

5027/5708



The State of South Carolina  
OFFICE OF THE ATTORNEY GENERAL

CHARLES MOLONY CONDON  
ATTORNEY GENERAL

August 17, 1995

The Honorable Joe Wilson  
Senator, Lexington County  
P.O. Box 142  
Columbia, South Carolina 29202

*(Supplemental Opinion)*

Dear Senator Wilson:

You have requested an opinion concerning the legality of parents' releasing their children for religious instructions during study halls, and elective and exploratory class time. I hope that the information below will be of assistance to you.

School Districts have the authority to adopt policies concerning absences from school. Ops. Atty. Gen. (February 16, 1983); see also Ops. Atty. Gen. (June 17, 1986). State Board of Education reg.43-274 (S.C. Code Ann., Vol. 24) defines lawful absences so as to provide that "...students may be excused from attendance in school for recognized religious holidays of their faith [and] ... students may be excused from attendance in school in accordance with local board policies." This authority suggests that a school district where a student attends school should first determine whether releasing a student for the purposes set forth above would be consistent with its policy and if not, whether that policy should be changed.

Whether the First Amendment of the United States Constitution would compel that students be released for these purposes is a more difficult question. As you indicated in your letter, Zorach v. Clauson, 343 U.S. 306, 72 S.Ct. 679, 96 L.Ed. 954 (1952), upheld the constitutionality of a statute providing for the release of public school students from school attendance to attend religious classes; however, I have not located a case that expressly addresses the question of whether such a release must be permitted. But see Brandon v. Board of Ed. of Guilderland Cent. Sch., 635 F.2d 971, 977 (1980); Transworld Airlines Inc. v. Hardison 432 U.S. 63,90, 97 S.Ct. 2264, 2280, 53 L.Ed.2d 113 (1977).<sup>1</sup>

<sup>1</sup> The discussion in these cases provides some indication that such a right might be recognized, but the Courts did not expressly rule on the existence of such a right or its scope.

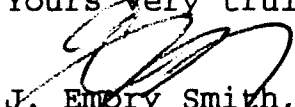
The Honorable Joe Wilson, Senator  
August 17, 1995  
Page 2

Some guidance is provided by Wisconsin v. Yoder, 406 US 205, 92 S.Ct. 1256, 32 L.Ed.2d 15, 24 (1972). In that case, the Supreme Court held that "...it must appear that the State does not deny the free exercise of religion or that there is a State interest of sufficient magnitude to override the interest claiming protection under the free exercise clause." Id; quoted in Ops. Atty. Gen. (November 13, 1979). Yoder analyzed in depth the tenets of the Amish faith and found that compulsory attendance laws as applied beyond the eighth grade would have a severe impact on the religious practices of the parties in that case. Id. Although the instant matter is concerned with release of students from school for only a portion of the day, Yoder nevertheless indicates that conducting an in-depth factual review concerning the respective interests of the students and the school district and the circumstances of the proposed release would be necessary before a determination could be made as to whether a school district would be required to permit the pupils release time. Such a factual investigation is beyond the scope of opinions of this Office. Ops. Atty. Gen. (December 12, 1983). Accordingly, given the absence of a case on point and the inability do to a factual investigation, we cannot reach a conclusion as to whether the school district would be compelled to permit release time and if so the extent to which it would be required to do so.

Although I have not reached a definitive conclusion concerning this issue, I hope that the above case law will provide some guidance as to this matter. This letter is an informal opinion. It has been written by the designated Assistant Deputy Attorney General and represents the opinion of the undersigned attorney as to the specific questions asked. It has not, however, been personally reviewed by the Attorney General nor officially published in the manner of a formal opinion.

I hope that this information is of assistance to you.

Yours very truly,

  
J. Embury Smith, Jr.  
Assistant Deputy Attorney General

JESJr.