

1979 WL 43632 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

October 2, 1979

*1 Bruce E. Davis, Esquire
1704 Fair Street
Camden, South Carolina 29020

Dear Mr. Davis:

As attorney for Richland County District Two, you have requested an opinion of this Office as to whether the teaching of 'Eckankar' in the adult night school program in that district violates the 'establishment clause' of the First Amendment of the United States Constitution.

The First Amendment provides that Congress shall make no law respecting an establishment of religion. This clause is applicable to the states ([See](#) cases annotated under USCA, Amendment 1, n.22) and South Carolina's Constitution also contains provisions against establishment of religion. [Art. 1, § 2 of the Constitution of South Carolina \(1895\)](#), as amended.

An initial question under the establishment clauses is whether the subject of this course is a 'religion.' A recent case [Malnak v. Yogi, 592 F.2d 197 \(3rd Cir. 1979\)](#) found the course 'Science of Creative Intelligence-Transcendental Meditation (SCI/TM)' to be religious in nature. A concurring opinion in that case discussed in depth the question of what is a religion for the purposes of the First Amendment. [592 F.2d at 200](#). It noted traditional case law definitions of religion which were grounded in Theistic perceptions, but felt that, under modern views, "religion' is not confined to the relationship of man with his Creator.' [592 F. 2d at 207](#). This concurring opinion said that ' . . . the modern approach . . . looks to the familiar religions as models in order to ascertain, by comparison, whether the new set of ideas or beliefs is confronting the same concerns, or serving the same purposes, as unquestioned and accepted 'religions.'" [192 F.2d at 207](#). While it recognized that the broader definition of religion had been applied only in 'free exercise clause' cases, I felt that the same definition should apply to the establishment clause. [592 F.2d at 210](#).

Regardless of which view is chosen, Eckankar appears to be subject to classification as a religion under them all. In a publication of Eckankar entitled 'A Profile of Eckankar,' the question 'Is Eckankar a Religion' is answered as follows: Yes, by definition ECKANKAR is a religion. It is based upon the existence of an ultimate being called the Sugmad (God) which is the origin and true home of soul. The ECK (Spirit, the Word, bani, etc.) is the essence of God which emanates from the SUGMAD and returns to It. Personal salvation is assured through intimate contact with Spirit and experience of the heavenly worlds before death of the physical body. However it is important to note that ECKANKAR, unlike other religions of the world, does not require worship of a personality or participation in rituals, does not deal with the doctrine of sin, and encourages each member to retain his individuality and responsibility. Nor does it ask for any tithing or put pressure on its members for financial support.

To determine whether the teaching of this religion violates the establishment clause, reference is made to [Committee for Public Education v. Nyquist, 412 U.S. 756, 37 L.Ed. 2d 948, 93 S.Ct. 2955 \(1973\)](#). That case sets out the following 'three-prong' test to determine whether government involvement with religion comes within the prohibition of the establishment clause: 1) Whether the action reflects a clearly secular legislative purpose; 2) Whether it has a primary effect which neither advances nor inhibits religion; and 3) Whether it avoids excessive government entanglement with religion. [37 L.Ed. 2d at 963](#). This test was set out in [Nyquist](#) with reference to legislation, but [Malnak](#) applied it to the TM course

in that case. Malnak found that the course had the primary effect of advancing religion and religious concepts and that the government aid given to teach the course and the use of public school facilities constituted excessive governmental entanglement with religion. 592 F. 2d at 197. Applying this test here, the same conclusion may be reached about the teaching of Eckankar.

*2 The teaching of religion is not impermissible under all circumstances. Abington School District v. Schempp, 374 U.S. 203, 10 L.Ed. 2d 844 83 S.Ct. 1560 (1963) stated as follows:

In addition, 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 consistent with the First Amendment. 40 L.Ed. 2d at 860.

Here, when Eckankar is taught in a course devoted entirely to that religion and is taught by a member of that religion, it lacks the objectivity referred to in Schemp. Although the courses may not involve the degree of religious activity present in Malnak, it appears that the effect of the course would be to propagate the religious tenets of the Eckankar faith. Thus, the teaching of the course appears to violate the second part of the Nyquist test.

Excessive government entanglement is also present here. Although the teachers for the course are furnished by Eckankar at no charge to the school district, the district provides assistance through the use of its buildings, the publishing of any material concerning the curriculum offered in its adult education program, and the drawing of students to the class who were first attracted by the offering of a general adult education program. See Malnak and McCollum v. Board of Education, 333 U.S. 203, 68 S.Ct. 461, 92 L.Ed. 659 (1948). Thus, the third part of the Nyquist test is violated.

In conclusion, the teaching of Eckankar as the sole subject of a adult education class and by a member of that faith appears to violate the establishment clause of the United States Constitution.

If I can be of any assistance to you, please do not hesitate to contact me.

Yours very truly,

J. Emory Smith, Jr.
State Attorney

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