

1978 S.C. Op. Atty. Gen. 145 (S.C.A.G.), 1978 S.C. Op. Atty. Gen. No. 78-113, 1978 WL 22582

Office of the Attorney General

State of South Carolina

Opinion No. 78-113

June 13, 1978

***1 SUBJECT: Constitutions, Religions, Schools**

Series of assembly programs held in a public school for students under supervision of school personnel emphasizing religion is 'advancement of religion' in the public schools and is prohibited by the Constitution.

TO: David M. Brown
Superintendent of Education

QUESTION:

Do series of assembly programs held at public schools under supervision of school personnel pursuant to Religious Emphasis Week violate the First Amendment of the Constitution of the United States?

STATUTES AND CASES:

United States Constitution, First Amendment;

[Everson v. Board of Education](#), 330 U.S. 1, 67 S.Ct. 504, 91 L.Ed. 71 (1947);

[McCullum v. Board of Education](#), 333 U.S. 203, 68 S.Ct. 461, 92 L.Ed. 649 (1948).

DISCUSSION:

The First Amendment of the United States Constitution states, in part:
Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; . . .

The United States Supreme Court in various decisions has held that this prohibition is also applicable to the States, the legal link being provided by the Fourteenth Amendment of the United States Constitution. See e.g., [Everson v. Board of Education](#), 330 U.S. 1, 67 S.Ct. 504, 91 L.Ed. 711 (1947).

The weight of the case law in this area indicates that advancement of any religious belief, bible reading, formulated prayers, the conduct of sectarian religious exercises, etc., conducted in the public schools runs afoul of the First Amendment prohibition.

In [McCullum vs. Board of Education](#), 333 U.S. 203, 68 S.Ct. 461, 92 L.Ed. 649 (1948), the local Board of Education permitted an interdenominational association to offer religious classes in the schools on a voluntary basis during school hours. The children who chose to attend these religious courses were required to be present and school personnel were required to monitor their attendance. A taxpayer brought suit to prohibit this religious instruction in the schools. The U.S. Supreme Court held that this plan fell squarely under the ban of the First Amendment. Justice Black, in the majority opinion, stated:

To hold that a state cannot consistently with the First and Fourteenth Amendments utilize its public school system to aid any or all religious faiths or sects in the dissemination of their doctrines and ideals does not, as counsel urge, manifest a governmental hostility to religion or religious teachings. A manifestation of such hostility would be at war with our national tradition as embodied in the First Amendment's guaranty of the free exercise of religion. For the First Amendment rests upon the premise that both religion and government can best work to achieve their lofty aims if each is left free from the other within its respective sphere. Or, as we said in the *Everson* case, the First Amendment has erected a wall between Church and State which must be kept high and impregnable.

*2 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 as 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.

McCullum vs. Board of Education, supra.

The McCullum case is closely analogous to the situation described in your letter. A series of assembly programs held in the schools, under the supervision of school personnel, at which ministers of various denominations speak, emphasizing religion, can be fairly construed as 'advancement of religion' within the public schools; and, as such, breaches the 'wall of separation between Church and State', which is prohibited by the Constitution.

It might be permissible to have such assemblies during non-school hours supervised by non-school personnel, with students attending by choice.

CONCLUSION:

A series of assembly programs held at public schools, under the supervision of school personnel, emphasizing the advancement of religion is prohibited by the Constitution.

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