



State of Kansas
Office of the Attorney General
Topeka, Kansas

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August 22, 1963

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Honorable Robert Dole
Member of Congress
House Office Building
Washington, D. C.

Dear Congressman:

You have asked for my comments on the recent decision of the United States Supreme Court in Murray v. Curlett, 374 U.S. 203 (1963), and on its sequel, the proposed establishment by Mrs. Murray of an atheist center near Stockton, Kansas.

As you know, the State of Kansas is not directly affected by the decision, since we have no statute compelling prayers or scripture readings in schools. On the contrary, G.S. 1961 Supp., 72-1628, provides that no school in a city of the first or second class shall teach any religious doctrine, although it also provides that the Holy Scriptures may be read without comment. A similar provision in L. 1963, Ch. 392, Sec. 1 (n), applies to special unified school districts.

This leaves open the question whether religious exercises such as prayers or ceremonial Bible readings may be required by a local school board.

The Supreme Court in the Murray case held Bible reading to be unconstitutional when required by school board rule. This was an extension of its earlier holding in 1962 that a prayer suggested by a state board of regents and required by a local school district board could not be used [Engle v. Vitale, 370 U.S. 421 (1962)]. The Murray case implies that this prohibition also covers prayers required by school boards alone. In neither of these cases, the Court said, did it matter that the attendance or participation by students was voluntary.

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Personally, I do not agree with the philosophy of the Supreme Court in either of these decisions--as a matter of fact the Attorney General of Kansas joined several other Attorneys General in the defense of the Regents' prayer in the Vitale case. However, the Supreme Court was not impressed with our position or argument, and we of course are bound by that Court's interpretation of the United States Constitution.

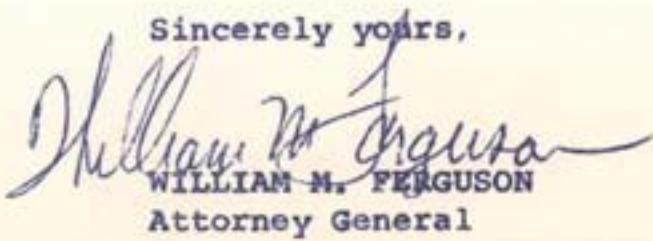
With respect to the proposed atheist center, no statute of the State of Kansas prohibits such an enterprise. Further, although Kansas is a Christian state and the United States is a Christian nation, the U.S. Constitution protects the right not to believe as well as the right to believe in a given form of religion. As the Supreme Court said in Torcaso v. Watkins, 367 U.S. 488 (1961):

"Neither a state nor the federal government can constitutionally pass laws which aid all religions as against nonbelievers."

Regardless of my personal opinion of the center, it is my legal opinion that any state law which purported to prohibit such a center would be found unconstitutional.

I hope these comments sufficiently answer the questions you had in mind.

Sincerely yours,


WILLIAM M. FERGUSON
Attorney General