

Opinion No. 45-4686

April 12, 1945

BY: C. C. McCULLOH, Attorney General

TO: Mrs. Georgia L. Lusk Superintendent of Public Instruction Department of Education Santa Fe, New Mexico

{*44} In your letter dated April 3, 1945 you enclose a letter from a city superintendent asking an interpretation of the law prohibiting the teaching of any sectarian doctrine in the public schools. The letter further states that in some school rooms the opening exercises include a prayer and a reading from the Bible without comment, the prayer being a printed one taken from some outside source and not read directly from a denominational publication or prayer book.

Article 12, Section 9 of the New Mexico Constitution provides as follows:

"No religious test shall ever be required as a condition of admission into the public schools or any educational institution of this state, either as a teacher or student, and no teacher or student of such school or institution shall ever be required to attend or participate in any religious service whatsoever."

On May 9, 1922, the Attorney General wrote an opinion, a copy of which is enclosed, relative to this matter in which he held that this constitutional provision did not prohibit the reading of the Bible without comment in the public schools, or the repeating of a prayer and singing of religious songs. The Legislature, in 1923, immediately after the opinion was given, passed Section 55-1102 of the New Mexico 1941 Compilation which provides as follows:

"No teacher shall use any sectarian or denominational books {*45} in the schools or teach sectarian doctrine in the schools, and any teacher violating the provisions of this section shall be immediately discharged, his certificate to teach school revoked, and be forever barred from receiving any school moneys and employment in the public schools in the state. Provided, that this section shall not be construed to interfere with the use of school buildings, for other purposes authorized by the county board after school hours."

The subject of sectarianism in schools is exhaustively annotated in 5 A. L. R. 866, and the great weight of opinion seems to agree with the opinion of the Attorney General rendered in 1922, to the effect that Bible reading without comment and exercises which merely tend to inculcate fundamental morality in the pupils and quiet them in their studies are not prohibited under constitutional and statutory provisions similar to ours. However, the school boards and school authorities should exercise care to prohibit such exercises being carried so far as to emphasize the teaching of a particular sect or denomination as this would result in a violation of the constitutional provision above quoted.

Emphasis should also be laid upon the fact stated in the former opinion that the pupils whose parents or guardians object to their being present during such exercises should be excused therefrom.