



## Office of the Attorney General

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September 10, 2008

**OPINION**

**Ref: DPHSS 07-0310**

TO: Director, Department of Public Health and Social Services

FROM: Attorney General

SUBJECT: Religious Exemption for School Immunizations

This responds to your request for an opinion clarifying the intent of Title 10 G.C.A. 3322, which both requires that school students be vaccinated against certain diseases and creates a religious exemption from that requirement. Two different couples who are Roman Catholic have requested an exemption from immunization for their children, citing strongly held personal religious beliefs against the procedure. However, the Roman Catholic Church does not officially oppose immunizations. Therefore, you ask whether these families should be exempted since it appears that their personal beliefs are not completely consistent with those of their own church.

Section 3322 provides:

- (a) No student shall be permitted to attend any public or private school...within Guam unless evidence is presented...that the student child is free from any communicable diseases and has had all the required vaccinations or immunizations as the Director shall...[sic] order;...except that a exemption may be granted to a student in a case:
- (i) when the vaccination or immunization would be against his or her religious beliefs and would not constitute a contagious health risk for the public at large, as certified annually...by the Director...
  - (ii) upon certification by a parent or guardian of a student who is a minor, that such vaccination or immunization would be against their religious beliefs and would not constitute a contagious health risk for the public at large, as certified annually...by the Director...

Statutes requiring that public school students be immunized and granting exemptions from such a requirement are very common. Both the requirement of immunization and the

religious exemption have generally been upheld. Turner v. Liverpool. Cent. School, 186 F.Supp.2d 187 (N.D.N.Y. 2002); Boone v. Boozman, 217 F.Supp.2d 938 (E.D.Ark. 2002).

It is well established that the State may enact reasonable regulations to protect the public health and the public safety, and it cannot be questioned that compulsory immunization is a permissible exercise of the State's police power...

Boone v. Boozman, *supra*, at p. 954.

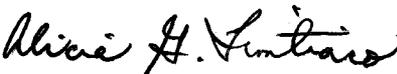
This case presents the question of whether the member of a particular church whose personal beliefs differ from that church's official teaching can claim the exemption for his child.

Section 3322(a) does not require that the individual's religious beliefs conform to that of his church to obtain an exemption. In fact, such a requirement would be constitutionally suspect. Boone v. Boozman, *supra*, struck down a statutory exemption that applied only to members of established religions. Section 3322(a) requires only that the immunization violate the individual's genuine beliefs.

...Yet the First Amendment's protections are not limited to those who are responding to the commands of a particular religious organization. *See, e.g. Frazee v. Illinois Dep't of Employment Sec.*, 489 U.S. 829, 830-34, 109 S.Ct. 1514, 1516-18, 103 L.Ed.2d 914 (1989)...

Boone v. Boozman, *supra*, at 947.

Therefore, it is our opinion that the families in question are entitled to the statutory exemption granted by Section 3322(a) and that their children should therefore not be compelled to undergo immunization before enrolling. It is their beliefs that matter, not the teachings of their church. If you have any questions about this opinion, please do not hesitate to contact us.

  
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Attorney General