



COMMONWEALTH of VIRGINIA

Office of the Attorney General

Gerald L. Baliles
Attorney General

William G. Broaddus
Chief Deputy Attorney General

Donald C.J. Gehring
Deputy Attorney General
Criminal Law Enforcement Division

Maston T. Jacks
Deputy Attorney General
Human & Natural Resources Division

Elizabeth B. Lacy
Deputy Attorney General
Judicial Affairs Division

Walter A. McFarlane
Deputy Attorney General
Finance & Transportation Division

Karl E. Bren
Director of Administration

November 26, 1984

The Honorable Paul B. Ebert
Commonwealth's Attorney for the
County of Prince William
9311 Lee Avenue
Manassas, Virginia 22110

My dear Mr. Ebert:

You have asked several questions concerning application of the compulsory school attendance laws. Your questions are: (1) What guidelines, if any, should the local school board follow in determining whether a pupil is exempt from school attendance for religious reasons under § 22.1-257(C) of the Code of Virginia; (2) is a child, whose parents declare that they are opposed on the basis of their religious convictions to his attendance at public school, automatically exempt from the school attendance requirements of § 22.1-254; and (3) should a guardian be appointed for a child in the above situation?

Your correspondence indicates that a parent notified the division superintendent of schools by letter that the parent was not enrolling his child in the public schools.¹ I assume, for the purpose of this Opinion, that the child is not enrolled in any public or private school, nor is he receiving approved alternative schooling as permitted by § 22.1-254.1. I further assume

¹ The excerpt which you sent of the parents' letter stated: "[D]ue to our religious convictions we cannot in good conscience enroll our son in public school," and that "[d]ue to these religious convictions our son will not attend public school this fall. We are conscientiously opposed to his doing so. We plan to supervise his education at home and anywhere else that is conducive to the best possible education."

You also note in your correspondence that the parents contend their church tenets require "...that the parents, not the State, have been given by God the ultimate authority over how and where their children are to be educated," and that a child is to be trained to "approach all knowledge from a christian perspective and to evaluate all claims to Truth according to the standard of God's word - the Bible." (Emphasis added.)

that there is no statutory exemption from compulsory school attendance other than § 22.1-257(A)(2), which may apply to this child.

Section 22.1-257(A)(2) requires that a school board excuse from compulsory school attendance, "any pupil who, together with his parents, by reason of bona fide religious training or belief, is conscientiously opposed to attendance at school." Section 22.1-257(C) specifically provides that a "'bona fide religious training or belief' does not include essentially political, sociological or philosophical views or a merely personal moral code." The guidelines which should be followed by a school board in cases of claimed religious exemption are basically these statutory provisions. A school board should first ascertain, under § 22.1-257(C), that the parents' objection is based on a "'bona fide religious training or belief'" and not on political, sociological, philosophical or purely personal views.

Parents who, for religious reasons, seek excusal from school attendance also must show to the local school board that public school attendance and its statutory equivalents, such as home instruction, do not accommodate their bona fide religious beliefs. See 1983-1984 Report of the Attorney General at 305. Therefore, after a school board determines that the criteria for a "'bona fide religious...belief'" under § 22.1-257(C) have been met, it must determine whether the statutory equivalents of public school attendance meet the parents' religious objections.

The school board may wish to provide the parents with the opportunity to present facts and materials which would aid the school board in making its determination. If the school board determines, on the basis of the parents' presentation or on the basis of its own inquiry, that the child must be excused on religious grounds under § 22.1-257(C), the child is exempt from the compulsory attendance laws in Virginia. See § 22.1-256(A)(4).

In response to your first question, therefore, the school board should use the criteria of § 22.1-257(C) to determine whether the claimed exemption is on the basis of a bona fide religious belief and then should determine whether the statutory alternatives to public school attendance are sufficient to meet that religious belief.

Concerning your second question, I am unable to determine on the facts of the case you recited whether exemption from the compulsory attendance laws is warranted. It appears that the parents have stated facts in their letter which could lead a school board to conclude only that public school attendance is reli-

November 26, 1984

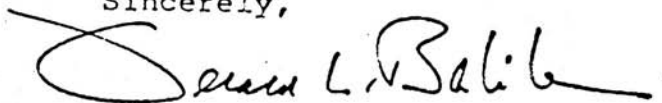
Page 3

giously objectionable to them. A school board would be unable to conclude, on the basis of the excerpted letter alone, that the statutory equivalents to public school attendance could not meet the parents' and child's needs. For instance, attendance at a private denominational school or home instruction may be acceptable to the parents' religious tenets. Nothing in their statement leads to the conclusion that the parents are opposed on religious grounds to these alternatives. The school board, therefore, may want to inquire further on the basis of the parents' initial statement before concluding that the religious exemption in § 22.1-257 does, or does not, apply in the case you presented. I am unable to make such a determination solely on the basis of the statement presented in the parents' letter.

Finally, a child who is subject to the compulsory school attendance laws but is absent from school, habitually and without justification, may be brought before the juvenile and domestic relations court as a "[c]hild in need of services." See § 16.1-228(F)(1). The court, in an appropriate case, may transfer custody of a child found to be in need of services to a relative or other person who is found qualified to care for the child. See § 16.1-279(C)(5)(a). The appropriateness of an order transferring custody in a particular case is a determination which, by law, rests within the sound discretion of the court. Certainly, in the case you presented, the school board must initially determine whether the exemption of § 22.1-257(C) applies before taking any court action. In answer to your third question, therefore, it is my opinion that, solely on the basis of the excerpted letter from the child's parents, there is an insufficient factual basis to conclude that the child in question is a child in need of services. Therefore, it appears to be inappropriate to seek the appointment of a custodian for this child on the facts which you presented.

With kindest regards, I am

Sincerely,



Gerald L. Baliles
Attorney General