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A Study of the Legal Relationship Between Public and Private Schools

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A STUDY OF THE LEGAL RELATIONSHIP BETWEEN PUBLIC AND PRIVATE SCHOOLS

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CHAPTER I

INTRODUCTION

In 1930 we had enrolled approximately two million elementary school pupils in seven thousand private and parochial schools in our country. In addition to this there were enrolled in round numbers three hundred thousand secondary school pupils in twenty-seven hundred private and parochial high schools and academies.[1] While these schools have not experienced as phenomenal a growth as our public schools, nevertheless they are increasing in numbers in every section of the country.

In fourteen states and the District of Columbia the private elementary schools enroll more than ten per cent of the combined enrollment of both the private and parochial schools.[2] New Hampshire and Rhode Island enroll more than twenty-one per cent of their elementary pupils in private schools. Massachusetts, Delaware, Connecticut, Wisconsin, and New York enroll between fourteen and sixteen per cent in the private schools; Pennsylvania, New Jersey, Illinois, Ohio and the District of Columbia from twelve to fourteen per cent; Maine, Michigan, and Maryland from ten

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1. Elementary School Journal, 34: 173-4, N. 1933.
2. Ibid

to twelve per cent. We find that ninety-one per cent of all our private schools are affiliated with some religious denomination while only three per cent are non-sectarian schools.

This growth in our private schools shows that there are people who still prefer to send their children to private rather than to public schools whether the reason for such preference is religious or otherwise. The sponsors of these private schools sometimes feel that an undue tax burden is placed upon them since they are required to help support our public schools besides maintaining their own educational institutions. Some of them feel that since the private schools are required to meet the same standards and regulations as the public schools, in respect to courses of study, certification, equipment and supplies, and the numerous other regulations, that they should be entitled to their proportionate share of state aid or revenue. They feel that they should receive at least the tuition paid by the state for the non-resident high school pupils attending their schools. Some of our county superintendents are requested annually - and duly tempted - to permit questionable legal adjustments, between public and private schools in their counties in order that prominent groups of individuals may gain convenient advan-

tages. Some of them have felt justified in granting these special requests; numerous others have failed at re-election because they saw fit to act otherwise. It is possible that the constitutional provision which makes our present system necessary does serve an unjust hardship upon supporters of private schools. The province of Quebec provides for an arrangement whereby the Superintendent of Public Instruction is required to prorate equally the school revenues to private and public schools on the basis of enrollment. Since a similar system is constitutionally impossible here, school officers, County Superintendents and members of the State Department of Public Instruction are met frequently with the difficult task of drawing the precise dividing line between the legal relationship and the authority of the two classes of schools.

Purpose

It is the purpose of this study to set forth as clearly as possible just where the courts of our country have drawn the dividing line between the legal authority of the public and the private schools. No attempt was made to deal with those phases of our private schools which do not have a direct relationship with the public schools. It is the hope of the author that this study will help, in a small measure, all those who work in the educational field, and

more especially those who are called upon to interpret and decide questions involving the legal relationship of these schools.

Procedure

In securing the necessary information for this study State bulletins or State Schools Laws; the American Digest System; Corpus Juris; and various Secondary sources such as text books, bulletins and magazines were utilized. The State bulletins were used to ascertain what constitutional provisions and statutes govern the legal procedure in the different states. The resources of the Law Library were used,—the index to the Digest System, Corpus Juris and the other available sources of information — to find out what cases, dealing with this question, had come before our courts. The major cases were briefed while the minor cases were referred to for supplementary information. On the basis of the information gathered from all these cases and the various secondary sources, this thesis was written.

CHAPTER II

GENERAL RELATIONSHIP BETWEEN PUBLIC AND PRIVATE SCHOOLS

(A) Definitions and General Classification. A public schools has been defined as one that is common to all children of a certain specified age and capacity; it is free and under the control of the qualified voters of the district. A private school is one managed and supported by individuals or a private organization. Public schools are a part of our various state educational systems performing a public duty purely governmental in character.[1] They are established and regulated chiefly by the legislative departments of a state or by someone duly authorized or appointed by them for that purpose. Private schools do not assume any state responsibility for education and are dependent wholly upon private individuals or groups for their maintenance and support.

A private school may either be incorporated or unincorporated. If it incorporates, it may choose to be a private stock corporation, a public corporation, or a quasi-public corporation. An incorporated school enjoys practically the same privileges as any other corporation. It may bring suit and be sued.[2] The corporation, and not

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1. See Weltzin, J. F., The Legal Authority of the American Public School, Ch. I
2. See Weltzin, J. F., The Legal Authority of the American Public School, Ch. II
   Trussler, H. R., Essentials of School Law, Ch. VIII

its individual members, are responsible for debts contracted. A religious society, which has founded an educational institution, is divested of all title to the property and of the power of management by the incorporation of a board of trustees under a charter which confers upon them the power to hold the property and to manage all the affairs of the school.[3] If a private school association chooses to remain unincorporated each member of the association is liable for the debts incurred by the association during his period of membership. In the words of Trussler, "The individual Liability of the members of an unincorporated educational institution is similar to the individual liability of the members of a class of students for debts contracted as the result of a class vote, since in each case they may be regarded as an association; and it has been held that members of a college class voting, or assenting to the vote whereby the publication of a class book is ordered, are personally liable for the expense of it at the suit of one who has printed the book under a contract with a member of the class alleged to be the business manager of the publication."[4] Thus we see that the chief difference between these two classes of schools is their general organization and control. Both may exist for practically

3. Union Baptist Assoc. v. Hunn 7 Tex. Civ. A249, 26 S.W. 755
4. Trussler, H. R., Essentials of School Law, p. 241

the same purposes; their curriculi, terms of admission, rules and regulations may be identical; their only difference is their method of procedure.

(B) Compulsory and School Attendance Laws. By nature of their function public schools are required to accept any and all pupils who apply for admission since this right is given by the state without unreasonable regulations or discriminations. The private schools are at liberty to select whom they please as pupils and may discriminate by age, sex, intelligence, or any other barriers the directors may decide to set up. This holds true unless a special contract has been given by the state whereby they must provide certain special educational functions for the state, and which obligates them to accept all applicants upon equal terms and without unreasonable discrimination. All states have compulsory school attendance laws.[5] It has been consistently held by our courts that regular school attendance for a required number of weeks in a private or parochial school meets the compulsory school attendance regulations, provided the school meets essentially the same requirements as those demanded of the public schools. Twenty-three states require that special permission must be had from the state department.[6] Several states have special statutes

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5. Elementary School Journal, 34: 173-4 N. '33
6. Ibid

setting forth specific requirements which must be met by private schools in order to fully meet the school attendance laws. Thus,a California statute setting forth the exceptions to the compulsory school attendance, states in part: "Children who are being instructed in a private full-time day school by persons capable of teaching: provided, that such school shall be taught in the English language and shall offer instruction in the several branches of study required to be taught in the public schools of the state; and provided, further that the attendance of such pupils shall be kept by private school authorities in a register, such record of attendance to indicate clearly every absence of the pupil from school for a half day or more,during each day that school is maintained during the year."[7] Other states have similar statutes or regulations by state departments of public instruction until today such statutes have become generally accepted as the law.

(C) In the Oregon Case, Society of Sisters v. Pierce, the question as to just how far a state may go in the regulation of school attendance was partly determined. In 1922 the Oregon state legislature passed a statute requiring all children of the state between the ages of 8

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7. Act 7487, Sec. 3, General School Laws, 1927

and 16 to attend the public schools. A penalty was also provided for those who failed to comply with this statute. Here was a definite attempt on the part of the state to dictate to the individual parents as to what type of school their children must attend. Here was the first direct attempt on the part of a state government to go so far as to not only require that all children must attend school but that they must attend a specific kind of school. This case was appealed to the United States Supreme Court, where, unfortunately, it was not tried on its own merits: the real issue was averted and two minor questions were presented for decision, namely (1) whether the suit was prematurely brought and (2) whether the statute was unconstitutional. The court held that action was not prematurely brought because the nature of operating a private school was such that persistent injury would result to the school should a decision be withheld.

The Court said: "It is at once obvious that, in the very nature of the upbuilding and maintenance of parochial and private schools, when the attendance, prospective as well as acquired is taken away and rendered unlawful, it will destroy the pursuit or occupation. The drawing away of complainant's patronage has set in and will continue with increasing progession until the day when all will be lost. This is not only the alleged result of the passage of the

act, but it is the most natural and consequential thing to expect. The damage, of course, is irreparable and compensation does not afford adequate relief. The injury being of a quality that is continuous and accelerating, it must be stayed if the ends of justice are to be met."[8]

Regarding the matter of the constitutionality of the statute, the court held that it was unconstitutional because it violated the fourteenth amendment. The court stated in effect that individuals and organizations had in good faith invested large sums in these private school enterprises and to prohibit the children from attending them would be a deprivation of property without due process of law. They argued further that private and parochial schools have existed for a long period of time and that they have the educational interests of youth at heart equally as much as does the public schools. As long as they are under the direct supervision of the state educational authorities there can be no harm in their existence. It was unfortunate that this case was not determined on its own merits in order that we might know just how far our courts will permit the state to regulate education. The court alluded to the real issue in the concluding remarks when it said, "The melting pot idea, applied to the common schools of the state, as an incentive for the adoption of the act,

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8. Society of Sisters v. Pierce, 510, 69 U.S. (L. Ed.) 1070, 45 S.C., 296 Fed. Rep. 928

is an extravagance in simile. A careful analysis of the attendance of children of school age, foreign-born and of foreign-born parentage at private schools, as compared with the whole attendance at school, publid and private, would undoubtedly show that the number is negligible, and the assimilation problem could afford no reasonable basis for the adoption of the measure." One would conclude from this type of reasoning that the court was inclined to reason in favor of the continued operation of the private schools. Whether a similar case will come again before our courts is problematic.

CHAPTER III

SPENDING PUBLIC FUNDS FOR PRIVATE SCHOOLS

(A) How Public Funds May Be Spent. Whenever state constitutions specifically prohibit the spending of public money for sectarian purposes, as they generally do, no appropriations whatsoever may be used for schools which can be classified as giving sectarian instruction.[9] The question then becomes one of determining sectarian instruction. It has been held that, "to teach the existence of a Supreme Being of infinite wisdom, power, and goodness, and that it is the highest duty of all men to adore, obey, and love Him is not sectarian, because all religious sects so believe and teach. Instruction becomes sectarian when it goes further and inculcates doctrines or dogma concerning which the religious sects are in conflict."[10] Schools controlled and operated by a Church body are necessarily sectarian regardless of whether or not it is optional with a student or whether or not he receives this instruction. If the instruction given to those electing to take it is sectarian, the school is sectarian. Where apprivate school is not giving sectarian instruction and where the state constitution does not specifically forbid it, the state

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9. Cook Co. v. Chicago Ind. School for Girls, 125 Ill. 540, 18 N.E. 183; 1 L.R.A. 437
10. State v. Dist. Board etc., City of Edgerton, 76 Wis. 177, 44 N.W. 967

may appropriate money for its support, as for instance, the courts sustained aggrant of state land in aid of the German-American Seminary of Detroit, Michigan.[11] However, sums of school money specifically provided by constitutional provision for school purposes may not be used for private school purposes. The courts have held that where state constitutions do not prohibit such action the state or any of its subdivisions may employ individual or corporations to render specific services for it. An outstanding example of this type of service is found in the case of Cornell University, a private educational institution receiving a direct state appropriation for the purposes of managing the state forest lands, provided that neither the credit nor the money of the state shall be given or loaned to any corporation or private undertaking. In this instance the Court explained: "We have here a public statute whose sole aim is to promote education in the art of forestry; an object in which every citizen of the state has a vital interest. The statute provides a perfect scheme of state control,constitutes the University its agent, requires frequent reports, and as amended in 1900 confers upon the comptroller additional powers of financial supervision. The power sought to be exercised by the state in the present instance is supported not only by judicial authority, but by many instances where

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11. Keifer v. German-American Seminary, 46 Mich. 636, 10 N.W. 50

its exercise has existed for many years and remains unchanged."[13]

(B) Taxation for Private Schools. The records contain three outstanding court cases which have held definitely that state legislatures may not by special statutes raise money by taxation for private educational institutions. In Wisconsin a legislative act authorized a town to raise by taxation a sum of money for the use and benefit of a private educational institution. The Supreme Court held this act unconstitutional arguing that "The fact that it is an institution incorporated by an act of the legislature, does not change its character in this respect. It is but a most frivolous pretext for giving to a corporation, where there is no certain and definite personal responsibility, money exacted from the taxpayers, which a just and honorable man engaged in the same business would hesitate to receive, though paid without opposition and to enforce the payment of which, against the will of the taxpayers, he would never think of resorting to coercive measures, provided the same were unlawful."[13]

A second and similar case is where an Illinois constitutional provision authorizes the corporate authorities

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12. People v. Brooklyn Cooperage Co. 187 N.Y. 142; 79 N.E. 866
13. Curtiss Administrator v. Whipple et al., 24 Wis. 350, 1 Am. Rep. 187

of counties,townships, school districts, cities, towns, and villages to assess and collect taxes for corporate purposes. The legislature accepted a private schoolhouse, provided for the election of trustees and invested them with taxing power for the support of a school to be maintained there. The court held this act unconstitutional on the grounds that it was not organized in the manner intended and provided for by the constitution. They said that, "To hold that this school district in question comes within the constitutional intendment of 'school districts', would be to enable the legislature to confer the taxing power upon any college, seminary or private school of learning withih the state, by constituting about it an arbitrary district, providing for the election of trustees therein, and bestowing upon them the taxing power for the support of the institutions. The bequest of $4,000 by the will of Silas Hamilton, for the establishment of a primary school, $2,000 thereof to be appropriated to the erection of a building suitable for a school and for a place of public worship, was not made to, nor did it belong to, the state; and the same is truw of the lot of land procured by his executors, and the building erected by them thereon. It was not public property, but private property. The incorporation of Hamilton primary school was not for governmental purposes,nor for any purpose belonging to the

carrying out of the common school system of the state, but for the purpose of the administration of private charity. It is but a private corporation, and under the constitution of 1848, as we conceive, the legislature could not rightfully invest its corporate officers with the power of taxation. We hold the tax in question to be unauthorized and invalid."[14]

A third similar case was one where a town in Massachusetts raised money by taxation for the support of a school which was founded by a certain religious society and was governed by trustees, the majority of whom were chosen by the citizens of the town. The courts held that such taxation violated that provision of the constitution which stated that, "All moneys raised by taxation in the towns and cities for the support of public schools, and all moneys which may be appropriated by the state for the support of common schools, shall be applied to, and expended in, no other school than those which are donducted according to law, under the order and superintendance of the authorities of the town or city in which the money is to be expanded."[15] The fact that this school was not under direct control of the officers of the town was its chief objection. All of the above cases seem to indicate clearly that moneys raised by taxation may not be expended for private schools.

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14. People v. McAdams, 82 Ill. 356
15. Jenkins et al v. Inhabitants of Andover,, 103 Mass. 94

Only one court decision seems to hold a slightly different opinion. The Supreme Court of New Hampshire held that a town was legally authorized to raise money by taxation for the erection of a school building and to lease the same to a private academy for school purposes without rent. The reasoning of the court was substantially to the effect that a tax raised for a free public school and a free public schoolhouse is raised for a public purpose, and the purpose is not made private by a mere exaction of tuition. It stipulated that the building must continue to remain open to the public, free from unreasonable discrimination, and the responsibility for the trustees of the property was placed directly upon the public. The Court said: "This construction of the statute by implication of law made a controlling stipulation of the lease, establishes the absolute and definite personal responsibility of the trustees, and the direct and exclusive nature of the public interest, the want of which was the ground of the decision in Curtis v. Whipple."[16]

(C) Leasing Private Building. This question has come up most often in cases where school boards have attempted to rent church properties for public school purposes and to pay the rents from public funds. The majority of evidence

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16. Holt et al v. Town of Astrim. 64 N.H. 284, 9 Atl. 389

holds that school funds may not be used for these purposes and the type of reasoning most generally found can best be illustrated in the following cases:

Knowlton v. Baumhover et al, an Iowa case wherein the school district discontinued its own school and placed its children in a two-story Catholic parochial school where Catholic teachers, dressed in regular garb and regalia, taught the classes and where regular instruction was given in the Bible and the catechism. The school was supported by public funds and the directors were enjoined to discontinue appropriating or paying out money for these purposes. Judge Weaver, in writing the opinion, said in part, "It is the duty of the court to enjoin defendants and their successors in office from permitting or allowing religious or sectarian instruction of any kind to be provided in the public school wherever the same may be established."[17]

Again in a similar Kentucky case, Holbert v. Sparks, the president of Vanceburg Academy was authorized by act of January 12, 1872, to take charge of the common school for District #8 in Lewis county, have instruction therein, and draw one half of the public school money to which the school was entitled. The Court held this procedure illegal and the money was refunded. The Court reasoned thus: "If

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17. Knowlton v. Baumhover et al. 166 N.W. 202, 182 Iowa 691

the unauthorized action of Holbert can be ratified and money due to a district in Lewis County turned over to him and his employees, instead of being paid out to those entitled to it under the general law, the same thing can be done in every district in the state, and the system of common schools practically destroyed."[18]

We have several cases where school boards have been restrained from using school buildings for religious worship. In a Michigan case, which the court upheld, a writ of mandamus was issued against the board to compel it to stop religious meetings in the schoolhouse.

The one outstanding case holding the opposite viewpoint was that of Millard v. Board of Education wherein it was held that the Board of Education could rent the basement of the Roman Catholic church and use it for school purposes in view of the fact that the district previously had voted down a proposition to bond for a new school building. Judge Craig, quoted in part, said, "Money to build could not be raised because the voters had defeated the proposition. The school was required to be kept in operation --- What building the board should lease for school purposes is a matter for that body to determine and not for the courts to decide. After the building is procured of course the school will

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18. Holbert v. Sparks, 72 Ky. (9 Bush) 259, 121 Ill. 297, 10 N.E. 669

have to be conducted in the same manner that other free schools of the state are conducted regardless of any opinion that may be entertained by the owner of the building in regard to the property of any school exercises."[19]

One other case merits some consideration. A Kentucky decision which would seem to be a borderline case, deals with a situation where two rooms were rented from Stanton College, a Presbyterian school, and were used for grade instruction. School funds were used to pay salaries for these teachers. It was held that this arrangement did not violate constitutional section 189 which provides that no part of an educational fund shall be appropriated to aid any church, sectarian, or denominational school. It was stated that, "The most that can be said is that the arrangement was one for the mutual convenience of the parties, and neither such conveniences nor the ultimate benefit which Stanton College might derive by way of increased attendance on the part of the pupils formerly attending the grade school district, would constitute the appropriation or use of any portion of the school fund in aid of a sectarian or denominational school."[20]

These cases would indicate that there is a continuous

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19. Williams et al v. Board of Trustees of Stanton Graded Common School, 172 Ky. 133, 188 S.W. 1058

20. Millard v. Board of Education, 121 Ill. 297, 10 N.E. 669

attempt being made to carefully guard public school funds from being spent for private schools. The courts have emphasized repeatedly the danger of setting a precedent which might eventually lead to an abuse of the taxing power of the state.

(D) Payment of Tuition to Private Schools. Nowhere in the statutes or in the court decisions is there any information directly on the matter of whether or not it is permissible for public school districts to pay tuition to private schools. This matter seems to be covered by the statutes and constitutional provisions which prohibit the payment of public money for sectarian purposes. It would seem reasonable then to assume that unless there are special statutes expressly forbidding it, tuition may be paid by school districts to non-sectarian private schools.

(E) Private Schools Not Exempt from Right of Eminent Domain. While the courts have held uniformly that public schools may be authorized to acquire property by the exercise of eminent domain, the majority of opinion seems to hold that private schools may not do so. One of the most outstanding cases dealing with this phase of the authority of private schools is that of Connecticut College for Women v. Calvert.[21] In this decision the college was denied the

21. Conn. College for Women v. Calvert, 87 Conn. 421, 88 Atl. 633, 48 L.R.A.N.S. 485

right to exercise the power of eminent domain, because "The vital question is whether it appears that the public will have a common right upon equal terms, independently of the will or caprice of the corporation, to the use and enjoyment of the property sought to be taken." Usually the courts have held that the public will not enjoy eqyal rights in these cases but that certain individuals or groups will receive greater benefits than others. Judge Wheeler in a dissenting opinion, however, held that "the state can make such grant provided it be one for the public use; that whether it be for the public use or not depends upon the extent of the public welfare to be supervised; and when in a given case the public good to be subserved is large enough the grant may be made, even though it be in the power of the trustees of the institution to administer it so that its benefits may not be open to the public on equal terms." It would seem that the opinion of Judge Wheeler is well worth considering, in view of the fact that the right of eminent domain has been granted frequently to all sorts of private business and public utilities.

The matter of eminent domain entered the courts of Pennsylvania under slightly different conditions in the case of the Western Pennsylvania Exposition Society, a corporation organized not for profit but for "the educating

ibiting artistic mechanical, agricultural,
oducts, and providing public instruction
nces." The manner in which this differed
College for Women v. Calvert case was
on existed for equal benefit to everyone
The Court said: "In view of the fact
such corporations is the education of
education is both necessary and the
nds it, the conclusion irresistibly
king of private or other property by
such corporations, for the purposes set forth in the act
creating them, is a taking for a public use."[22]

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22. Appeal of Rees (Pa 1888) 12 Atl. 427

CHAPTER IV

SUPERVISION AND CONTROL

(A) Subject to Police Power of State. While state legislatures or their agents have direct supervision and control over public schools they exercise only a general police power over private schools. The state has power to prohibit the operation of private schools and to prohibit the teaching therein of doctrines hostile to the safety of the government.[23] It may not however, refuse a school a license to operate if the school can show that its curriculum does not include the teaching of prohibited doctrines. The state must not act arbitrarily in this matter; its general police power is chiefly limited to the preservation of the public health, safety, and morals. In the matter of regulating the unincorporated schools the state practices either a general or a specific regulation. In schools where pupils of non-compulsory school age are enrolled, the state merely regulates to the extent of providing that a school conform to certain accepted moral standards. In states enrolling pupils of compulsory school age, the state exercises a specific regulation. In twenty-three states the schools must receive special approval from the state educational

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23. People v. Amer. Soc. 202 App. Div. 640, 195 N.Y.S. 801

authorities in order to enroll pupils of compulsory school age. Fifteen of these require inspection and supervision by public agencies; for the remaining eight approval is granted on the basis of regularly submitted data and without visitation.[24] North Dakota is listed in the latter group of states. Other than this no regulations dealing specifically with this phase of our public schools are available. Several state constitutions include specific provisions about inspection, as for instance the New York constitution Art. IX, Par. 4 states in part, "Neither the State nor any subdivision thereof shall use its property or credit or any public money, or authorize or permit either to be used, directly or indirectly, in aid or maintenance, other than for examination or inspection."

A state may have the constitutional right to deny a private school the right to operate but it has no authority to dispose of its property; this would be violating the Federal Constitution by taking property without the due process of law.

(B) Rejection and Expulsion of Pupils. Here again the private school is given considerably more authority than the public school. The latter must accept all pupils who

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24. Government figures quoted in El. Sch. J. 34: 174-4 N. '33
School and Soc. Vol. 34 436-40 S. 26 - '31

apply for admission and can only expel for very specific and drastic reasons. The former is much more autocratic in power and may reject and expel almost at pleasure. They make their own rules and regulations, prescribe their own courses of study, determine their own standards of proficiency and have the authority to dismiss whomsoever fails to comply with these requirements. In commenting on the authority of the officers of a private school the Supreme Court of Illinois said: "A discretionary power has been given them to regulate the discipline of their college in such a manner as they deem proper, and so long as their rules violate neither Divine nor human law, we have no more authority to interfere than we have to control the domestic discipline of a father in his family."[25] The courts have warned that those in authority may not act arbitrarily or fraudulently.

(C) Control and Certification of Teachers. The court decisions relating to the dismissal and discharge of teachers indicate that there is very little difference between the causes for dismissal of teachers in public and private schools. By Nature of their autocratic position the private schools are permitted more general authority over their teachers but

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35. People ex rel. Pratt v. Wheaton College, 40 Ill. 186

a Massachusetts court[26] held that teachers in private schools could not be removed merely on the grounds of "expediency or convenience." As in our public schools a teacher may be dismissed for immorality or immodest conduct or for any other improper conduct which might have a tendency to injure the standing or the reputation of the school. Public as well as private school teachers reasonably can be expected not to frequent places where intoxicating liquors are sold near the school or to conduct themselves in any unreasonably unbefitting manner. The sole reasoning seems to center around the reasonable conduct argument and this holds equally well for both classes of schools.

In four states,teachers in private schools must obtain certificates or licenses from the state educational authorities in order to be qualitifed to teach. In some other states the power to approve or disapprove the operation of private schools has been construed to include the right of approval or disapproval of teachers. Seven other states specify that the teachers "must be competent" which might also include the right to license or certificate them. Six states require that a teacher take an oath of allegiance before being permitted to teach in private schools.[27]

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26. Murdock v. Phillips Academy. 12 Pick (Mass.) 244
27. State Regulation of Private Schools --Bellesn. School and Society 34: 436-40 S. 26 -'31

(D) While private schools may make religious or political discriminations in the selection of their teachers, public schools are forbidden expressly to do so in at least twelve state constitutional provisions. Typical of these provisions is the one found in Article XXVIII, Sec. 2801 of the Pennsylvania constitution. "No religious or political test or qualification shall be required of any director,visitor, superintendent, teacher, or other officer, appointee,or employee in the public schools of this commonwealth." The Arizona Constitution Chapter IV, Paragraph 4520 states in part: "no religious or sectarian tests shall be applied in the selection of teachers and none shall be adopted in the schools." Section 29 of the Massachusetts Constitution reads: "No public school committee or official shall inquire concerning,or require or solicit from an applicant for a position in the public schools, any information as to his religion, creed or practice,or his political opinions or affiliations, and no appointment to such a position shall be in any manner affected thereby." Generally it has been held that school trustees may reject or accept any applicants but in these states at least,no direct issue may be made of religion or political opinions. The North Dakota constitution does not include any specific section on this matter.

CHAPTER V

INSTRUCTION MUST BE NON-SECTARIAN

Bible Reading in the Public Schools is a problem which frequently has appeared before our courts and one on which there seems to be no unanimity of opinion. On this question there is not only a difference in the state constitutions but there is a real difference of judicial opinion regarding the legality of the matter. Also it is interesting to find that this question is rapidly growing in importance since out of a total of seventeen state supreme court decisions, eleven of them have been rendered since 1900. Only six of the seventeen occurred before 1850. The majority of cases have held that the Bible may be read, without comment, in schools provided pupils, whose parents object to such reading, may be excused from such reading. In thirty-six of the states Bible reading is specifically permitted or it is gradually construed as permissible. Only twelve states regard Bible reading as giving sectarian instruction or influence. In all of these twelve states the state constitutions fail to say anything about religious instruction.

The question which invariably arises in these cases is, as Judge Rainey of Texas said, "Does the conducting of the exercises as shown by the evidence violate the provision of the constitution? If so, they should be discontinued.

If not, the court will not undertake to say that the rule requiring the attendance of the children whose parents object is unreasonable."[30] Numerous cases may be cited where the courts have held that the reading of the Bible is not sectarian instruction. In a Colorado case in 1927 the court refused to change its rule which required portions of the Bible to be read each day and which did not excuse any pupils. Pupils whose parents objected might be excused. The decisions said in part, "We conclude that the reading of the Bible, without comment, is not sectarian ..... The conclusion is that the Bible may be read without comment in the public schools, and the children whose parents or guardians so desire may absent themselves from such reading."[31]

In a Massachusetts case in 1866 the School commission was given authority to require all pupils to be present for Bible reading and the commission might exclude such scholars as refuse to obey this rule.[32]

In opposition to these cases we find a few instances where courts have held that the reading of the Bible in public schools constitutes sectarian instruction and is therefore unconstitutional. Chief among these is the Wisconsin case of 1890 which held that reading of the Bible is an act of worship as that term is used in the constitution,

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30. Church v. Bullock, 100 S.W. 1025; 109 S.W. 115; 104 Texas.
31. People v. Stanley, 255, p. 610
32. Spiller v. Inhabitants of Woburn, 94 Mass.

and hence the taxpayers of any district who are compelled to contribute to the erection and support of common schools have the right to object to the reading of the Bible therein under the Wisconsin constitution, Act I-II, 18 cl. 2.[33] Judge Bennett stated that, "The practice of reading the Bible in such schools can receive no sanction from the fact that pupils are not compelled to remain while it is being read; for the withdrawal of a portion of them at such time would tend to destroy the equality and uniformity of treatment of the pupils sought to be established and protected by the constitution." Orton (concurring), "The clause that no sectarian instruction shall be allowed was inserted ex endustria to exclude everything pertaining to religion. They are Godless souls and the education department of the government is Godless, in the same sense that the executive and administrative departments are Godless. So long as our constitution remains as it is no one's religion can be taught in our common schools."

The Illinois, Nebraska and Lousiana courts have handed down decisions similar to the Wisconsin decision and their reasoning can best be expressed by quoting from the Supreme Court of Illinois. "The Petition avers that selected portions of the Bible have been read by the teachers, without

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33. State v. Dist. Bd. of School Dist. #6, 76 Wis. 177; 44 N.W. 967. 2o Am. St. Rept. 41; LRA 330

averring what portions, so that it does not appear whether or not the portions so read involved any doctrinal or sectarian question. No test suggests itself to us, and perhaps it would be impossible to lay down one, whereby to determine whether any particular part of the Bible forms the basis of or supports a sectarian doctrine. Such a test seems impracticable. The only means of preventing sectarian instruction in the schools is to exclude altogether religious instruction, by means of the reading of the Bible or otherwise. The Bible is not read in the public schools as mere literature or mere history. It cannot be separated from its character as an inspired book of religion. It is not adapted for use as a textbook for the teaching alone of reading, of history, or of literature, without regard to its religious character. Such use would be inconsistent with its true character and the reverence in which the Scriptures are held and should be held. If any parts are to be selected for use as being free from sectarian differences of opinion, who will select them? Is it to be left to the teacher? The teacher may be religious or irreligious, Prostestant, Catholic, or Jew. To leave the selection to the teacher, with no test whereby to determine the selection is to allow any part selected to be read, and is substantially equivalent to permitting all to be read.

"It is true that this is a Christian state. The great

majority of its people adhere to the Christain religion. No doubt this is A Protestant state. The majority of its people adhere to one or another of the Protestant denominations. But the law knows no distinction between the Christain and the Pagan, the Protestant and the Catholic. All are citizens. Their civil rights are precisely equal. The law cannot see religious differences, because the constitution has definitely and completely excluded religions from the law's contemplation in considering men's rights. There can be no distinction based on religion. All sects, religious or even anti-religious, stand on equal footing. They have the same right of citizenship, without discrimination. The public school is supported by the taxes which each citizen, regardless of his religion or his lack of it, is compelled to pay. The school, like the government, is simply a civil institution. It is secular, and not religious, in its purposes. The truths of the Bible and the truths of religion, which do not come within the province of the public school. No one denies that they should be taught to the youth of the state. The constitution and the law do not interfere with such teaching, but they do banish theological polemics from the schools and the school districts. This is done, not from any hostility to religion, but because it is no part of the duty of the state to teach religion, to take the money of all, and apply it to teaching the children of all the religion of a part only.

Instruction in religions must be voluntary. Abundant means are at hand for all who seek such instruction for themselves or their children. Organizations whose purpose is the spreading of religious knowledge and instruction exist, and many individuals, in connection with such organizations and independently, are devoted to that work, Religion is taught and should be taught in our Churches, Sunday Schools, parochial and other Church schools, and religious meetings. Parents should teach it to their children at home, where its truths can be most effectively enforced. Religion does not need an alliance with the state to encourage its growth. The law does not attempt to enforce Christianity. Christianity had its beginning and grew under oppression. Where it has depended upon the sword of civil authority it has been weakest. Its weapons are moral and spiritual, and its power is not dependent upon the force of a majority. It asks from the civil government only impartial protection, and concedes to every other sect and religion the same impartial right."[34]

It is worth noting however that in the above quoted case the decision was three to two and the two dissenting judges gave very lengthy discussions and reasons for their opinions. To no other subject brought before them have the courts given more profound deliberation and consideration

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34. People ex rel. Ring v. Board of Ed., 245 Ill. 344, 92 N.E. 251, 29 L.R.A. N.S. 442

than that of Bible study in schools. Both sides of the question have been ably represented by the very best authorities.

(B) TEACHING OF RELIGIOUS MATTER CONTRARY TO CONSTITUTION

May Credit be Given for Bible Study done outside of regular school hours is a question which has occurred. The Board of Education at Everett, Washington, made a regulation which provided that one credit might be allowed students provided they successfully passed an examination covering the historical, biographical, narrative and literary features of the Bible and based upon an outline adopted by the Board of Education. All instruction was to be provided in the homes or by the respective religious organizations, while the school was to provide a syllabus, give the examination and grade the papers. A student, trying to compel the superintendent to give him an examination, applied for a writ of mandamus. The Supreme Court of Washington held that the rule was in conflict with an article in the state constitution which provided that "no public money shall be appropriated for or applied to any religious worship, exercise or instruction." The court held that this method did constitute religious instruction, even the courts had held that reading the Bible was not sectarian. The following statement of the court is significant: "The vice of the present plan is that

school credit is to be given for instruction at the hands of sectarian agents. We had thought that history, biography, and Biblical narrative would require no interpretation, - certainly no interpretation calling for the doctrinal opinion of a religious organization. Who in authority in our schools is to say that a pupil shall or shall not have credit if he answers questions in a way that is different from the way intended by those who prepare the course of instruction? It may be said that the pupil is entitled to credit if he answers in a way that is consistent with the faith of his instructor. But there are two objections to this. The one is that the examiner may not know the faith and teachings of those of a different faith; the other and more conclusive objection is that to give a credit in the public school for such instruction is to give a credit in the public school for sectarian teaching and influence,which is the very thing outlawed by the constitution." -----The resolution provides that the syllabus or course of study is to be made by the school board. What guaranty has the citizen that the board having a contrary faith will not inject those passages upon which their own sect rests its claims as the true Church under the guise of 'narrative or literary features'; and if they do so, where would the remedy be found? Surely the courts could not control their discretion, for judges are made of the same stuff as other men, and what would appear to be heretical or doctrinal

to one may stand out as a literary gem or as inoffensive narrative to another, and thus the evil at which the constitution is aimed would break out with its ancient vigor. If the sentiment of the people has so far changed as to demand the things sought to be done, the remedy is by amendment to the constitution."[35]

While the foregoing Washington decision is the only one of this kind to come before our courts, the extent to which it would serve as persuasive evidence in other states would depend chiefly upon the State Constitutional provisions. The North Dakota Statutes do not prohibit the expenditure of money for "religious instruction"; consequently, the State Department of Public Instruction has authorized a plan whereby classes in Bible study may be organized by any Church or society and a maximum of one unit of credit toward graduation given in the subject. Similar plans are used in other states where Bible reading is not prohibited by statute.

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35. State ex rel. Dearle v. Frazier, 102 Wash. 369, 173 Pac. 35

CHAPTER VI

WEARING OF RELIGIOUS GARB

The question as to whether or not teachers in our public schools may wear a distinctive religious garb or insignia has come before our courts four times.

(A) A Pennsylvania Case, Hysong et al v. School District Gallitzen, in 1894 came before the Supreme Court of that state when action was brought against the school board of Gallitzin, enjoining it from continuing sessions of the public schools with members of the order of Sisters of St. Joseph as teachers. The teachers constantly wore this distinctive garb as well as a crucifix and rosary. The school board did not have any regulations prohibiting the wearing of this attire but the plaintiffs contended that the employment of these teachers under these circumstances unlawfully compelled the support of sectarian religious instruction by taxation. The court however upheld the defendants and held that the board had not exceeded its discretionay powers nor was it guilty of having violated any law. Judge Dean, speaking for the court, reasoned: "It may be conceded that the dress and crucifix impart at once knowledge to the pupils of the religious belief and society membership of the wearer. But is this, in any reasonable sense of the word, 'sectarian' teaching, which the law prohibits?

"The dress is but the announcement of a fact that the wearer holds a particular religious belief. The religious belief of teachers and all others is generally well known to the neighborhood and to pupils, even if not made noticeable in the dress, for the belief is not secret, but is publicly professed. Are the courts to decide that the cut of a man's coat or the color of a woman's gown is sectarian teaching, because they indicate sectarian religious belief? If so then they can be called upon to go further. A pure unselfish life necessarily tends to promote the religion of the man or woman who lives it. Insensibly, in both young and old, there is a disposition to reverence such a one, and at least to some extent, consider the life as the fruit of the particular religion. Therefore, irreproachable conduct, to that degree is sectarian teaching. But shall the education of the children of the commonwealth be entrusted only to those men and women who are destitute of any religious belief?"[36]

The above rendered decision was not unanimous and the arguments of Judge Williams in his dissenting opinion are worthy of note, for he contended, "Is the introduction into the schools, as teachers of persons who are, by their striking and distinctive ecclesiastical robes, necessarily and constantly asserting their membership in a particular Church,

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36. Hysong et al v. School Dist. of Gallitzin, 164 Pennsylvania 629, 30 Atl. 482

and in a religious order within that Church, and the subjection of their lives to the direction and control of its officers. With faces averted to the world they have renounced; wearing their peculiar robes, which tell of their Church, their order, and the subordination to the guidance of their ecclesiastical superiors; using their religious names and addressed by the designation 'Sister', they direct the studies and department of the children under their care, as ecclesiastical persons. They come to their work as a religious duty, and their wages pass, under the operation of their vows, into the treasury of the order. If a school so conducted is not dominated by sectarian influence and under sectarian control, it is not easy to see how it could be."

A New York Case in 1906, O'Connor v. Hendrick et al, differed considerably from the Pennsylvania case. Two sisters of the Order of St. Joseph refused to obey a regulation of the State Superintendent of Public Instruction forbidding teachers to wear a distinctively religious garb while teaching in public schools of the state. Here the court upheld the regulation of the state superintendent and the Sisters were not only prohibited from continuing to teach but they were not allowed to recover for services they rendered after they had been warned of this matter. The prohibitory regulation was declared reasonable and in accordance with public policy and not necessarily in conflict with the Pennsylvania Court decision. The question involved in this case was really

that of whether or not the State Superintendent has a right to make such a regulation and not whether or not it was legal to wear the religious garb. Said the court: "It must be conceded that some control over the habiliments of teachers is essential to the proper conduct of the schools. Thus grotesque vagaries in costume could not be permitted without being destructive of good order and discipline. So, also, it would be manifestly proper to prohibit the wearing of badges calculated on particular occasions to constitute cause of offense to a considerable number of pupils, as for example, the display of orange ribbons in a public school in a Roman Catholic community on the twelfth of July."[37]

In an Iowa case in 1918, Knowlton v. Baumhover, the Supreme Court was called upon to decide whether or not the wearing of a religious garb in a public school constituted sectarian instruction. In this case the schoolhouse belonging to the school district was sold, and a room was leased in a building in which a parochial school was then being operated. The building was immediately adjacent to a Roman Catholic Church. There were two rooms in the building. One of the teachers who had previously taught in this parochial school was employed to teach in the room leased by the public school board. From the beginning and for a period of more than nine years the study of the Catholic catechism and the giving of religious instruction were part of the daily program of instruction in

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37. O'Connor v. Hendrick et al. 184 N.Y. 421, 77 N.E. 612, 7 LRA N.S. 402

both rooms. The question here was not so much whether the wearing of the garb was permissible but whether the school board had a right to use money raised through public taxes for sectarian purposes. Quoting from the Court we find: "The act of the board in thus surrendering its proper functions and duties is not to be explained as a mere change in the location of the public school or a mere exercise of the discretion which the law gives to the board to rent a schoolroom when circumstances render it necessary. It was a practical elimination of the public school as such and a transfer of its name and its revenues to the upper department of the parochial school."[38]

This case is distinctly different from the Pennsylvania case. There was no attempt in this case to deny the fact that sectarian instruction was being given, which was the real issue in the former decision.

A North Dakota Supreme Court, Gerhardt et al v. Heid et al, decision was handed down on April 2, 1936, on the matter of whether or not the wearing of a religious garb constituted sectarian instruction. This was an action brought by the taxpayers of Gladstone School District in Stark County against the school directors and four teachers in that district. The object of the action was to restrain the teachers from wearing

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38. Knowlton v. Baumhover et al. 182 Ia. 691, 166 N.W. 202

"a religious garb or dress" while engaged in teaching and to stop the school officers from paying the salaries of said teachers unless they discontinued the wearing of this apparel.

The case was tried in a district court without a jury, where the defendants were upheld. The plaintiffs appealed to the Supreme Court which body also upheld the defendants.

The Constitution of North Dakota, paragraph 152, states that "no money raised for the support of public schools of the state shall be appropriated or used for the support of any sectarian school." The question here in controversy was really:

First, "Is the school in question here a sectarian school?"

Second, "Is it free from sectarian control; or is it under sectarian control?"[39]

In discussing the matter of whether or not this particular school could be classed as a sectarian school the court said: "Obviously the school in question here is not a 'sectarian school' within the meaning of section 152 of the Constitution. It is not affiliated with any particular religious sect or denomination. It is not governed or managed, nor are its policies directed or controlled, by such sect or denomination. It is one of the public schools of North Dakota, operated under the supervision, direction, and control of the public officers of the state, county, and district who, under the

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39. Gerhardt et al v. Heid et al., #6381 N. Dak.

Constitution and laws of the state, are charged with the administration, management, and government of such public schools. The courses of study therein are prescribed by public officers and employees whose duty it is under our laws to prescribe such courses. The teachers in the school have received the certificates authorizing them to teach in the public schools of North Dakota upon compliance with the laws of the state; and they are as much subject to the control and direction of the superintendent of the school in which they teach, and of the county superintendent of schools and the state superintendent of public instruction as are other teachers in similar schools in the state."

Quoting again from the reasoning of the court we find that they suggest that if the people of North Dakota wish to prohibit the wearing of any form of religious garb they have the privilege of legislating for that purpose as has been done in other states.

"In the sixty years of existence of our present school system, this is the first time this court has been asked to decide, as matter of law, that it is sectarian teaching for a devout woman to appear in a school room in a dress peculiar to a religious organization of a Christian church. We decline to do so. The law does not so say. The legislature may, by statute, enact that all teachers shall wear in the school room a particular style of dress, and that none other shall be worn,

and thereby secure the same uniformity of outward appearance as we now see in city police, railroad trainmen, and nurses of some of our large hospitals. But we doubt if even this would repress knowledge of the fact of a particular religious belief."

"Subsequent to the decision in Hysong v. School District, supra, the Pennsylvania legislature enacted a statute (Act June 27, 1895, P. L. 395 (24 P.S.Pa ##1129, 1130) to 'prevent the wearing in the public schools ----by any of the teachers thereof, of any dress, insignia, marks or emblems indicating the fact that such teacher is an adherent or member of any religious order, sect or denomination, and imposing a fine upon the board of directors, of any public school permitting the same.' The validity of the statute was assailed on the ground that it violated the provisions of the Pennsylvania Constitution guaranteeing religious liberty. The Supreme Court of Pennsylvania sustained the statute, and quoted with approval what had been said in Hysong v. School District, supra, to the effect that the Legislature might prescribe the style of dress to be worn by the teachers in the public schools. The court said: 'It (the statute) is directed against acts, not beliefs, and only against acts of the teacher whilst engaged in the peformance of his or her duties as such teacher.' Commonwealth v. Herr, 229 Pa. 132, 78 A. 68, 71. Ann. Cas. 1912A, 422."

The court concluded as follows: "In this case there is no evidence and no claim thatany of the teachers departed in

any manner from their line of duty and gave or sought to give instruction in religious or sectarian subjects or that they conducted or attempted to conduct any religious exercises, or that they sought to impress their own religious beliefs while acting as teachers. So far as the record discloses they were subject to and obeyed all orders given by the district school board, the superintendent of the school in which they taught, the county superintendent of schools, and of the state superintendant of public instruction. The sole complaints are: (1) That while giving instruction they wore the habit of their order; and (2) that they contributed a large portion of their earnings to the order of which they are members.

"We are all agreed that the wearing of the religious habit described in the evidence here does not convert the school into a sectarian school, or create sectarian control within the purview of the Constitution. Such habit, it is true, proclaimed that the wearers were members of a certain denominational organization, but so would the wearing of the emblem of the Christian Endeavor Society or the Epworth League. The laws of the state do not prescribe the fashion of dress of the teachers in our schools. Whether it is wise or unwise to regulate the style of dress to be worn by teachers in our public schools or to inhibit the wearing of dress or insignia indicating religious belief is not a matter for the courts to determine. The limit of our inquiry is to determine whether what has been done infringes upon and violates the provisions of the Constitution."

A North Dakota district court case merits mention. On March 14, 1934, A. H. Olson, apatron of the Manheim public school, District #7 of Pierce County, started legal procedure against the school board of said school district in order to restrain it from employing four Catholic sisters, who wore a religious garb and were teaching in the public schools. The case was tried in district court before Judge Grimson where a permanent restraining order was granted on the grounds that the wearing of the religious garb constituted sectarian instruction and was contrary to the state constitution, paragraphs 147-152.

CHAPTER VII

SUMMARY AND CONCLUSIONS

Public schools are purely governmental in character and are gegulated chiefly by state legislative departments. Private schools depend upon private individuals or groups for their maintenance and support. Private schools may be either incorporated or unincorporated. The incorporated schools enjoy practically the same privileges as other corporations. In the unincorporated schools the individual members of the association, which support the school, are held responsible for the activities of the schoolddduring the time which they are members of the association. Public schools must accept all pupils who apply for membership; private schools are at liberty to discriminate and to accept whomsoever they wish. It has been consistently held by our Courts that regular attendance in a private or parochial school meets the compulsory school attendance requirements, provided the school meets essentially the same standards as those required by the public schools. Constitutional provisions and statutes specify additional state requirements for private schools in some states. In the Oregon case, Society of Sisters v. Pierce - the United States Supreme Court ruled that it was unconstitutional for a state to pass a law compelling all children to attend the public schools. Unfortunately, this case did not

settle the matter as to the extent to which a state legislature may control the children of the state. It was declared to violate the Fourteenth Amendment which states in substance that a state may not take away property without due process of law.

Whenever state constitutional privisions and statutes prohibit the spending of public funds for sectarian instruction it becomes a matter of determining just what constitutes sectarian instruction. Instruction becomes sectarian when it inculcates doctrines or dogma concerning which religious sects are in conflict. Schools controlled and operated by a church body are sectarian. Where private schools are not giving sectarian instruction and where constitutional provisions do not specifically forbit it, the state may appropriate money for its support. Sums of money specifically provided for school purposes by constitutional provision may not be used for private schools. Where state constitutions do not forbid it a state may employ individuals or corporations to render specific services for it. State legislatures, by special statutes, may not raise money by taxation for private educational institutions. Taxes may be raised only for schools organized and operated under the regular state school statutes. A municipality was authorized to raise money by taxation for the erection of a school building and to lease same to a private

academy for school purposes, without rent, with the stipulation that "the building must continue to remain open to the public, free from unreasonable discrimination and the responsibility for the trustees of the property placed directly upon the public." The courts have consistently held that public school funds may not be used to lease private buildings for school purposes. The only exception to this opinion is where an Illinois school district had previously voted down a bond issue to construct a school building. Private schools may not acquire property by the right of eminent domain but courts of Maine and Pennsylvania have held that they are subject to lose property in that manner. They are held subject to special assessments.

The state may prohibit the operation of private schools; its police power is chiefly limited to matters pertaining to public health, safety and morals. Private schools may reject and expel pupils almost at will so long as they do not act arbitrarily, or fraudulently. Private schools are permitted more authority in dismissing or discharging the teachers than the public schools. They may make religious or political discriminations in the selection of their teachers. At least twelve states have constitutional provisions expressly prohibiting such discrimination in the public schools. It is within the authority of a state legislature to prohibit private

schools from enrolling white and negro children in the same school. Voters of a precinct may not prohibit the establishment of an industrial school for colored children by a private charitable corporation.

In thirty-six states Bible reading is specifically permitted or it is construed as permissible. Twelve states regard Bible reading as giving sectarian instruction or influence. In all of these states the state constitution fails to say anything about religious instruction. To no other subject brought before them, have the Courts given more profound deliberation than to that of Bible study in public schools; yet, the best legal authorities have failed to agree. The Supreme Court of Washington held that credit may not legally be given for Bible study done outside of school hours, where a clause in the state constitution provides that "no public money shall be appropriated for or applied to any religious worship, exercise or instruction."

The Supreme Court of Pennsulvania held that the wearing of a religious garb by a teacher in the public schools, did not in itself constitute sectarian instruction. A New York court held that a State Superintendent of Schools did not exceed his discretionary powers when he forbade the teachers to wear a distinctly religious garb while teaching in the public schools. An Iowa Court held that a school board could

not surrender its proper functions and duties by closing the public school and sending the children of the district to a private school, taught by Catholic sisters wearing a religious garb, and giving sectarian instruction. The North Dakota Supreme Court held that wearing a religious garb by public school teachers was not contrary to the State constitution which prohibits sectarian instruction.

CONCLUSIONS

1. In general, the relationship between public and private schools is becoming more acute as shown by the numerous recent court cases, eleven out of a total of seventeen having occurred since 1900.

2. States are almost unanimous in requiring that private schools meet the same standards and general regulations as the public schools, in order to meet the state educational standards and compulsory attendance laws.

3. Courts are almost unanimous in holding that no public funds may be spent for sectarian purposes. However, non-sectarian private schools are given some latitude in performing special educational functions for the state.

4. In theory, the private schools enjoy more freedom and liberality in the operation of their schools, but in actual

practice, most private schools are required to meet the same regulations and inspections as the public schools.

5. There is very little unanimity of opinion in our courts as to whether or not the reading of the Bible in School constitutes sectarian instruction. Thirty-six states permit or require Bible reading in school; twelve prohibit it. It is significant that it is the western states that question Bible reading.

6. The courts are fairly well agreed that wearing a religious garb in itself does not constitute sectarian instruction. However, several noteworthy dissenting opinions have been given, holding that the wearing of a religious garb signified more than merely wearing a specified uniform dress.

SUGGESTIONS FOR FURTHER STUDY

Two ideas suggest themselves for possible further study: first, it would be interesting and valuable to ascertain whether there is any correlation between the number of pupils enrolled in private schools in a state and the educational standards of that state; secondly, a study for the purpose of determining whether the prohibition of Bible reading in the public schools of a state has any correlation with the number of private schools in that state.

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