

Opinion No. 71-73

May 28, 1971

BY: OPINION OF DAVID L. NORVELL, Attorney General

TO: Honorable Robert A. Mondragon Lieutenant Governor State Capitol Building Santa Fe, N.M.

QUESTIONS

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1. Is it permissible under the Laws of the State of New Mexico and/or the Laws of the United States for public school officials to PROHIBIT or DISCOURAGE students from speaking their native language or punish them for so doing on school grounds, classrooms or on school buses?
2. If the answer to Question # 1 is in the negative, what action should be taken if such is being done:

CONCLUSION

1. No.
2. See Analysis.

OPINION

{*105} ANALYSIS

1. The First Amendment to the Constitution of the United States and Article II, Section 17 of the New Mexico Constitution contains prohibitions against abridging the freedom of speech. See *State v. Diamond*, 27 N.M. 477, 202 Pac. 988, 20 ALR 1527.

The freedom of speech which is protected by the First Amendment from abridgment by Congress, is among the fundamental rights and "liberties" protected by the due process clause of the Fourteenth Amendment from impairment by the states (*Talley v. California* 362 U.S. 60, 4 L. Ed. 2d 559, 80 S. Ct. 536), or by any state agency (*Lovell v. Griffin*, 303 & S. 444, 82 L. Ed. 949, 58 S. Ct. 666).

The right of free speech is a general one which is not limited to any particular class of persons (*N.L.R.B. v. Montgomery Ward & Co.*, C.C.A. 8, 157 F.2d 486; *Time, Inc., v. Hill*, N.Y., 87 S. Ct. 534, 385 U.S. 374, 17 L. Ed. 2d 456; *U.S. v. Powell*, D.C. Cal., 171 F. Supp. 202; and *Tyler v. Ciccone*, D.C. Mo., 299 F. Supp. 684; *Tinker v. Des Moines Independent Community School Dist.*, Iowa, 89 S. Ct. 733, 393 U.S. 503, 21 L. Ed. 2d

731; Saunders v. Virginia Polytechnic Institute, C.A. Va. 417 F.2d 1127; Scoville v. Board of Ed. of Joliet Tp. High School Dist. 204, Will County, State of Ill., C.A. Ill., 425 F.2d 10, cert. den 91 S. Ct. 51; Zucker v. Panitz, D.C.N.Y., 299 F. Supp. 102-Stacy v. Williams, D.C. Miss. 306 F. Supp. 963-Sullivan v. Houston Independent School Dist., D.C. Tex., 307 F. Supp. 1328-Siegel v. Regents of University of Cal., D.C. Cal. 308 F. Supp. 832), and the constitutional guaranty, as derived from the Fourteenth Amendment, applies to all persons without regard to citizenship (Powe v. U.S., C.C.A. Ala., 109 F.2d 147).

The privilege of free speech carries with it freedom of choice as to the mode of expression that may be employed.

Freedom of speech is a fundamental personal right and liberty guaranteed by the Federal and State Constitutions under which any person has the right freely to utter and publish whatever he may please with immunity from legal censure and punishment for the publication as long as it is not harmful in its character when tested by such standards as the law affords. This right is the matrix the indispensable condition of every other form of freedom. It must be construed liberally, jealously guarded and generous scope given thereto.

It is truly in the American tradition to allow the widest room for discussion and the narrowest range for its restriction particularly when the right is exercised in conjunction with peaceable projects.

It is therefore my judgment that no prohibitions, restraints or discouraging tactics may be punitively imposed upon students exercising their freedom to speak on school grounds, classrooms or on school buses, whether the language they choose to speak may be English, Spanish or Hindustani.

{*106} 2. Any violations occurring in this regard should be reported to this office and appropriate action will be forthcoming.