise engaged in direct instruction or instruction related activities, it is unlikely he will interfere substantially with discipline. If he is acting alone, it is unlikely he would interfere with others.

In summary, the Kansas Bill of Rights and the First Amendment to the United States Constitution guarantee free exercise of religion. Students do not shed these rights when they enter school grounds. Absent a compelling state interest, a student may not be prohibited from reading a Bible or other religious text during free reading periods or unstructured recesses.

Very truly yours,

  
ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS

  
Mark W. Stafford  
Assistant Attorney General

RTS:JLM:MWS:bas