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AUGUSTA, MAINE 04333

February 13, 1980

Honorable Walter W. Hichens
Maine State Senate
State House
Augusta, Maine 04333

Dear Senator Hichens:

This will respond to your request for an opinion as to whether it is constitutionally permissible for public school officials to allow the Gideons International ("Gideon Society" or "Gideons") to deposit copies of the King James version of the Bible at public schools, for the purpose of making the Bibles available to any school children who desire a copy. In particular, you have inquired whether an inter-departmental memo from this Office regarding this issue remains valid.

In an inter-departmental memo dated March 6, 1967, this Office responded to a question raised by then Deputy Commissioner of Education Kermit S. Nickerson, as follows:

> "You have now inquired whether the subject of the distribution of Bibles in public schools may be left to the determination of the local superintending school committee or school directors, whatever the case may be. It is our understanding that the Bibles are to be left at the school by the Gideons and that the pupils may pick up one of the Bibles if they choose to do so. This manner of distribution will not require any student to openly manifest his intentions concerning the distribution of the Bibles. A public school committee, such as a superintending school committee or school directors, may choose to authorize the Gideons to place a supply of Bible [sic] at the school so that students who desire them may pick them up. The decision is one for the local school officials."

For the reasons discussed below, it is our conclusion that the inter-departmental memo of March 6, 1967 does not accurately reflect the law and should no longer be viewed as a valid opinion of this Office.

The Establishment Clause

The First Amendment to the United States Constitution[1] provides, in relevant part:

> "Congress shall make no law respecting an establishment of religion,..."

Article I, §3 of the Maine Constitution contains a similar prohibition.[2]

The United States Supreme Court has emphasized that the underlying purpose of the Establishment Clause of the First Amendment is to place governmental entities, both state and federal, in a position of neutrality with respect to religion. See, e.g., Abington School District v. Schempp, 374 U.S. 203, 222 (1963); Zorach v. Clauson, 343 U.S. 306, 314 (1952). As stated by the Court in Everson v. Board of Education, 330 U.S.1, 15-16 (1947):

> "Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another.

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1. The provisions of the First Amendment have been made applicable to the states through the Fourteenth Amendment. See Cantwell v. Connecticut, 310 U.S. 296 (1940); Murdock v. Pennsylvania, 319 U.S. 106 (1943).

2. Article I, §3, Me. Const., provides:

"All men have a natural and unalienable right to worship Almighty God according to the dictates of their consciences, and no one shall be hurt, molested or restrained in his person, liberty or estate for worshipping God in the manner and season most agreeable to the dictates of his own conscience, nor for his religious professions or sentiments, provided he does not disturb the public peace, nor obstruct others in their religious worship;-- and all persons demeaning themselves peaceably, as good members of the State, shall be equally under the protection of the laws, and no subordination nor preference of any one sect or denomination to another shall ever be established by law, nor shall any religious test be required as a qualification for any office or trust, under this State; and all religious societies in this State, whether incorporate or unincorporate, shall at all times have the exclusive right of electing their public teachers, and contracting with them for their support and maintenance."

> Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion.... No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in affairs of any religious organizations or groups and vice versa."

On the other hand, the Court has also stressed that the First Amendment's mandate of neutrality does not mean that the government must adopt an attitude of hostility towards religion. See Zorach v. Clauson, supra at 314. Rather, in any case in which an Establishment Clause challenge has been raised, the issue is whether the government's position of neutrality with respect to religion has been compromised, such that the "'wall of separation between church and State'" has been breached. Everson v. Board of Education, supra at 16 quoting Reynolds v. United States, 98 U.S. 145, 164.

As Mr. Justice Brennan stated in his concurring opinion in Abington School District v. Schempp, supra at 230, the prohibitions embodied in the First Amendment have faced their "severest test" in those cases involving the delicate relationship between education and religion. Those cases raising Establishment Clause challenges usually involve two types of situations: those pertaining to attempts to provide public aid to sectarian educational institutions[3] and those involving religious activities in public schools. The practice of permitting the Gideons to place copies of the King James Bible in public schools falls into the latter category.

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The Maine Law Court has held that the prohibitions in Article I, §3 are "no more stringent" than those embodied in the First and Fourteenth Amendments to the United States Constitution. Squires v. City of Augusta, 155 Me. 141, 164, 153 A.2d 80, 88 (1959).

3. There have been numerous attempts by both state and federal governments to devise programs providing for public aid to sectarian educational institutions. See, e.g., Wolman v. Walter, 433 U.S.229 (1977)(direct payments for field trip supervision, reimbursement for instructional material and equipment); Meek v. Pittenger, 421 U.S. 349 (1975)(instructional material and equipment); Roemer v. Maryland Public Works Board, 426 U.S. 736 (1976)(federal aid for colleges); Hunt v. McNair, 413 U.S. 734 (1973)(state aid for colleges); Committee for Public Education v. Nyquist, 413 U.S. 756 (1972) (grants for maintenance and repair, tuition reimbursement grants,

In a series of decisions beginning with Everson v. Board of Education, supra and continuing up to its most recent decision in this area, Wolman v. Walter, 433 U.S. 229 (1977), the United States Supreme Court has attempted to formulate a general rule applicable to Establishment Clause cases. Mr. Justice Blackmun articulated the test in Wolman v. Walter, supra at 235-36:

> "The mode of analysis for Establishment Clause questions is defined by the three-part test that has emerged from the Court's decisions. In order to pass muster, a statute must have a secular legislative purpose, must have a principal or primary effect that neither advances nor inhibits religion, and must not foster an excessive governmental entanglement with religion."[4]

See also Roemer v. Maryland Public Works Board, 426 U.S. 736, 748 (1976); Committee for Public Education v. Nyquist, 413 U.S. 756, 772-73 (1973); Lemon v. Kurtzman, 403 U.S. 602, 612, 613 (1971). In addition to the three-prong test articulated above, the Supreme Court has indicated that the Establishment Clause was intended to minimize political debate concerning religious issues. Accordingly, in determining whether governmental action offends the First Amendment, it is appropriate to consider whether such action has a tendency to generate political divisiveness

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income tax relief); Levitt v. Committee for Public Education, 413 U.S. 472 (1972)(grants for testing and recordkeeping); Sloan v. Lemon, 413 U.S. 825 (1973)(tuition reimbursements); Tilton v. Richardson, 403 U.S. 672 (1971)(federal aid to colleges); Lemon v. Kurtzman, 403 U.S.602 (1971)(textbooks, instructional materials, teachers salaries); Board of Education v. Allen, 392 U.S. 238 (1968)(textbooks); Everson v. Board of Education, 330 U.S. 1 (1947)(bus transportation). See also Op.Atty. Gen., January 7, 1980 (contracts with sectarian elementary and secondary schools).

4. The above-quoted criteria employed by the Supreme Court to determine whether a statutory enactment contravenes the Establishment Clause, is equally applicable to governmental action which is not specifically authorized by statute. See Illinois ex rel. McCollum v. Board of Education, 333 U.S. 203, 206 (1948).

along religious lines.[5]

Having set forth the principles applicable in Establishment Clause cases, it is now possible to assess the constitutionality of the practice of permitting the Gideons to supply public schools with copies of the King James Bible for distribution to those pupils who may desire a copy.[6]

Analysis

Prior to analyzing the question of Bible distribution in public schools in accordance with the Establishment Clause criteria formulated by the United States Supreme Court, it may be instructive to examine some of the Court's decisions with respect to various religious activities at such schools.

Initially, it should be observed that the United States Supreme Court has never had occasion to address the specific question of Bible distribution in public schools. In Abington School District v. Schempp, 374 U.S. 203 (1963), however, the question of Bible reading in public schools was presented to the Court. Abington School District, supra involved a Pennsylvania law and a school board rule which required that each school day be opened with readings from the Bible. Pupils whose parents objected to the readings were excused from the morning exercises. After observing that the Bible, as used in this context, was "an instrument of religion," the Court concluded that the holding of such religious exercises was in "direct violation" of the First Amendment. Id. at 224. In his concurring opinion, Mr. Justice Brennan cited Tudor v. Board of Education, 14 N.J. 31, 100 A.2d 857 (1953) and Brown v. Orange County Board of Public Instruction, 128 So.2d 181 (Fla.App. 1960) with approval. See Abington School District v. Schempp, 374 U.S. at 262-63, n.28 (Brennan, J., concurring). The courts in Tudor and Brown held that the distribu-

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5. The Supreme Court's concern with the potential for political divisiveness along religious lines was first expressed in Lemon v. Kurtzman, supra. The Supreme Court has indicated that the "political divisiveness" factor is not an independent test under the Establishment Clause, but is a "warning signal" which will trigger greater judicial review of the challenged government action. See Committee for Public Education v. Nyquist, 413 U.S. at 797-98. See generally L. Tribe, American Constitutional Law §14-12 at 866 (1978).

6. For a more in-depth discussion of the "purpose" test, the "primary effect" test, the "entanglement" test, and the "political divisiveness" factor in Establishment Clause cases, see Op. Atty.Gen., January 7, 1980.

tion of Gideon Bibles in public schools violated the First Amendment's Establishment Clause.[7]

In Engel v. Vitale, 370 U.S. 421 (1962) the Supreme Court held that New York's practice of requiring that each school day commence with the reading of a prayer composed by state officials was "wholly inconsistent with the Establishment Clause." Id. at 424. The Court was careful to point out that the First Amendment's Establishment Clause was violated notwithstanding the fact that those pupils who did not wish to recite the prayer were permitted to leave the classroom, since "[t]he Establishment Clause...does not depend upon any showing of direct governmental compulsion...." Id. at 430.

In the first of two "release time" cases, the Supreme Court in Illinois ex rel. McCollum v. Board of Education, 333 U.S. 203 (1948) struck down a program whereby religious instructors visited public school classrooms each week and taught religious classes to those pupils whose parents had consented. The Court expressed considerable concern that the state's compulsory school attendance law was being utilized to provide religious groups with an audience for sectarian instruction.

> "Here not only are the State's tax-supported public school buildings used for the dissemination of religious doctrines. The State also affords sectarian groups an invaluable aid in that it helps to provide pupils for their religious classes through use of the State's compulsory public school machinery. This is not separation of Church and State."

Id. at 212.

In the second "release time" case, Zorach v. Clauson, 343 U.S. 306 (1952), the Supreme Court distinguished McCollum and upheld a program whereby students were permitted to leave the public schools and attend religious instruction classes at nearby sectarian schools. The Court concluded that this program did not offend the Establishment Clause since the public schools were merely accommodating their schedules to a program of outside religious instruction.

1. The "Purpose" Test.

In order to avoid violating the Establishment Clause, governmental action must have a secular purpose. With respect to permitting the distribution of Gideon Bibles in public schools, it is conceivable that school officials do have a secular purpose in mind, i.e., making a great work of literature available to school children.

However, the overriding purpose of the Gideons is undoubtedly religious. One of the central objectives of the Gideon Society

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7. The decisions in Tudor and Brown are discussed in greater detail in a later section of this opinion.

"is to be a vital force, a missionary force of the Church of Jesus Christ among the commercial travelers of America and Canada...." Twenty-Two Year's History of the Gideons 186 (Gideon Assoc., 1st ed., 1921). To carry out this missionary goal, the Gideons have embarked upon a program of placing the Bible "in hotels, hospitals, schools, institutions, and also through distribution of same for personal use." See generally, L. Pfeffer, Church, State, and Freedom 456 (1967). Moreover, the United States Supreme Court has recognized that the Bible, and in particular the King James version, is an "instrument of religion."[8] Abington School District v. Schempp, 374 U.S. at 224. See also Tudor v. Board of Education, 14 N.J. 31, 100 A.2d 857, 866 (1953), cert.denied, Gideons International v. Tudor, 348 U.S. 816 (1954). In view of the foregoing, it can hardly be doubted that the purpose of the Gideons in attempting to distribute copies of their Bibles in the public schools is the advancement of religion.

Based upon the foregoing, a strong argument can be made that permitting the distribution of Gideon Bibles in the public schools violates the "purpose" test under the Establishment Clause. However, because it is our conclusion that the practice of permitting the distribution of Bibles in public schools violates both the "primary effect" and the "entanglement" tests under the Establishment Clause, we need not decide whether the purpose of such a practice is secular in nature. See, e.g., Citizens concerned for Separation of Church and State v. City and County of Denver, F. Supp. (Colo., December 17, 1979), 48 U.S.L.W. 2452 (1/15/80), appeal filed, 12/18/79.

2. The "Primary Effect" Test.

Even if governmental action has a secular purpose, such action violates the First Amendment's Establishment Clause if its primary or principal effect advances religion.

As noted previously,[9] the underlying purpose of the Establishment Clause is to place the government in a position of neutrality toward all religious groups. Preliminarily, the practice of allowing the distribution of Gideon Bibles in public schools involves preferential treatment to a particular religious group since the King James version of the Bible[10] is unacceptable to members of the Catholic and Jewish faiths.[11] See, e.g., Brown

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8. Prior to the Supreme Court's decision in Abington School District, supra, the majority view was that the Bible was a non-sectarian book. See generally The First Amendment and Distribution of Religious Literature in the Public Schools, 41 Va.L.Rev. 789, 795-98 (1955).

9. See pages 2-3, supra.

10. The King James version of the Bible consists of the New Testament, Proverbs and Psalms.

11. On the other hand, the Douay-Rheims version of the Bible, which is acceptable to Roman Catholics, is unacceptable to Protestants and Jews.

v. Orange County Board of Public Instruction, 128 So.2d 181, 185 (Fla. App. 1960); Tudor v. Board of Education, 14 N.J. 31, 100 A.2d 857, 868 (1953). See also Goodwin v. Cross County School District 394 F.Supp. 417, 428 (E.D. Ark., 1973). By its very terms, the Maine Constitution forbids preferential treatment of one religious sect over another. See Article I, §3, Me. Const., note 2 supra. The United States Supreme Court has construed the First Amendment to prohibit governmental favoritism of one religion over another. See, e.g., Everson v. Board of Education, supra; Zorach v. Clauson, supra. See also Fowler v. Rhode Island, 345 U.S. 67,69 (1953). Thus a practice of permitting only the Gideon Bible to be distributed in public schools results in and has a primary effect of aiding one religious group over another.

It has been suggested that the problem of governmental preference in the context of Bible distribution can be resolved by allowing all regligious groups to distribute religious literature at public schools. See Note, 4 Catholic U.L. Rev. 118, 123 n.33 (1954); Meltzer v. Board of Public Instruction, 548 F.2d 559, 579 (5th Cir. 1977)(Gee, Jr., dissenting), rehearing en banc, 577 F.2d 311 (5th Cir. 1978), cert.denied, 439 U.S. 1089 (1979). Such a practice, however, does not result in the governmental neutrality towards religion which the First Amendment requires.[12] The constitutional requirement of governmental neutrality towards religion is not fulfilled merely because the government treats all religious groups equally. See Illinois ex.rel. McCollum v. Board of Education, 333 U.S. at 227. As stated by the Supreme Court in Everson v. Board of Education, the Establishment Clause forbids government conduct "which aid[s] one religion, aid[s] all religions, or prefer[s] one religion over another." 330 U.S. at 15. Stated simply, the Establishment Clause requires that the government assume a position of neutrality, not equality, towards all religious groups.

The practice of permitting Bible distribution in public schools places school officials in the position of allowing tax-supported public school buildings to be used by a religious group to advance a religious goal. Moreover, by virtue of the compulsory school attendance law, the practice of permitting Bible distribution in the public schools provides the Gideons with an audience for the dissemination of its version of the Bible. In the words of the United States Supreme Court, "[t]his is not separation of Church and State." Illinois ex rel. McCollum v. Board of Education,333 U.S. at 212.

A primary effect of this practice is the perception by school children, and possibly by the general public, that public school officials are not religiously neutral. As expressed by the New

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12. Moreover, such a practice would violate the "entanglement" test under the Establishment Clause. The "entanglement" test is discussed in greater detail in a later section of this opinion.

Jersey Supreme Court:

> "...the public school machinery is used to bring about the distribution of these Bibles to the children of Rutherford. In the eyes of the pupils and their parents the board of education has placed its stamp of approval upon this distribution and, in fact, upon the Gideon Bible itself."

Tudor v. Board of Education, 14 N.J. 31, 100 A.2d 857, 868 (1953), cert.denied, Gideons International, 348 U.S. 816 (1954), See also Goodwin v. Cross County School District, 394 F. Supp. 417 (E.D. Ark. 1973); Brown v. Orange County Board of Public Instruction, 128 So.2d 181 (Fla. App. 1969). See generally Meltzer v. Board of Public Instruction, 577 F.2d 311, 319 (5th Cir. 1978)(Brown, C.J., dissenting), cert.denied, 439 U.S. 1089 (1979).

Finally, the fact that school children are not required to accept copies of the Bible does not render the practice of Bible distribution in public schools constitutional. In order to demonstrate a violation of the Establishment Clause, it is not necessary to present evidence of government coercion or compulsion.[13] See,e.g., Abington School District v. Schempp, 374 U.S. at 223; Engel v. Vitale, 370 U.S. at 430.

To permit the distribution of Bibles in the public schools by the Gideons results in a situation by which the public school system assists a religious organization to carry out a religious purpose. The primary effect of such a practice is the advancement of religion and a violation of the Establishment Clause.

3. The "Entanglement" Test.

Action which results in excessive entanglement between the government and religion violates the First Amendment's Establishment Clause. With respect to activity in the public schools, excessive entanglement with religion usually results when school officials attempt to avoid violating the Establishment Clause on some other ground. For example, in Lemon v. Kurtzman, 403 U.S. 602 (1971) the United States Supreme Court invalidated two state statutes which provided for salary reimbursements to teachers in non-public elementary and secondary schools. The Supreme Court held that in order to be "certain" that sectarian school teachers, who had received salary reimbursements, were not teaching religion, the state would have to engage in "[a] comprehensive, discriminating and continuing...surveillance." 403 U.S. at 619. It is such surveillance or monitoring which entangles the government, to an excessive degree, with religion.

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13. In any event, those courts which have considered the constitutionality of Bible distribution programs have emphasized the pressures to conform under which school children operate and to which they generally respond. See, e.g., Tudor v. Board of Education, supra; Miller v. Cooper, 56 N.J. 355, 244 P.2d 520, 521 (1952). See generally Note, The First Amendment

The practice of permitting the distribution of Gideon Bibles in public schools would produce such excessive entanglement. In order to be "certain" that the Bibles were being distributed without any attempts at coercion or persuasion, school officials would have to engage in systematic monitoring of the distribution program. Cf. Lemon v. Kurtzman, 403 U.S. at 619. Governmental entanglement with religion would be even more extensive if all religious groups were permitted to distribute literature in public schools. Local school officials would find themselves involved in monitoring a Bible distribution center. See Meltzer v. Board of Public Instruction, 577 F.2d at 319 (Brown, C.J., dissenting).

4. The "Political Divisiveness" Factor.

One of the factors which the United States Supreme Court has considered relevant in evaluating Establishment Clause challenges is whether the governmental action in question has a tendency to generate political divisiveness and debate along religious lines. See Lemon v. Kurtzman, 403 U.S.602 (1971); Roemer v. Maryland Public Works Board, 426 U.S.735 (1976); Committee for Public Education v. Nyquist, 413 U.S. 756 (1972).[14] With respect to the practice of permitting the distribution of Gideon Bibles in the public schools, the possibility of political fragmentation and divisiveness along religious lines appears quite real. One can readily envision a situation in which those religious groups which are not permitted to distribute literature in public schools are resentful towards both school officials and the Gideons. Such a fear was expressed by the Courts in Tudor v. Board of Education, 100 A.2d at 866 and Brown v. Orange County Board of Public Instruction, 128 So.2d at 185. See also Meltzer v. Board of Public Instruction, 548 F.2c at 576, n.36.

Moreover, it is to be expected that members of a local community would have widely differing views on the propriety of permitting Bible distribution in the public schools. Attempts by the Gideons in other states to obtain permission to distribute their Bibles in the public schools have often met with vociferous opposition. See L. Pfeffer, Church, State, and Freedom 457 (1967).

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and Distribution of Religious Literature in the Public Schools, 41 Va.L.Rev. 789, 803-06 (1955). The United States Supreme Court has also recognized the implicit pressures which operate on children in the school setting. Engel v. Vitale, 370 U.S. at 431.

14. For a recent application of the "political divisiveness" factor, see Citizens Concerned for Separation of Church and State v. City and County of Denver, ___F.Supp.___(Colo., December 17, 1979) 48 U.S.L.W. 2452 (January 15, 1980) App.Filed, (12/18/79) (nativity scene erected in front of city hall with use of public funds held violative of Establishment Clause).

Bible Distribution - Court Decisions

While the United States Supreme Court has not had occation to address the specific question of Bible distribution in public schools, several state and federal courts have. Those courts which have addressed the issue have concluded, almost uniformly,[15] that the practice of permitting the distribution of Bibles in public schools is violative of the First Amendment.

The leading case on this issue is Tudor v. Board of Education, 14 N.J. 31, 100 A.2d 857 (1953), cert.denied, Gideons International,v. Tudor, 348 U.S. 816 (1954). In Tudor, the New Jersey Supreme Court concluded that the distribution of Gideon Bibles in the public schools constituted governmental preference of one religious group over another.[16] Moreover, the Court rejected the argument that allowing Bible distribution was merely an "accommodation" of the type approved by the United States Supreme Court in Zorach v. Clauson, 343 U.S. 306 (1952). The Court stated:

> "This is more than mere 'accommodation' of religion permitted in the Zorach case. The school's part in this distribution is an active one and cannot be sustained on the basis of a mere assistance to religion."

Tudor v. Board of Education, 100 A.2d at 868. A similar result was reached in Brown v. Orange County Board of Public Instruction, 128 So.2d 181 (Fla.App. 1960).

In Goodwin v. Cross County School District, 394 F. Supp. 417 (E.D. Ark., 1973), the Court invalidated a Bible distribution program pursuant to which members of the Gideon Society visited public school classrooms and distributed copies of the King James Bible to those pupils who expressed a desire for one.

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15. In Meltzer v. Board of Education, 577 F.2d 311 (5th Cir., en banc, 1978), cert.denied, 439 U.S. 1089 (1979) the Court of Appeals for the Fifth Circuit, by an equally divided vote, affirmed a District Court's ruling refusing to enjoin or to declare unconstitutional the practice of Bible distribution in public schools because school officials had voluntarily stopped the practice. But see 577 F.2d at 313 (Brown, C.J., dissenting).

16. It should be observed that in Tudor, the Bibles were distributed by school officials after school hours and only to pupils who had the written permission of their parents.

In Miller v. Cooper, 56 N.M. 355, 244 P.2d 520 (1952), the New Mexico Supreme Court struck down a practice whereby literature published by the Presbyterian Church was deposited in public school classrooms.

> "The charge the defendants were using the school as a medium for the dissemination of religious pamphlets published by the Presbyterian Church presents a different situation. It is true the teachers did not hand them to the pupils or instruct that they be taken or read. The pamphlets were, however, kept in plain sight in a classroom and were available to the pupils and the supply was evidently replenished from time to time. We condemned such a practice in Zellers v. Huff, supra,[17] and condemn it here...."

Miller v. Cooper, 56 N.M. 355, 244 P.2d at 521.[18]

Finally, the question of the constitutionality of the practice of Bible distribution in public schools has been addressed by the Attorneys General of several states. In each opinion of which we are aware, the conclusion is that the practice of Bible distribution in public schools offends the Establishment Clause of the First Amendment. See Ariz. Op.Atty.Gen. no. 61-14 (March 16, 1961) and 78-8 (January 23, 1978); Cal.Op. Atty.Gen. 25-316 (June 10, 1955); Colo. Op.Atty.Gen. 56-2955 (June 12, 1956); Del.Op.Atty.Gen. 68-452 (September 9, 1968); Md.Op.Atty.Gen. (January 8, 1980); Mo.Op.Atty.Gen.no.8 (February 8, 1979); Pa.Op.Atty.Gen. (May 31, 1956); Wash.Op.Atty.Gen. 61-62-118 (April 20, 1962).

Conclusion

Based upon the criteria developed by the United States Supreme Court in Establishment Clause cases and on those judicial decisions which have explicitly addressed the issue, it is our conclusion that the practice of permitting the distribution of Gideon Bibles or similar religious literature in the public schools for the purpose of providing copies thereof to those pupils who desire a copy, violates the Establishment Clause of the First Amendment to the United States Constitution. Accordingly, the inter-departmental memo issued by this Office on March 6, 1967 is overruled and should no longer be relied upon as the opinion of this Office.

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17. See Zellers v. Huff, 55 N.M. 501, 236 P.2d 949, 965 (1951) (distribution of literature published by the Roman Catholic Church).

18. In a somewhat analogous situation, the court in Hernandez v. Hanson, 430 F. Supp. 1154, 1161-62 (D.Neb.1977) upheld the validity of a school board regulation which prohibited students from distributing sectarian literature in the public schools. The court concluded that the regulation was valid since to allow the distribution of sectarian literature in the public schools would result in a violation of the Establishment Clause.

We wish to emphasize that our conclusion should not be construed to prohibit the placement of copies of the several versions of the Bible, or similar literature, in public school libraries. Moreover, our opinion should not be interpreted as prohibiting the teaching, in public schools, of comparative religion courses or the study of the Bible as a literary and historical work. As the United States Supreme Court emphasized:

> "...it might well be said that one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization. It certainly may be said that the Bible is worthy of study for its literary and historic qualities. Nothing we have said here indicates that such study of the Bible or of religion, when presented objectively as part of a secular program of education, may not be effected consistently with the First Amendment."

Abington School District v. Schempp, 374 U.S. at 225.

Rather, our opinion is limited to those situations where religious groups or sects seek permission to deposit copies of religious literature for distribution to public school children.

I hope this information is helpful to you. Please feel free to call upon me if I can be of further assistance.

Sincerely,

RICHARD S. COHEN
Attorney General

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