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Opinion No. 04-095

Public School System's Calendar — Day Off on Religious Holiday

QUESTION

May a public school system give a school holiday on a day that is also a religious holiday?

OPINION

A public school system may not give a school holiday for religious purposes, such as, to enable students and staff to observe a religious holiday or to encourage religious observance. Doing so would violate the First Amendment to the United States Constitution. The First Amendment does not prohibit, however, a public school system from giving a school holiday on a religious holiday, if the school system has a clearly secular purpose for the school holiday, if the school holiday neither advances nor inhibits religion and if the choice of the day for the school holiday does not foster an excessive government entanglement with religion.

ANALYSIS

A public school board has the authority and duty to set a school calendar and to follow statutory requirements. *See* Tenn. Code Ann. § 49-6-3004. School boards often have given a school holiday on a day that is also a religious holiday. An example would be the Friday before Easter, known as "Good Friday," a significant Christian holy day. The Establishment Clause of the First Amendment to the United States Constitution prohibits Congress from making any "law respecting an establishment of religion, or prohibiting the free exercise thereof."[1] States must abide by the First Amendment. *See, e.g., Capitol Square Review and Advisory Bd. v. Pinette*, 515 U.S. 753, 757

[1] The full text of the First Amendment to the United States Constitution is as follows: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

Similarly, the Tennessee Constitution, Article I, § 3 states: " That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience; that no man can of right be compelled to attend, erect, or support any place of worship, or to maintain any minister against his consent; that no human authority can, in any case whatever, control or interfere with the rights of conscience; and that no preference shall ever be given, by law, to any religious establishment or mode of worship."

(1995). Thus the question is whether a school system provide a school holiday that coincides with a religious holiday without violating the First Amendment.

In *Lemon v. Kurtzman*, 403 U.S. 602 (1971), the United States Supreme Court set out a three-part test for determining whether government action violates the Establishment Clause of the First Amendment. Under this test, a state statute or governmental policy must

1. Have a clearly[2] secular purpose;
2. Have a principal or primary effect that neither advances nor inhibits religion; and
3. Not foster excessive government entanglement with religion.

Id. at 612-13.

In a case decided after *Lemon*, the Supreme Court used a "coercion" or "endorsement" of religion test, prohibiting speech that a reasonable observer would think is an endorsement of religion by the government. *Lee v. Weisman*, 505 U.S. 577 (1992). Some have read *Lee* to replace the *Lemon* three-part test. *See, e.g.*, "Lemon Is Dead," 43 Case W. Res. L. Rev. 795 (1993). The United States Court of Appeals for the Sixth Circuit has continued to apply the *Lemon* test, viewing the "endorsement" test as a refinement or clarification of Part 2 of the *Lemon* test. *See, e.g., Americans United for Separation of Church and State v. City of Grand Rapids*, 980 F.2d 1538, 1542-45 (6th Cir. 1992) (*en banc*).

In *Granzeier v. Middleton*, the Sixth Circuit Court of Appeals reviewed a decision by county officials to close the county courthouse on the Friday before Easter. 173 F.3d 568, 571 (6th Cir. 1999). In addition to the closing, a county judge, acting on his own, posted a sign[3] with an image of a crucifixion announcing that the courthouse would be closed "for observance of Good Friday." *Id.* The Court applied the modified three-part *Lemon* test and upheld the county's decision to close the courthouse on Good Friday. *Id.* at 573. The Court found that the Spring Holiday[4] satisfied the first part of the *Lemon* test because the defendants presented "unrefuted, credible evidence of a significant secular purpose." *Id.* at 574. The Court concluded that the third part of the *Lemon* test was satisfied as well. The "public officials are not required to make religious determinations . . . . They simply decide on what dates their courts and offices will be closed." *Id.* Finally, the Court held that the government defendants' action neither advanced nor inhibited religion because a reasonable

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[2] The government defendant has to prove the alleged secular purpose with credible evidence. *See, e.g., Koenick v. Felton*, 190 F.3d 259, 266-67 (1999).

[3] The sign was not at issue in the appellate court. Government defendants had conceded that the sign was unconstitutional. *Id.* at 573.

[4] Defendants redesignated the Friday before Easter closing as a "Spring Holiday," which plaintiffs argued was a sham. The court disagreed, finding sufficient evidence of a secular purpose. *Id.* at 574. The Seventh Circuit Court of Appeals suggested in *Metzl v. Leininger* that a similar redesignation might pass constitutional muster, assuming a secular purpose was proved with adequate evidence. 57 F.3d 618, 622-24 (7th Cir. 1995).

observer would not think the court was endorsing religion by closing its offices on the Friday before Easter. *Id.*

Under the Sixth Circuit's *Granzeier* rationale, a Tennessee public school system may have a school holiday which coincides with a religious holiday, if (1) the school system, through credible evidence, shows that its action has a significant secular purpose, (2) its action does not require school officials to make religious determinations and (3) the action does not appear to a reasonable observer to endorse religion. *See, e.g., Koenick v. Felton*, 190 F.3d 259 (4th Cir. 1999) (upheld school board's action to have a school holiday on the Friday before Easter); *Metzl v. Leininger*, 57 F.3d 618, 623 (7th Cir. 1995) (struck down statute making the Friday before Easter a legal holiday in public schools because, among other reasons, the articulated reason for the holiday was "to commemorate the crucifixion of Jesus Christ"); *Cammack v. Waihee*, 932 F.2d 765, 779 (9th Cir.1991) (court upheld statutory holiday of Good Friday, concluding, among other things, that the so-called Good Friday holiday had become secularized in Hawaii).

We conclude by restating the general guidelines and providing examples. Each fact situation will be different and must be reviewed separately under the constitutional tests.

For a school holiday falling on a religious holiday to be constitutional, first, there must be a clear secular purpose for the school holiday. For example, the school system might set a school holiday around or to coincide with a religious holiday because the school system can predict high absenteeism and thus decreased instructional effectiveness. *Koenick*, 190 F.3d at 266. Second, the school holiday cannot have the effect of inhibiting or endorsing religion. For example, the school board could not set Good Friday as a school holiday to "commemorate the Crucifixion." *Metzl*, 57 F.3d at 623.

Third, the school board's choice of a date for a school holiday cannot result in the board's excessive entanglement with religion. For example, if a school board's policy was to give Good Friday as a school holiday and school policy required a school administrator to monitor students and staff to determine whether they participated in the religious observance, then the policy would result in excessive entanglement with religion. The school board or school administrator would be making determinations about the religion of the students and staff, a direct connection between government and religion in violation of the Establishment Clause. *See Ganulin v. United States,* 71 F.Supp. 2d 824, 835 (1999).

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