

SOUTHEAST LAW INSTITUTE™

1200 Corporate Drive, Suite 107
Highway 280 - Meadow Brook Corporate Park
Birmingham, Alabama 35242

Telephone: (205) 408-8893
Facsimile: (205) 408-8894

E-mail: AEJ@SoutheastLawInstitute.org
www.southeastlawinstitute.org

SUBJECT: Home Schooling in Alabama

FROM: A. Eric Johnston, General Counsel

DATE: 5th Revision, October 16, 2009¹

INTRODUCTION

The state of Alabama has no specific legal provision described as home schooling, either in statutory or case law. A home schooling bill was first introduced in the Alabama Legislature in the Spring of 1985 but no action was taken on it. Another was introduced in the 1988 session that gained much support, but ultimately did not pass. Since that time, no bills have been introduced. There have only been two important cases on home schooling in the state of Alabama. Neither of these cases adequately addressed the issues involved in home schooling.

Home schoolers may utilize either of two statutory sections in Alabama law for home schooling. The provisions chosen depend upon the circumstances of the particular home schooling situation. One is the “private tutor” method and the other is the “satellite program” under the private and church school statutes. Neither of these methods have been judicially tested and therefore we cannot explain the extent of their applicability as may be finally determined by the Supreme Court of the State of Alabama.

The mechanism for assuring that children are attending school in Alabama is through the compulsory attendance laws. Each local public school board in the state has the authority and obligation to oversee the children in that school board’s prescribed area. There are 132 city and county boards of education. Consequently, although home schooling may be approved by one board, it could be disapproved by another. In fact, some private tutoring situations and satellite programs have been approved by local boards, while in other board jurisdictions, they have not been approved. This may be considered unequal or discriminatory application and enforcement of compulsory attendance laws. However, until a home schooling law is passed by the Legislature or the Supreme Court of Alabama rules on the two types of existing methods of home schooling, these inconsistencies will continue.

¹ June 12, 1985; 1st Revision, July 29, 1988; 2nd Revision, November 15, 1995; 3rd Revision, July 21, 1999; 4th Revision, January 6, 2006. Copyright 2009, Southeast Law Institute.

This memo is not intended to be legal advice. If you qualify, we can refer you to a participating attorney. Otherwise, you must obtain private legal advice.

It could also be possible that the State Board of Education would issue guidelines for home schooling. At this date, the State Board of Education has no plans, but does not seem to disfavor home schooling. Since the 1980's, the home schooling alternative has gained much credibility and there is better support.

THE PARENTAL DECISION

Under present Alabama law, when parents decide² to home school, there are two immediate questions that must be answered. First, which method of home schooling should be used and, second, should that parent notify the local school board of their decision and method.

Later in this memorandum we will examine more closely the applicable statutes to determine the proper method of home schooling. The ultimate parental decision would be made upon their understanding of these laws as applied to their particular circumstances. To make that decision easier, the two methods can be easily categorized. There may be however, some overlap depending upon a particular course of study or curriculum chosen.

One method of home schooling would be under the "private tutor" type of program as defined by the statute. Normally, this would include a course of study or curriculum obtained by the parents or formulated by them. It would not normally be administered or overseen by a private school or church. It would be under the supervision of the local board of education.

If the parents choose a course of study or curriculum administered by a private school or by a church, or a church school ministry of the church, then it would normally be considered a home satellite program. The private or church school through, its course of study and curriculum, would provide or identify a source to obtain the materials necessary for teaching, reporting requirements, testing, and other normal indicia of a typical educational program. There may be times of socialization and other group activities. The private or church school oversees all that is done and normally assists the parents if questions are raised by the state. If the parent chooses such a course of study or curriculum, then it could be classified under either the private school or the church school statutes. These statutes make specific reporting requirements for private schools and exemptions for church schools that will be discussed later.

When the parents determine which method they will follow, the next question, and perhaps one of the most important, is whether they will inform the local board of education. The law, under either situation, requires that. However, many home schoolers do not notify the local school board, but institute and continue their course of study. Quite often, the local board learns of the home schooling situation and makes inquiries. Normally, the boards have been favorable in allowing the home schooling provided the parents meet statutory requirements. However, there have been cases when the local board of education immediately began prosecution of violation of the compulsory attendance laws.

² The right of parents to decide the method of their child's education is beyond the scope of this memorandum. Southeast Law Institute can provide information on this by request.

The decision of whether to inform the board is one that must be made by parents based upon particular facts of their method of teaching and their personal beliefs, including sincerely held religious beliefs. Many home schoolers believe that parental rights should not be encroached on by the state or dictated by the state. Consequently, there is a collision of philosophical or theological beliefs.

The state often takes the position that it has the right to dictate educational requirements. Many of those requirements are reasonable and should be enforced. However, many of the philosophical beliefs of the state are read into existing statutory law which results in the abridgment of some parental rights. Perhaps the most onerous condition is that of the private tutor law requiring a certified teacher. This will be more closely examined in the private tutor discussion below.

Christians believe that Scripture teaches submission to governmental authorities (Romans 13:1-5) unless these authorities stop us from obeying God (evangelism-Acts 4, worship of an idol-Daniel 3, prayer-Daniel 6, murder-Exodus 1). Where God ordained authorities disobey His commands, Christians should first seek to appeal to the authority by lawful means (Paul's appeal to Felix-Acts 24), or seek to change the law or elect new authorities. Then Christians may appeal to Caesar (Acts 25:11). Finally, where these avenues have failed, Christians may be led to disobey. However, Romans 13 teaches responsibility to submit to governing authorities unless one must violate Scripture to do so. We will not defend an individual who flaunts God's authority.

ALABAMA CASE LAW

Where there is an allegation by the state that parents are violating the compulsory attendance laws, the legal proceedings usually instituted are pursuant to Section 12-15-13, 1975 *Code of Alabama*³, that charge the parent with causing the delinquency, dependence, or need of supervision of a minor child. There are two important Alabama cases on this subject. Both were intermediate level appeals courts and the Alabama Supreme Court has not spoken authoritatively on this subject.

The first case reported was *Hill v. State*, 381 So.2d 91 (Ala. Crim. App. 1979). This was an appeal from a conviction in the Circuit Court of Montgomery County for violation of § 12-15-13. The parents had been convicted under this statute because they had removed their seven year old son from the second grade in the public school. The father admitted that he was not teaching his son reading, spelling, mathematics or history. There was no program of vocational education. The court held that it was the object of the compulsory education law to assure that children be educated to a minimum educational level. The parents in this situation, according to the evidence, were not doing this.

The state does have an interest in seeing that children are at least given a minimum educational level. However, it should not be the prerogative of the state to require the parents to provide such education by any particular means. That decision should be left to the parents.

³ Unless otherwise cited, all Section references in this memorandum are to the 1975 *Code of Alabama*.

The parents in *Hill* objected to such education because of their religious beliefs. The court found that an accommodation of their beliefs would result in the child's inability to be self-supporting or discharge his duties and responsibilities as a citizen. The case was compared with *Yoder v. Wisconsin*, 406 U.S. 205 (1972), the Amish case, and the facts were found to be vastly different. It appears that the court in the *Hill* case may have been correct. We do not have an opportunity to review the evidence in the case, but based upon the brief recitation of facts and explanation in the decision, it appears that the court acted properly in finding the Hills guilty of contributing to the delinquency of their children.

Hill also examined the requirement of the three-day notice of § 16-28-16. This notice is required to be in writing and given to the parents to place their child in a school within three days. Otherwise, they will suffer criminal prosecution. The court held that the statute should be literally interpreted and the required notice must in fact be given.

The second reported case is *Jernigan v. State*, 412 So.2d 1242 (Ala. Crim. App. 1982). It is much more important and reveals a road map that should be followed by home schoolers. The Jernigans were also convicted under § 12-15-13 because they did not have their child enrolled in a school. In fact, the parents were Catholics and objected to the public school, but there was no parochial school in their county. They were using a Catholic correspondence course and adhered to a regular schedule of classes, providing more time of education than required by statute, but the mother was not a certified teacher and therefore did not qualify under the "private tutor" law. At this time, the Alabama church school law had not been passed by the Legislature.

The parents argued that the state must permit them to educate their children at home as an incident of their right to freedom of religion. The court again used the *Yoder* case and spoke of the balancing test, that is, the need to assure adequate education for children while at the same time seeking to accommodate sincerely held religious beliefs.

The court did not question the sincerity of the Jernigans' religious beliefs. However, the court did not believe that their religious beliefs were the same in the *Yoder* case and therefore would not accommodate those beliefs. Again, it appears to be a question of evidence presented to the court upon which it could make its determination. Apparently, there was not sufficient evidence to convince the court that the children were actually receiving an adequate education.

The court stated that the parents were attempting to exempt their children from all public education, but without showing that their home education was an adequate substitute. Also, the parents did not demonstrate that their home teachings were successful in preparing their children for life in modern society. The court was also concerned that there was no showing that the parent's way of life was inseparable from their religious beliefs or that they could replace the positive aspects of compulsory education by educating their children at home. Apparently, the court here was concerned with the social life of the children. One important factor that apparently was not proven by the parents was that there was a conflict between secular education and their religious values, beliefs, and the salvation of the children.

The court said it is within the state's power to require basic education, but that regulations must be reasonable and not extend to the point of compelling children to receive instruction from public schools or public school teachers only. But, the court found that even if children are educated in the home, that the state requirement of a certified teacher was reasonable.

Both of the above cases present problems for home schooling in Alabama. Neither were appealed to the Supreme Court of Alabama for further review. There have been a few later cases dealing with children not in public school and none address the real issue of home schooling. *E.g., Maas v. State*, 601 So.2d 209 (Ala.Crim.App. 1992). There is room for further judicial review of this subject.

Of note, the *Jernigan* case was settled shortly after the finding by the Court of Criminal Appeals because the church school statutes were passed by the Legislature. The local county board of education where the Jernigans lived approved their correspondence course as being administered by the Roman Catholic Church. This was not judicially determined, however, but was a settlement between the Jernigans and the Board of Education after the court made its ruling.

Both *Hill* and *Jernigan* were decided before home schooling was well defined and commonly practiced in Alabama. If another case arises, we would anticipate a more informed review of the issue and a favorable outcome.

STATUTORY LAW

Private Tutor Method

The "private tutor" law is found at § 16-28-5. It essentially has four main requirements: First, the person who is teaching must hold a certificate issued by the State Superintendent of Education. Secondly, there must be instruction in the several branches of study required to be taught in public schools. Thirdly, teaching must be at least three hours per day for 140 days each year between the hours of 8:00 a.m. and 4:00 p.m. Fourthly, a statement must be filed showing the child who is being instructed, the subjects taught, and the hours of instruction.

Private tutoring would normally be when there is no private or church school program involved. Forms are provided by the state giving the information required by the statute. Except for the certified teacher requirement, the other requirements appear to be reasonable and valid under the Constitution. The state does have an interest to see that children are being educated and that they are receiving basic education. This is done by requiring that basic subjects be taught and attendance reports be given in order to assure the state that the children are not truant or otherwise being forced to work in violation of child labor laws. This is not necessarily an encroachment by the state, but rather simply a mechanism to assure uniformity of education in the state.

The requirement that does cause problems is that of a certified teacher. Most home schooling parents are not certified teachers. They may not have the time, money or ability to obtain a certificate. Some may have religious based objection to this much state control.

Nevertheless, this requirement exists and must be addressed. If the home schooler elects the private tutor method, then the decision of whether to notify the state becomes important because the state will require information concerning whether the teacher is in fact certified. This question will no doubt be raised because of the apparent large number of home schoolers in the state using the private tutor method, and ultimately it must be tested in the courts. We believe that the certified teacher requirement is unconstitutional and unnecessary.

Some parents have avoided this issue by having a certified teacher be responsible for overseeing their home tutor program. The certified teacher completes the necessary forms and supervises the instruction while the parent carries on the day-to-day teaching. This has apparently been acceptable to some school boards and unquestioned by others.

Under the private tutor section, there is a requirement of teaching certain subjects. Section 16-8-28 requires that the county board of education prescribe the courses of study. Section 16-35-5 requires in every elementary school the teaching of reading, spelling, writing, arithmetic, oral and written English, geography, history of the United States and Alabama, elementary science, health education, physical education and other studies as prescribed by the State Board of Education. These are normal and usual subjects that one would normally expect to find being taught in an elementary school. These are probably the subjects that the local board of education would require to be taught under the private tutor method.

The parent should normally be able to meet the requirements of the private tutor method, except for the certified teacher provision. There are some parents who do not permit a certified teacher to oversee their program because it is considered to be state control. They reason if you permit the state to require a certified teacher, then you are opening the door for further or other state requirements at a later time. There appears to be a valid argument. However, if you have no objection to a certified teacher overseeing your program, then you will probably be able to home school without difficulty. If you will not permit a certified teacher to oversee the program, then you run the risk of criminal prosecution by the state.

Private School Method

Private schools exist under Alabama law. These are nonpublic and nonreligious schools that operate on a secular basis. Section 16-1-11 recognizes these private schools, but requires that certain reports be made to the Department of Education.

There is no prohibition of the operation of such a private school, so long as the proper reports are made. These private schools are not directly under state regulation and do not directly receive state funds.

Church School Method

Effective in January, 1980, the Alabama Legislature amended certain statutes creating an exemption for church schools. Section 16-28-1 included a definition for church schools. Section 16-28-3 recognizes “church school” as a school that fulfills attendance requirements. Other statutes that dealt with attendance and reporting were also amended. The purpose for these changes was to allow church schools, i.e., mainly Christian schools, in the state of Alabama, to be exempt from certain unconstitutional state authority. There had been conflicts between the State Board of Education, local school boards and church schools. The amendments served to remove those unconstitutional burdens on church schools.

Section 16-28-3 requires every child between the ages of seven and 17 to attend school. Section 16-28-4(a) permits a child who is six years of age on or before September 1 or the date school begins to attend school. Therefore, if at the beginning of the school year, the child is six years of age, he or she may attend, but if seven years of age, he or she must attend.

Section 16-1-11 requires private schools to register and supply certain information on courses of study, enrollment, attendance, *etcetera* with the Department of Education. However, church schools are exempt.

In order to meet compulsory attendance requirements, § 16-28-7 requires attendance reporting by the church school. The enrollment and attendance of a child is filed with the local public school superintendent by the parent on a form provided by the superintendent. The form should be countersigned by the administrator of the church school. When the child ceases attendance at the church school, the church school is to notify the public school superintendent that the child is no longer in attendance there.

Section 16-28-8 requires that the principal teacher of the church school keep an attendance register showing the enrollment of the school and the absence of any enrolled child. It appears that regular reporting requirements by the church school are not necessary.

Section 16-28-15 requires any absence at church school to be explained. Therefore, if the child is not present in school or attending classes on an instruction day, then an explanation should be included in his record on why he was not in attendance.

The records of attendance in church schools, although not regularly filed with the state or any subdivision thereof, should be kept in the event there is any questions of truancy of a child. This requirement is necessary in order to enforce the compulsory attendance laws. The state has an interest in being sure that children are in fact attending school, although it may be a church school that is exempt from the attendance reporting requirements of other private and public schools.

Satellite Programs in Private and Church Schools

Neither the private nor church school method explained above are significantly regulated by the state. The reporting requirements are the basic differences. Both of these programs are

free to determine curricula and other requirements. The only caveat is that they meet the core requirements for a basic public education in Alabama. This is important in order to get credit if a student transfers between such nonpublic and public schools, expects to attend college, and for related requirements in the total modern education system.

Alabama law recognizes the right for a satellite program in any public or nonpublic school. The satellite program is a term that has been commonly known to mean a correspondence, residential, home school or non-classroom education method. We are aware of a number of church satellite programs, though we do not have firsthand knowledge of any private school satellite program.

Section 16-46-1, *et sequel*, provides for regulation of off campus or non-classroom instruction. It recognizes availability through private and church schools. These statutes provide for certain regulation and licensing.

Section 16-46-1 includes definitions of a course of instruction “whether conducted in person, by mail, or by any other method,” by private school or church school. Section 16-46-2 recognizes that those receiving courses of instruction in this manner “should be afforded additional protection under the laws of this state.”

What this means is that private schools may offer off campus satellite programs, but will still need to report under Section 16-1-11 and meet other requirements of Section 16-46-1, *et sequel*. Section 16-46-3 exempts church schools from this regulation and they maintain their exemption from any reporting and regulation, as described in the statutes noted above.

The foregoing analysis is statutory only. There has been no judicial interpretation of any of these statutes. However, we believe it is the clear and expressed intent of the Legislature that those choosing these forms of education are entitled to protection under the law. Private schools simply inform the Department of Education of their existence and some basic information, while church schools report only attendance and are otherwise exempt.

It would appear that if properly administered, these programs would come within the intent and meaning of applicable law. However, if such a program is to be considered, it should be studied very carefully and competent legal advice obtained.

OTHER METHODS

The tutor, private, and church satellite methods can be described with some certainty as being legal. There are variations or other methods which may be acceptable, but there will be the possibility of a significant difference of opinion among local school authorities.

One of the variations has been the home school program operated separately from a church, but in the form of a non-profit religious entity not defined as a church. Because Alabama has no statute defining the home school and no church is involved, this leaves open the question of the legal status of the school. It likely would be classified as a private school. If this

method is being utilized, it is imperative that adequate records are kept, including regular test scores and attendance.

Some of the separate home school organizations establish themselves as a “church.” We believe some of these may be churches meeting a legal definition and would therefore qualify under the church school statute. If the organization in fact holds church services and engages in other sacerdotal activities, then it strengthens its position as a church and therefore its school as a church school, though being conducted in homes. On the other hand, if the church has little semblance of what we normally perceive a church to be, it could cause criticism. The issue of what a church is has been litigated in many cases and in different contexts. In Alabama, we had a case that involved a school run informally by the church, because the church could not operate a school according to its dogma. This was accepted by the local school board. Another example would be churches that adhere to a organization from which they receive literature on a national basis, though they have no organized church in the state of Alabama. As part of their ministry, they operate a school. This has been accepted by certain local public school authorities.

The final method that some use is the stand alone home school. This type of arrangement would be the one more likely to have criticism by local public school authorities. There are a number of constitutional arguments that can be made to protect this parental choice of education. However, cases in other states have had inconsistent outcomes. There has been no court case in Alabama which would give any direction on the acceptability of this choice. In other words, parents who chose this method of home schooling may subject themselves to a greater chance of legal problems.

ENFORCEMENT AND PENALTIES

Compulsory attendance laws are enforced by placing the burden upon the parent to assure that his child is being educated in conformity with state requirements. Therefore, if a child is truant from school without proper reason or explanation, the parent is responsible.

Under § 12-15-13, failure by the parent to have his child in school as required by the attendance law is deemed to be encouraging, causing and contributing to the delinquency, dependency or need of supervision of such child. Any person who disregards this law is guilty of a misdemeanor and can be fined not more than \$500.00 or sentenced to hard labor for the county for a period not to exceed six months or both.

If a child is determined by the court to be a “child in need of supervision,” he or she can be taken from the parent and put into a state foster home. This is a very traumatic event and difficult to defend legally. This is one very important reason why early competent legal advice is suggested.

The failure of a parent to properly submit his child to jurisdiction of the state can result in contempt citations which would result in fines or imprisonment for a period of time as may be defined by the court. These eventualities can be avoided if the parent makes every effort to follow the state requirements which are constitutionally and scripturally permissible. If problems do occur, the parent should get competent legal assistance immediately.

Because of some of the uncertainties of home education in Alabama and the biblical mandate to honor governmental authority, one thing to keep in mind is to always take a reasonable and friendly approach with the public authorities. In almost every instance, problems can be resolved or punishments and fines avoided if the parent makes an attempt to work with authorities. This is not to say that the parent should succumb to unconstitutional or arbitrary requirements, but that an effort be made to understand constitutionally permissible requirements and attempt to work with public authorities to assure that there are no misunderstandings and the problems resolved on an agreeable basis. Although the state is often considered hostile, one can find many reasonable persons representing the state's interest. This is not to say, however, that some unreasonable representatives of the state may be encountered. If any problems come up, then legal assistance is strongly recommended.

Finally, § 16-28-16 requires the local school board attendance officer to investigate non-enrollment and non-attendance of children. If after an investigation the attendance officer finds no valid excuse for the child not being in school, then a written three day notice is required from the officer to the parent stating that the child is not properly enrolled in a school and that this should be done or there may be criminal prosecution. This would ordinarily give a home schooling parent the opportunity to obtain legal counsel and contact the attendance officer before a criminal prosecution is started. This would hopefully preclude an adversary position with the state and avoid court proceedings.

OTHER CONSIDERATIONS

Regardless of what approach the home schooler takes, there are several things that should always be done. A good basic curriculum should be used that covers, at least, those subjects that have been listed above. A record of the subjects taught should be kept, as well as grades, copies of tests, books, and other information.

You should complete and keep attendance and grade reporting forms. Check with a local private or church school for proper forms. For absences, i.e., during times of illness, vacation, or otherwise, you should put in your file an explanation for the reasons for the absence and the date.

You should have periodic testing done by reputable testing organizations or test administrators (private or church schools may be able to assist you) to not only be sure that you are giving your child an adequate education, but also to have a record that you are in fact giving an adequate education if there are any court proceedings or review by state authorities.

The foregoing are just some basic suggestions. You may know of others and you should institute any safeguards that you feel would be necessary or advisable. Keeping proper records for attendance and educational purposes are mandatory.

At any time you receive any communication from any board of education or state agency, you should respond, cooperate with them insofar as possible, and seek legal assistance if you feel it is necessary. Attendance is one of the main requirements. Be sure that you have class at least

the minimum amount of time as required in the private tutoring statute, whether you are in fact doing the private tutor, private school or the church school satellite method.

SCHOOL TRANSFER ISSUES

Parents must keep in mind the possibility of their child transferring between public and nonpublic schools. This could occur more than one time. Events such as moving into a new school district, a student having learning or discipline problems in a school, or safety or other issues may cause a change of schools.

Transferring from a nonpublic or a public school to a nonpublic school presents only issues of the nonpublic schools admission requirements. Whether the nonpublic school into which you are transferring is a home school satellite of a private or church school, a church school or a private school, it will have policies about when and how a student may transfer into it. Usually, grade placement is not an issue.

On the other hand, when a student transfers from a nonpublic school, regardless of what type, into a public school, there are state regulations with which the student must comply. Those regulations deal specifically with transferring at grade level and whether the transferring nonpublic school student's records are adequate.

Transferring at grade level means the nonpublic school student wishes to transfer into the public school at grade level. If the nonpublic school is an accredited school, that is a school that has been accredited by an agency recognized by the state, then the transfer usually presents no problem. The student is able to transfer based on his or her current records. On the other hand, if the nonpublic school is non-accredited, more scrutiny is given to school records.

Rule 290-3-1-.02(7)(k), *Alabama Administrative Code*, provides the requirements for a student transferring from a nonpublic non-accredited school to a public school. In order to transfer, the student's work in the nonpublic school is reviewed. Courses are divided into elective courses and core courses.

Elective courses are transferred at grade level without validation. That is, they are accepted at face value. Credit for core courses, *viz.*, English, mathematics, science and social studies, are transferred based on "all official records and nationally standardized tests." If there are no problems, the student would be placed at grade level.

Contested credit for core courses, however, can provide a significant problem. If school officials do not place the student at grade level, parents will usually disagree. The prerogative is given by the Rule for public school officials to administer the public school's most recent semester tests for any or all of the core courses. Some public schools administrators have abused this Rule and demand testing. As you might expect, passing last year's core courses, when the student did not sit under a particular teacher, can be difficult. If the student fails the test, he will not receive credit for the course.

While a parent may not ever anticipate enrolling his child in a public school, the possibility exists. Therefore, adequate records must be kept in order to meet the very onerous requirements of the transfer rule.

CONTINUING DEVELOPMENTS

When this memo was first done in 1985, the numbers of parents who were home schooling was growing, but there was much uncertainty concerning their legal rights and acceptance by the education community. Since that time, there has been continuing growth of home school numbers and much of the uncertainty appears to have diminished. This is not to say, however, there could be future problems.

Because there is no statute clearly stating the right to home school, there always remains a question of whether there may be legal problems. A great deal depends on those who are in positions of authority, *viz.*, the Attorney General, Superintendent of the State Department of Education and State Board of Education members, and the Governor. Because some of these persons are favorable to home schooling, laws that are indirectly related to home schooling have recognized that option. For example, the Alabama Child Protection Act of 1999 exempts home schools from background check regulation. Changes in leadership could affect attitudes toward home schooling.

Of course, the ideal situation would be to have an Alabama statute permitting home schooling. To have such a statute would require a substantial lobbying effort. Until there is such an effort, it is unlikely the legislature will address the subject of home schooling.

The Alabama Constitution was amended in 1998 to provide for the Alabama Religious Freedom Amendment, Amendment 622, 1901 Constitution of Alabama. This amendment provides additional protection for religious based home schooling choices. The Amendment provides that government may not burden a religious choice unless it has a compelling interest and even then it must regulate it in the least restrictive way. This is an additional measure of protection for choosing home schooling on religious grounds, though it is not an absolute protection.

CONCLUSION

Let us reiterate that the law of home schooling in Alabama is unsettled. Hopefully, home schoolers will properly administer their home schools and state authorities will be agreeable to working with home schoolers in order to avoid problems and, particularly, court proceedings. Those court proceedings that have been encountered around the state are usually a result of improper preparation of failure of parents to recognize certain constitutionally permissible state requirements.

Through the years, a number of statutes passed by the legislature have made recognition of home schools in various contexts. While this does not establish a right to home school as such, it is evidence of the growing acceptance of home school as a valid choice. It is reasonable

to say, that while there is no specific provision for or recognition of home school in Alabama law, neither is there a prohibition.

Law is complex and this area is no exception. This memorandum is for your information, but should not be accepted or used as legal advice. If you require legal representation or advice, please contact us. If you meet our guidelines, we may be able to refer you to one of our participating attorneys. Otherwise, you must obtain private legal counsel.