

TEXAS EDUCATION AGENCY

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RQ-0622-GA

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SEP 14 2007

OPINION COMMITTEE

Via Interagency Mail

September 11, 2007

Honorable Greg Abbott
Texas Attorney General
Post Office Box 12548
Austin, Texas 78711-2548

FILE # ML-45357-05
I.D. # 45357

Re: Attorney Opinion Request

Dear General Abbott:

This letter is to request your opinion on behalf of the Houston Independent School District regarding the effect, if any, of an existing federal court order on the district's ability to comply with the requirements of Subchapter E, Chapter 25, Texas Education Code, as enacted by House Bill 3678 in the most recent legislative session. The district's request and supporting documents are attached.

Thank you for your consideration of this request. Should you need any additional information, please contact me or David Anderson, General Counsel, at (512) 463-9720.

Sincerely,

Robert Scott

Robert Scott
Acting Commissioner of Education

da/ds

**BRACEWELL
& GIULIANI**

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Houston, Texas
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 **ENTERED**

August 24, 2007

→ Legal
Handle/Assigned

Mr. Robert Scott
Texas Commissioner of Education
1701 N. Congress Ave.
Travis Building
Austin, Texas 78701

Re: House Bill 3678/Adoption of Local Policy

Dear Mr. Scott:

Our law firm represents the Houston Independent School District ("Houston ISD" or "HISD"). We are seeking your assistance in requesting an opinion from the Attorney General of Texas regarding some unique issues that the Houston ISD is facing in implementing House Bill 3678, which was passed by the 80th Texas Legislature in regular session.

House Bill 3678 amended the Texas Education Code to create Subchapter E of Chapter 25, which governs student expression of religious viewpoints. Section 25.151 requires Texas public school districts to "...treat a student's voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject in the same manner the district treats a student's voluntary expression of a secular or other viewpoint on an otherwise permissible subject and may not discriminate against the student based on a religious viewpoint expressed by the student on an otherwise permissible subject." School districts are required by Section 25.152 to adopt a policy establishing "...a limited public forum for student speakers at all school events at which a student is to publicly speak." The statute further requires that the policy provide that students are not discriminated against for expressing a voluntary religious viewpoint, that student speakers are selected based on neutral criteria, that no obscene, vulgar, lewd or indecent speech be permitted, and that an oral and/or written disclaimer be provided at graduation and other events so that it is clear that the district is not sponsoring the student's voluntary speech. Section 25.153 provides for students to express their beliefs about religion in class assignments, and Section 25.154 authorizes students to organize prayer groups, religious clubs and other religious gatherings "...before, during, and after school to the same extent that students are permitted to organize other noncurricular student activities and groups." House Bill 3678 applies beginning with the 2007-2008 school year.

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J. David Thompson III
Partner

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Section 25.156 provides a model policy that school districts may adopt to implement House Bill 3678. The model policy identifies specific activities at which a limited open forum is created and at which a student may speak and express his or her views; these activities include football games, other athletic events designated by the district, opening announcements, and other events designated by the district, including assemblies and pep rallies. The model policy also includes a method to select student speakers and creates a process to identify students to speak at graduation. It also addresses religious expression in class assignments and the organization of religious groups and activities.

The Houston ISD is subject to a permanent injunction entered by a United States District Court that addresses some of the same issues for which the State has established requirements in House Bill 3678. The permanent injunction was entered on December 28, 1970, in the case of Calvin C. Guild, et. al. v. Houston Independent School District, et. al., Civil Action No. 70-H-1102. Even though the permanent injunction in Guild is nearly 37 years old, it still is in force and effect for the Houston ISD. The requirements of the Guild permanent injunction and the requirements of House Bill 3678 do not appear to be fully consistent or compatible. A copy of the Guild order is attached to this letter for your information.

The Guild order provides in part:

"Now, therefore, it is ORDERED, ADJUDGED, and DECREED that the Houston Independent School District, its Trustees, agents, servants, and employees, be permanently enjoined as follows:

1. From reading from the Holy Bible or any other religious work or book in connection with or as part of any school practice, ceremony, observance, exercise or routine, and from causing or permitting anyone to read from the Holy Bible or any other religious work or book in connection with any school practice, ceremony, observance, exercise or routine within the Houston Independent School District.
2. From allowing, permitting, or requiring students of the Houston Independent School District to participate in the recitation of any prayer in connection with or as a part of any school practice, ceremony, observance, exercise or routine.
3. From distributing, causing to be distributed, permitting or allowing distribution of religious materials in, by or through the schools of the Houston Independent School District.

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4. From the enforcement of any policy, rule or regulation relating to: (a) the reading from the Holy Bible or any other religious work or book, (b) conducting students of the Houston Independent School District or causing or allowing the students of the Houston Independent School District to be conducted in the recitation of any prayer in connection with or as a part of any school practice, ceremony, observance, exercise or routine, (c), the distribution of any religious materials in, by and through the schools of the Houston Independent School District.

It is further ORDERED that this injunction is not intended to, and shall not, in any way, interfere with or prohibit the use of any books or works (including the Holy Bible or any other religious work or book) as educational, source or reference materials, nor prohibit or interfere with the personal recitation at will of silent prayers at any time by the students, Trustees, agents, servants, and employees of the Houston Independent School District so long as such prayers are not part of or in connection with any school practice, ceremony, observance, exercise or routine of the Houston Independent School District.

It is further ORDERED that this injunction is not intended to and shall not prevent the purchase of religious books or acceptance of bona fide gifts of religious books in the same manner as secular books and works are purchased or accepted for reference purposes and placed in libraries or customary reference areas in the same manner as secular books and works.

This injunction is not intended to and shall not require the deletion of reference to religion from secular discussions and classroom teaching and is not intended to and shall not permit hostility toward any religion. The Houston Independent School District, its Trustees, agents, servants, or employees are enjoined to neutrality in all matters of religion.

The study of the Bible or of religion when presented objectively as a part of a secular program of education does not fall into the categories enjoyed by this Order."

Given the existence of this court order issued by a United States District Court and the differences between the terms of the Guild permanent injunction and the requirements of House Bill 3678, on behalf of the Houston ISD we are requesting that the following questions be submitted to the Attorney General of Texas:

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1. Do the terms and requirements of the Guild permanent injunction issued by a United States District Court control to the extent of any conflict over the terms and requirements of House Bill 3678, or does House Bill 3678 supersede or otherwise control to the extent of any conflict with the permanent injunction?

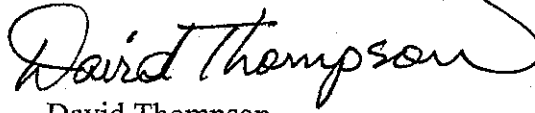
2. If the terms and requirements of the Guild permanent injunction control to the extent of any conflict over the terms and requirements of House Bill 3678, is the Houston ISD Board of Education authorized to adopt a policy that complies with the terms and requirements of the permanent injunction, but which may not comply with all terms and requirements of House Bill 3678?

Because the Houston ISD may not submit its questions directly to the Attorney General of Texas, we respectfully request that the Commissioner of Education submit these questions on its behalf. We are happy to work with you and your staff to prepare the request to the Attorney General, or to assist in any other way that is helpful. If you have any questions or need further information, please let me know.

As always, the Houston ISD greatly appreciates your assistance and support. The Houston ISD is looking forward to a successful and productive year for its students, and we know you are working with all districts in Texas to accomplish this objective, which is so important to the future of our State.

Very truly yours,

Bracewell & Giuliani LLP



David Thompson

JDT/nc

2103976.1 HOUSTON

IN THE UNITED STATES DISTRICT COURT U. S. DISTRICT COURT,
FOR THE SOUTHERN DISTRICT OF TEXAS SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION FILED

DEC 28 1970

CALVIN C. GUILD, et al.

Plaintiffs,

V.

HOUSTON INDEPENDENT SCHOOL
DISTRICT, et al.

Defendants.

Y
X
X
X
X
X
X
X
X
X
X

V. BAILEY THOMAS, CLERK
BY DEPUTY: *R. Mullins*

CIVIL ACTION NO. 70-H-1102

ORDER

Upon the pleadings, arguments of counsel, and admissions of fact made by the Houston Independent School District, this court finds as follows:

1. That the Houston Independent School District has a policy which permits representatives of the Gideon Society to make copies of the New Testament available free of charge to those classroom teachers and fifth-grade pupils who wish to receive them.

2. That copies of the New Testament are in fact distributed by members of the Gideon Society to those classroom teachers and fifth-grade pupils who wish to receive them in accordance with the policy.

3. That in some of the schools of the Houston Independent School District it is a practice to have opening exercises that include the recitation of a prayer.

4. That in some of the schools of the Houston Independent School District it is the practice to have opening exercises that include the reading of pages from the Holy Bible.

5. That in some of the schools of the Houston Independent School District it is the practice to have opening exercises that include reading of religious poetry or spiritual proverbs.

6. That in some of the schools of the Houston Independent School District it is the practice to have opening exercises that include both prayer recitation and Bible reading.

7. That there is no written policy of the Board of Trustees of the Houston Independent School District prohibiting religious practices from being incorporated into the schools' opening exercises.

8. That there is no written policy of the Board of Trustees of the Houston Independent School District requiring sectarian and religious neutrality of its agents, servants, and employees.

Now, therefore, it is ORDERED, ADJUDGED, and DECREED that the Houston Independent School District, its Trustees, agents, servants, and employees, be permanently enjoined as follows:

1. From reading from the Holy Bible or any other religious work or book in connection with or as a part of any school practice, ceremony, observance, exercise or routine, and from causing or permitting anyone to read from the Holy Bible or any other religious work or book in connection with any school practice, ceremony, observance, exercise or routine within the Houston Independent School District.

2. From allowing, permitting, or requiring students of the Houston Independent School District to participate in the recitation of any prayer in connection with or as a part of any school practice, ceremony, observance, exercise or routine.

3. From distributing, causing to be distributed, permitting or allowing distribution of religious materials in, by or through the schools of the Houston Independent School District.

4. From the enforcement of any policy, rule or regulation relating to: (a) the reading from the Holy Bible or any other religious work or book, (b) conducting students of the Houston Independent School District or causing or allowing the students of the Houston Independent School District to be conducted in the recitation of any prayer in connection with or as a part of any school practice, ceremony, observance, exercise or routine, (c) the distribution of any religious materials in, by and through the schools of the Houston Independent School District.

It is further ORDERED that this injunction is not intended to, and shall not, in any way, interfere with or prohibit the use of any books or works (including the Holy Bible or any other religious work or book) as educational, source or reference materials, nor prohibit or interfere with the personal recitation at will of silent prayers at any time by the students, Trustees, agents, servants, and employees of the Houston Independent School District so long as such prayers are not part of or in connection with any school practice, ceremony, observance, exercise or routine of the Houston Independent School District.

It is further ORDERED that this injunction is not intended to and shall not prevent the purchase of religious books or acceptance of bona fide gifts of religious books in the same manner as secular books and works are purchased or accepted for reference purposes and placed in libraries or customary reference areas in the same manner as secular books and works.

This injunction is not intended to and shall not require the deletion of reference to religion from secular discussions and classroom teaching and is not intended to and shall not permit hostility toward any religion. The Houston Independent School District, its Trustees, agents, servants, or employees are enjoined to neutrality in all matters of religion.

The study of the Bible or of religion when presented objectively as a part of a secular program of education does not fall into the categories enjoined by this Order.

The Houston Independent School District and its Trustees are ordered to disseminate this Order to the agents, servants, and employees, in such manner that they will be fully apprised of its contents.

The clerk of the court is directed to file this Order and to send true copies to counsel of record.

This is a final judgment.

DONE at Houston, Texas, this 29th day of December, 1970.

JOHN V. SINGLETARY, JR.

United States District Judge

APPROVED AS TO FORM:

William K. Wilde
Attorney for Houston Independent
School District

Lynn N. Hughes
Attorney for Plaintiffs

TRUE COPY I CERTIFY
ATTEST:
V. BAILEY THOMAS, Clerk
By *V. Bailey Thomas*
Deputy Clerk