

1973 S.C. Op. Atty. Gen. 140 (S.C.A.G.), 1973 S.C. Op. Atty. Gen. No. 3522, 1973 WL 20982

Office of the Attorney General

State of South Carolina

Opinion No. 3522

May 8, 1973

*1 Dr. Charles S. Davis

President

Winthrop College

Rock Hill, South Carolina 29730

Dear Dr. Davis:

This is in response to your letter of April 2, 1973, requesting the opinion of this office as to whether (1) the presence of Bibles in rooms in the College Infirmary and (2) the free distribution of Bibles by the Gideons to students who wish to accept them comports with the concept of separation of Church and State mandated by the First Amendment to the United States Constitution. I apologize for the delay in responding.

Your letter does not identify the source of supply of the Bibles located in the College Infirmary. If state monies have been or are being used for the purchase and placement of Bibles in the College Infirmary, or if their placement there is the product of an arrangement between Winthrop College and some religious organization whereby some such organization is authorized to procure and place Bibles in the College Infirmary, the practice is one which offends the Constitution of the United States as well as the Constitution of South Carolina.

The First Amendment of the United States Constitution reflects the philosophy that Church and State should be separated, and the separation must be complete and unequivocal, since the First Amendment, within the scope of its coverage permits no exception and its prohibition is absolute. While the study of religion and of the Bible from a literary and historic viewpoint, presented objectively as part of a secular program of education, need not collide with the First Amendment provisions regarding freedom of religion, a state may not adopt programs or practices in its public schools or colleges which aid or oppose any religion. The Supreme Court of South Carolina in a recent PER CURIAM opinion construed Article 1, Section 4, of the Constitution of South Carolina—the language of which is for all intents and purposes the same as the language of the First Amendment to the Constitution of the United States—as intended to afford protection against sponsorship, financial support and active involvement of government in religious activity. Hence, it is the Command of the Constitution that the government maintain strict neutrality, neither aiding nor opposing religion; and it is no defense to urge that the religious practice involved is of a non-coercive nature or is a relatively minor encroachment on the First Amendment. To withstand the strictures of the Establishment Clause there must be a secular purpose and a primary effect that neither advances nor inhibits religion. If the purpose and primary effect of the practice is either the advancement or inhibition of religion, it comes under the condemnation of the freedom of religion provision of the First Amendment. Therefore, Bibles placed at public expense or arrangement in the College library for the objective study of religion and of the Bible from a literary and historic viewpoint would conform to these Constitutional standards. But Bibles placed at public expense or arrangement in the College Infirmary would likely be construed by the courts as a practice which is repugnant to the Constitution.

*2 All of the foregoing notwithstanding, the people of the United States are a religious people whose institutions presuppose a Supreme Being. And while the government must be neutral, there is no requirement which makes it necessary for the government to be hostile to religion and to throw its weight against efforts to widen the effective scope of religious influence. You indicate in your letter that the Gideons wish to make a free distribution of Bibles to those students who wish to accept them. The spread of ones religious beliefs through distribution of religious literature is an age-old type of evangelism with as high a claim to Constitutional protection as the more orthodox type; and the Free Exercise Clause of the First Amendment bars interference with

the dissemination of religious ideas. Consequently, it is the opinion of this office that Winthrop College could not, consonant with the Constitution, prohibit the Gideons from making an orderly, person to person distribution of Bibles to these students who wish to receive them. Not to prohibit such a distribution follows our best traditions in that it respects the religious nature of our people and merely constitutes an accommodation to their spiritual needs. Such respect and accommodation is in accord with Constitutional standards regarding freedom of religion.

The following cases are cited for your perusal and future reference: [School District of Abington Twp. v. Schempp](#), 374 U.S. 203; [Epperson v. State of Arkansas](#), 393 U.S. 97, [Lemon v. Kurtzman](#), 403 U.S. 602; [Flast v. Cohen](#), 392 U.S. 83; [Negre v. Larson](#), 401 U.S. 437; [Sidney Brown, et al. v. Orange County Board of Public Instruction, etc.](#) 128 So. 2d 181, [Tudor v. Board of Education](#), 100 A. 2d 857.

I trust that this satisfactorily answers your inquiry. If you feel a need to inquire further concerning this matter, please do not hesitate to do so.

Sincerely,

Bruce E. Davis
Assistant Attorney General

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