

Opinion No. 41-3971

December 11, 1941

BY: EDWARD P. CHASE, Attorney General

TO: Mr. Quincy D. Adams Acting District Attorney Second Judicial District Albuquerque, New Mexico

{*136} This will acknowledge receipt of your letter dated December 5, 1941, in which you request the opinion of this office on the following two questions:

"(1) May a school child be exempted from the requirement of vaccination against smallpox upon the certificate of a chiropractor that such vaccination would be injurious to the health of the child?

(2) May a school child be compelled to salute the flag of the United States where the parent objects for some religious reason?"

In view of the fact that the above questions are not related nor analogous to each other, this opinion will merely answer question (2) and question (1) will be answered by a separate opinion, the same being Opinion No. 3972.

As to the second question in your letter, the United States Supreme Court in 1940 passed upon this question in the case of *Minersville School District v. Walter Gobitis, et al.*, 310 U.S. 596, 60 Supreme Court 1010, 84 L. ed. 1375, and held that the right of the Legislature or the school authorities to require a pupil to salute the flag and repeat the Pledge of Allegiance did not infringe upon the constitutional right of a person under the Federal Constitution, and the Court in support of its holding used this language:

"The ultimate foundation of a free society is the binding tie of cohesive sentiment. Such a sentiment is fostered by all those agencies of the mind and spirit which may serve to gather up the tradition of a people, transmit them from generation to generation, and thereby create that continuity of a treasured common life which constitutes a civilization
* * .

The preciousness of the family relation, the authority and independence which gives dignity to parenthood, indeed the enjoyment of all freedom, pre-supposes the kind of ordered society which is summarized by our flag. A society which is dedicated to the preservation of these ultimate values of civilization may in self-protection utilize the educational process for inculcating those almost unconscious feelings which bind men together in a comprehending loyalty whatever may be their lesser differences and difficulties."

{*137} Thus the Supreme Court has held that as between two conflicting rights that the right to use appropriate means in order to promote patriotism and a unifying sentiment

without which there can be no liberties, civil or religious, is paramount to the right of religious freedom which may conflict with the means to such patriotism. To the same effect are cases cited in 110 A.L.R. 383, being *Hering v. State Board of Education*, 189 Atl. 629 (N. J. 1937); *Nicholls v. Lynn*, 7 N. E. 577 (Mass. 1937); *People v. School Officers*, 18 Abb. Pr. 165 (N. Y. 1863), and also the cases cited under 120 A.L.R. 655; *Leoles v. Londers*, 184 Ga. 580, 192 S. E. 218; *Gavrielli v. Knickerbocker*, 82 P. (2d) 391 (Cal. 1938); *People v. Fish*, 279 N. Y. 523, 18 N. E. (2d) 840 (1939); *Shinn v. Barrow*, 121 S. W. (2d) 450 (1938 Tex. Civ. App.).

In view of the foregoing authorities, I am of the opinion that a school child may be compelled by school authorities to salute the Flag of the United States of America regardless of the objection of parents for some religious reason, and upon refusal to do so such child may be excluded from the public schools of this state.

Trusting that the foregoing sufficiently answers your inquiry, I am,