

Opinion No. 50-5272

January 3, 1950

BY: JOE L. MARTINEZ, Attorney General

TO: Charles L. Rose Superintendent of Public Instruction Santa Fe, New Mexico

{*117} We are in receipt of your recent letter of December 20, 1949 in which you request an official opinion as to whether or not parents can refuse to permit their children to be vaccinated because of religious beliefs.

The State Legislature, under its police power, may violate constitutional rights **only** when it substantially relates to public health, safety, morals, or general welfare. *Liggett vs. Baldrige*, 278 U.S. 105.

In *Jacobson, v. Massachusetts*, 197 U.S. 11, the court stated that it is within the police power of a state to provide for compulsory vaccination. That case and others held also that a state may, consistently with the Federal Constitution, delegate to a municipality authority to determine under what conditions health regulations shall become operative. *Laurel Hill Cemetery v. San Francisco*, 216 U.S. 358.

In *Zucht v. King*, 260 U.S. 114, it stated that an ordinance excluding from the public schools or other places of education, children or other persons not having {*118} a certificate of vaccination, does not confer arbitrary power but only the broad discretion required for the protection of public health.

In *Wilker v. Dallas Independent School District*, 75 Fed. Sup. 552, (1948), a case where plaintiff was expelled because he had not complied with orders that he be vaccinated, it states on page 553:

"They claim that to submit to such vaccination 'is contrary to their religion and prohibits the free exercise thereof, and that it abridges the privileges and immunities of citizens of the United States and that each of said plaintiffs is a citizen of the United States.'"

* * *

"They then allege, 'That the stated acts of all of the defendants are not supported by legislative Acts and are without due process of law; that these acts constitute arbitrary edicts by the defendants contrary to orderly democratic procedure; that these acts are opposed to public policy as generally administered throughout the United States. That these acts are not in the best interests of the health of the community and serve no beneficial purpose at this time.'"

* * * *

"Both the state and national courts have repeatedly called attention to the sort of appeals which may or may not be heard with reference to the religious rights of the citizen and with reference to the vaccination of pupils. *Zucht v. King*, 260 U.S. 147, 43 S. Ct., 67 L. Ed. 194; *Jacobson v. Massachusetts*, 197 U.S. 11, 25 S. Ct. 358, 49 L. Ed. 643, 3 Ann. Cas. 765; *Johnson v. City of Dallas, Tex. Civ. App.* 291 S.W. 972."

It is my opinion that compulsory vaccination does not violate any constitutional rights of the individual, in view of the greater right of the state to legislate in the interests of public health, safety and welfare.

You are directed to previous Attorney General opinion which hold as follows:

"Rules and regulations of the state department of public health are given the same force and effect as laws enacted by the legislature and the same may be enforced by peace officers, including the state police. 1943-44, No. 4239. No private individual or school official could compel a child to be vaccinated against his or his parents' will without subjecting himself to liability, but the teacher of an unvaccinated child can prevent his attendance at school until he has been vaccinated or has obtained a certificate exempting him. 1943-44 No. 4269.

Under this section the courts have no authority to enter an order compelling a child to submit to vaccination, as there is no such proceeding at common law and as the statute merely makes it a crime upon the part of the parent to refuse to permit his child to be vaccinated. 1943-44, No. 4269.

For failure to have a school child vaccinated, only one penalty, under provisions of this section, could be assessed, even though the refusal by the parent continued for many days or after many notices had been given. However, if the parent is once fined or imprisoned for his refusal to have his child vaccinated, this would not prevent another later action for this refusal after former penalty. (No. 4269).

The provisions of subsection (8) apply to all children in each county of school age, {*119} including those enrolled in private schools, as well as those in public schools. 1943-44 No. 4317.

"In view of the specific and mandatory language of this statute, it is the duty of a teacher, and a teacher will have the authority, to prevent any child from attending school who has not complied with our vaccination laws. No formal procedures are required. 1943-44, No. 4410."

Trusting the foregoing sufficiently answers your inquiry, I am

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