

Opinion No. 42-4186

November 17, 1942

BY: EDWARD P. CHASE, Attorney General

TO: Mr. Scott H. Mabry Assistant District Attorney Albuquerque, New Mexico

{*278} We are in receipt of your letter of October 20, 1942, and the enclosed petition and pamphlets.

In your letter you ask whether or not Public Law 623, 77th Congress, Chapter 435, Second Session, dated June 22, 1942, abrogates the decision of the Gobitis case upon which the previous opinion of this office, being No. 3971, was based so that school authorities can no longer require children to salute the flag as a part of the Pledge of Allegiance ceremony if they object to doing so on religious grounds.

The Act of Congress in question, so far as is pertinent herein, is as follows:

"Joint Resolution to codify and emphasize existing rules and customs pertaining to the display and use of the flag of the United States of America.

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That:

"The following codification of existing rules and customs pertaining to the display and use of the flag of the United States of America be, and it is hereby, established for the use of such civilians or civilian groups or organizations as may not be required to conform with regulations promulgated by one or more executive departments of the Government of the United States.

* * * *

"Sec. 7. That the pledge of allegiance to the flag, 'I {*279} pledge allegiance to the flag of the United States of America and to the Republic for which it stands, one Nation indivisible, with liberty and justice for all,' be rendered by standing with the right hand over the heart; extending the right hand, palm upward, toward the flag at the words 'to the flag' and holding this position until the end, when the hand drops to the side. However, civilians will always show full respect to the flag when the pledge is given by merely standing at attention, men removing the headdress. * * *."

It will be noted that no penalty is provided for violations of this chapter, it being merely declaratory and designed simply as a codification of the rules for the respectful and patriotic use of the flag for the information of the general public, under the official sanction of Congress. See Congressional Record Vol. 88, No. 81, page 3837. It will also be seen that this is not a law but merely a joint resolution.

The author, in 54 C. J. 721, defines a resolution as:

"A formal expression of the opinion or will of an official body, or a public assembly adopted by a vote; a mere expression of the opinion or mind of the counsel concerning some matter of administration coming within its official cognizance; merely the form in which the legislative body expresses an opinion."

In distinguishing a resolution from a law, the Supreme Court of New Jersey in *Ex Parte Hague* (N.J. Eq.), 144 Atl. 546, said at page 560:

"The chief distinction between a resolution and a law seems to be that the former is used whenever the legislative body passing it wishes to merely express an opinion as to some given matter or thing, and is only to have a temporary effect on such particular thing; while by the latter it is intended to permanently direct and control matters applying to persons or things in general."

I am, therefore, of the opinion that the joint resolution, above set forth, does not abrogate the decision of the *Gobitis* case, on which Opinion No. 3971 of this office was based, and that a school child may still be compelled by the school authorities to salute the flag of the United States of America as part of the Pledge of Allegiance ceremony even though he or his parents object for religious reasons.

You will please find enclosed petition and pamphlets which you forwarded to me in your letter.

By ROBERT W. WARD,

Asst. Atty. General