

OPINION
63-207

SCHOOL DISTRICTS - Discipline and Punishments - Superiority of Religious Beliefs

This is in reply to your letter of March 11, 1963.

You state substantially as follows:

A resident of your county "has eight children going to the Dunseith Public School - the oldest child who is in the eighth grade naturally respects the religion which is Jehovah's Witness, in which she was raised. She will not get up to face the flag and join in the patriotic singing because this is contrary to her religion. Her teacher has punished her for refusal to stand and join in the signing of the patriotic songs by locking her in a dark room for about twenty or thirty minutes during this program."

You ask that we issue you an opinion on whether or not such punishment may legally be administered for such refusal.

The first question that must be asked is "what powers and duties does a teacher or principal possess in such matters?" As a general rule a teacher has sufficient power to effectually carry out his functions of education. This means that he may necessarily discipline and punish any misconduct that is injurious to the good government and morals of the other students. This would be so with or without rules and regulations set down by a board of education. The purpose of such powers, of course, is to insure that the ultimate goal of maximum education may be achieved. But the rule as so far set down does not yet provide an answer to the main question posed. (47 Am. Jur. § 181).

The factual situations such as you have conveyed have usually been attacked as a violation of the United States Constitution guaranteeing freedom of speech, religion, etc. Until 1943, the United States Supreme Court had taken the position that the requirements of saluting the flag in schoolrooms had nothing to do with religion and therefore could not be an infringement of the right of freedom of religion. They went on to say, in effect that school authorities could prescribe such an activity. "A society which is dedicated to the preservation of these ultimate values of civilization may in self-protection utilize the educational process for inculcating those almost unconscious feelings which bind men together in a comprehending loyalty, whatever maybe their lesser differences and difficulties." (Minersville School District v. Gobitis, 310 U.S. 586.)

However, in 1943 the prevailing attitude of the United States was handed down in the decision of West Virginia State Board of Education v. Barnette, 319 U.S. 624. The court in this case held that the action of a state board of education in requiring public school pupils to salute the flag of the United States while reciting a pledge of allegiance, under

penalty of the pupil's expulsion and liability of both pupil and parent to a proceeding for unlawful absence of the pupil, transcended constitutional limitations upon the power of the board of education and invaded the sphere of intellect and spirit which it is the purpose of the First and Fourteenth Amendments of the Constitution to reserve from all official control. Thus, the court overruled its decision rendered in the *Gobitis* case.

We realize that the facts presented in this case do not involve expulsion from school. However, the difference in the penalty outlined by you and the expulsion from school used in the *Barnette* case are only matters of degree and do not alter the principle laid down by the Supreme Court of the United States. The rule as we understand it is that a student may not be required to salute the flag if such an activity is contrary to his religious beliefs. It should be understood that such refusal would not be allowed if the refusal presented a clear and present danger to the community. However, we do not think such is the case here. The freedom of religion is absolute and may not be limited save the exception of incurring a clear and present danger to the community.

It therefore follows, that it is our opinion that the rule as laid down in the *Barnette* case is one in which we can in good conscience embrace as well as follow as a rule of law. The refusal to salute the flag, in this case, should be respected as guaranteed by our constitution unless there can be shown a clear and present danger to the community.