



# REPORT FROM THE CAPITAL

★ RELIGIOUS LIBERTY ★ BAPTIST PRINCIPLES  
★ PUBLIC AFFAIRS

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May 1961

## UNITED STATES SUPREME COURT REFUSES TO REVIEW VERMONT SCHOOL TUITION CASE

It is unconstitutional for a public school district to pay tuition for students to attend parochial high schools or religious academies.

The United States Supreme Court has refused to review a decision by the Vermont State Supreme Court holding that such payments, made by the South Burlington school district, violated the U.S. Constitution.

The school district does not maintain a high school of its own, but pays tuition for its students to attend public high schools in nearby Burlington. Pursuant to a 1956 amendment to the Vermont school code, which provided that it could pay tuition for students attending any "approved school," it began sending students to a Catholic diocesan high school in Burlington and Mount St. Mary's Academy, a convent school for girls.

C. Raymond Swart, and a group of taxpayers began a suit, charging violation of separation of church and state, and were granted an injunction. The Vermont Supreme Court upheld the injunction.

Paul M. Butler, former chairman of the Democratic national committee, serving as attorney for a group of Catholic parents, pointed to the significance of the present controversy over Federal aid to parochial schools, in asking the Supreme Court to review the Vermont decision.

"It would seem manifest," he declared in his brief, "that a decision by this Court not to review the court below would be taken by President Kennedy and perhaps by a majority of members of Congress as an indication that the Vermont Supreme Court construed the first amendment to the Constitution correctly and in a manner which the President believes that the Court already has done."

The Supreme Court may have taken note of Butler's argument, for it ruled unusually quickly on his petition. Without comment--and apparently unanimously--it ruled simply that "the petition for writ of certiorari (certification for review) is denied."

The case takes on unusual significance because the Vermont court ruled out the State's law on the basis

of its conflict with the U.S. Constitution, not the Vermont State constitution.

The court of chancery in Burlington which first heard the case took note of the fact that there were no guiding precedents under the Vermont constitution on this question, but that the U.S. Supreme Court had made pertinent comments in a number of its decisions.

The first amendment to the Constitution prohibits its only Congress from making laws "respecting an establishment of religion" but the 14th amendment, adopted after the Civil War, has been held with respect to "due process of law" and "equal protection of the laws" to make applicable to the States all of the prohibitions of the Bill of Rights.

Accordingly, Vermont's Supreme Court looked at its State law solely from the standpoint of conflict with the Federal Constitution.

That portion of its decision which will now be regarded as a ruling precedent by legal scholars is an eloquent statement of principle. Speaking on the question of public support of Catholic schools, the court said:

"The Roman Catholic Church is the source of their control and the principal source of their support. This combination of factors renders the service of the church and its ministry inseparable from its educational function.

"That this is a high and dedicated undertaking is not to be questioned, and deserves the respect of all creeds. Yet, however worthy the object the first amendment commands that the States shall not participate.

"Equitable considerations, however compelling, cannot override existing constitutional barriers. Legislators and courts alike cannot deviate from the fundamental law."

"We conclude," the Vermont court declared, "that the defendants (South Burlington school board) while acting within the provisions of State statute, have exceeded the limits of the United States Constitution."

Said Butler in his petition for a review, "surely this Court, regardless of the respect which it

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holds for decisions of State tribunals...will not allow the Vermont Supreme Court to have the final say on a constitutional issue that is of importance to all 50 States...."

However, the law firm of Vermont's youthful Gov. E. Ray Kayser, Jr., (who was original attorney for the protesting taxpayers) in its responding brief said that the Supreme Court had already ruled on the pertinent questions and that the Vermont court had correctly interpreted these precedents.

The U. S. Supreme Court agreed, dismissed the petition for review--and let Vermont have the last word.

#### EIGHT BAPTIST GROUPS IN ILLINOIS DISCUSS RELIGIOUS LIBERTY AND BAPTIST PRINCIPLES

Pastors from eight Illinois Baptist groups met in six regional conferences during the first week of May to discuss Baptist principles and current religious liberty problems.

In approaching the problem of religious liberty the Baptist pastors emphasized that, although they support the first amendment of the Constitution of the United States, the Baptist witness antedates the Constitution and it springs from fundamental Christian insights into the meaning of the New Testament.

A panel of four Baptist leaders participated in the discussions at Belleville, Marion, Peoria, Springfield, Rockford and Chicago. More than 200 pastors participated in the conferences.

The team was composed of Charles E. Hartman, field secretary of the Illinois Baptist State Convention; William A. Johnson, pastor of the Greater St. Johns Baptist Church, Chicago; C. Emanuel Carlson, executive director of the Baptist Joint Committee on Public Affairs, Washington, D. C., and W. Barry Garrett, associate director of the BJCPA. Due to illness, W. C. Dobbs, president of the Illinois Baptist State Association, was unable to accompany the team.

Cooperating in the arrangements for the joint religious liberty discussions were leaders from the Illinois Baptist State Association (Southern Baptist), Noel M. Taylor, executive secretary; Illinois Baptist State Convention (American Baptist), A. J. Gernenz, executive secretary; Baptist General Conference, Midwest Conference, Harold Christenson, chairman of the public affairs committee; North American Baptist General Conference, Frank Woyke, executive secretary;

Illinois Baptist State Missionary and Education Convention (National Baptist), Luke Mingo, president; Chicago Baptist Association (American Baptist), W. A. Disman, executive secretary; Baptist General State Convention (National Baptist, Inc.), J. Alfred Wilson, president; and Baptist State Convention of Illinois (National Baptist, Inc.), C. V. Johnson, president.

The Baptist Joint Committee on Public Affairs, Washington, D. C., cooperated with the Illinois groups in planning the conferences.

Pressing church-state problems, both on the national scene and in the State of Illinois, were con-

sidered by the Baptist groups. Three questions were posed as these problems were discussed:

- (1) To what extent should the churches or their agencies accept Government aid for the accomplishment of church objectives?
- (2) To what extent should the Government use the churches and their agencies for national objectives?
- (3) What is meant by "cooperation" or "partnership" between the churches and Government, and what are the limits of such cooperation?

National religious liberty problems were considered under the headings of aids to education, public health, welfare services, civil defense, and taxation.

Many religious liberty problems in Illinois were aired by the Baptist pastors. A partial list includes: censorship, blue laws, religion in the public schools, the churches and tax policies, purchase of churches by the State as historic shrines, zoning problems involving the location of new churches, and problems involving churches and their institutions in redevelopment areas.

Although the conferences were unofficial and made no pronouncements on any subject, the groups faced realistically the question on what Baptists can do to implement their Christian witness in the area of religious liberty.

Among the suggestions made were these:

- (1) The Baptist preaching ministry could be made more effective by relating Biblical insights to the current problems faced by the churches.
- (2) The educational programs of the churches and of the denominational agencies could be geared in more closely to the relevance of Baptist principles to current issues.
- (3) Church members should become more active in community and civic affairs in order to exercise the stewardship of their Christian influence.
- (4) Baptist institutional policies should be closely related to Baptist principles of religious liberty.
- (5) A continuation of Baptist conferences in order to clarify insights, to face realistically the issues of the day, and to decide on proper procedures for the implementation of the Baptist witness.

#### BAPTIST INFORMATION REPRESENTATIVE GETS SENATE AND HOUSE PRESS GALLERY MEMBERSHIP

Press Gallery membership in both Houses of Congress has been granted to W. Barry Garrett, associate director of the Baptist Joint Committee on Public Affairs.

According to Religious News Service this is the first time the standing committee of correspondents has admitted a representative from a news service of a Protestant denomination. Press accreditation has for some time been accorded Religious News Service.

the National Catholic Welfare Conference and Jewish Telegraphic Agency.

Garrett devotes full time to the information service of the Baptist Joint Committee on Public Affairs. This service includes a news coverage to all the Baptist communications channels in the United States, such as Baptist publications, radio and television outlets and other public relations services.

For the Southern Baptist Convention Garrett serves as the Washington regional editor for the Baptist Press, which employs the use of a daily teletype service as well as weekly or semi-weekly mimeographed news releases. For the other Baptist groups in America another news service is maintained--Baptist Public Affairs (BPA). This is a mimeographed service which is mailed as frequently as the news develops.

In addition Garrett serves as the editor of the monthly newsletter of the Baptist Joint Committee on Public Affairs, "Report From The Capital," which is available on a subscription basis (\$1.00 per year) to all who wish to receive it.

Press accreditation in the Senate and House press galleries grants to Garrett free access to sessions of the Congress at all times, immediate first-hand contact with members of Congress and congressional committees, open access to information channels, press room facilities at the Capitol and the right to eat in the press section of the Senate dining room.

This new status of the information service of the Baptist Joint Committee will result in an improved, faster, more complete news coverage from Washington for the Baptist people of the United States. This is a significant development in the professional recognition of the quality of service rendered through the office of the BJCPA.

#### PROPOSALS FOR FEDERAL AID TO PAROCHIAL SCHOOLS POSE KNotty PROBLEMS IN CONGRESS

Some might have hoped that President Kennedy's campaign promises on separation of church and state and his subsequent positions against including tax aid to parochial schools in his legislative programs would have ended the battle. On the contrary, the battle of the bishops to have their schools included in Federal education legislation has unbelievably snarled the legislative processes for the first Roman Catholic President.

The complexity of the forces involved in the aid to education struggle and the numerous bills that have been introduced make it well nigh impossible to unravel the entire scheme and to present an unblurred picture of what is happening. For purposes of this report we confine ourselves exclusively to the church-state aspects of the controversy in the general education bill. We leave it to others to debate the merits of Federal aid to public education.

There are three major educational proposals before the Congress: (1) The Administration's program of aid to the public schools on the elementary and secondary levels. The bills involved are S. 1021 and H.R. 4970. (2) Aid to higher education. The bills in this area are S. 1241 and H.R. 6483. (3) The renewal

and expansion of the National Defense Education Act of 1958. These bills are S. 1785 and H.R. 6774. All three areas are potential danger spots for tax aid to church-related schools.

Shortly after President-elect Kennedy's task force on education recommended extensive Federal aid to education, excluding the parochial schools, the Roman Catholic bishops announced that if any legislative program excluded the parochial schools, this would mean discrimination, and they would oppose such discrimination. This threw the fat in the fire and immediately a national debate exploded on the subject of tax aid to parochial schools.

After prolonged public discussions the matter simmered down to a battle of political pressures and legislative strategy in the halls of Congress and in the conference rooms of the White House. A new question had to be faced: How to get education legislation through the Congress in the face of desperate efforts of the bishops to have their schools included? This, of course, is not the only obstacle in the legislative road, but it has been a major factor.

For those who oppose Federal aid to education in general, the parochial school question is a made-to-order gimmick to divide the enemy and to pour the whole program down the drain. For the parochialists who realize that their time has come to stand up and be counted, if they are to be included in national educational policy, this means that a fight to the finish must be engaged in. For the supporters of the public school system of the Nation this means that the Nation stands at the crossroads of a major decision in educational policy and philosophy. For the defenders of religious liberty and separation of church and state this means that a major battle in the age-old conflict is on their hands.

A development took place during the strategy planning that sent cold shivers down the spines of the public school lobbyists and the contenders for strict separation of church and state. Following a White House conference of the Democratic leadership it appeared that a compromise strategy had been agreed upon. There was to be a wedding of the general aid to education bill and the National Defense Education Act. The NDEA contains provisions for assistance to private schools in the form of loans for equipment to teach science, mathematics and foreign languages. This provision would be expanded to include classroom construction for private schools for these same purposes. This was obviously intended as appeasement for the Catholic bishops, and it was hoped that it would not be too offensive to those who objected to tax aid to parochial schools. They also figured that an education bill would be easier to get through the House this way.

This strategy backfired, however, because the public school lobbyists saw in the maneuver the complete defeat of the education program in this session of Congress. The church-state champions on the other hand viewed the move as possibly a reversal on the part of the President and a violation of his campaign promises. The Democratic leadership in the Senate tried to make it appear that this proposal did not come from the White House and that they alone were responsible. The opponents of the wedding of the

NDEA and the general education bill were far from convinced that the President could disavow responsibility for this move, especially since his Secretary of Health, Education and Welfare, Abraham Ribicoff, was one of the chief advocates of the plan.

When the Democratic leadership realized what a hornet's nest they had stirred up, they hastily changed course, had another conference and emerged with the announcement that their original strategy would be followed. This meant a separation of the public education issue and the parochial school issue. The plan now is to try to pass public school legislation and then take up the problem of parochial school aid as a separate item in connection with the revision of the NDEA.

At the time of this writing (May 19) the Senate was debating the general education bill (S. 1021) and voting on amendments. Final Senate voting on the bill was not expected until the week of May 22.

In the meantime, the House Committee on Education and Labor was in a royal struggle over the question of whether or not to include some kind of aid to parochial schools in the House version of the education bill. For a while it appeared that the parochialists were winning the battle. Then the reports were that the public school interests were gaining and that probably the committee would report a "clean" bill. This does not mean, however, that serious attempts will not be made on the floor of the House during the debate to attach the parochial school amendment.

The status of the aid to education proposals at the time this issue of the Report From The Capital goes to press is that of swirling eddies. The status of the education legislation is so fluid that even those closest to it are not sure that the river will stay within its banks, or, if it overflows, at which point it will break through.

STATE EDUCATION LEADERS OPPOSE  
FEDERAL AID TO PAROCHIAL SCHOOLS

Top education administrators in the States are opposed to Federal aid to parochial schools, according to testimony prepared for hearings before a Senate subcommittee on education.

Edgar Fuller, executive secretary of the Council of Chief State School Officers, testified on the extension and amendment of the National Defense Education Act before the subcommittee of which Sen. Wayne Morse (D., Ore.) is chairman.

The Council is composed of State Superintendents and State Commissioners of Education of the 50 states and the Chief School Officers of Puerto Rico, the Virgin Islands, the Canal Zone, Guam and American Samoa.

One of the amendments that may be proposed for the NDEA is to expand Title III, which provides loans to private schools for equipment to teach science, mathematics and foreign languages. The new proposal would include classroom construction for teaching these subjects.

The basic principle espoused by the Council of State educators is "that public funds should be used for public schools and colleges and that private funds should finance private schools and colleges."

The Council's testimony said that their policy "is based on the conviction that it describes the best course of action for the welfare of the Nation, for religious denominations, and for the public schools."

Fuller said that most of the Chief State School Officers favor restriction of Federal funds to public elementary and secondary schools because:

- (1) Federal funds for private schools require the exercise of Federal discretion in a way that easily results in Federal controls or Federal favors;
- (2) Federal funds for private schools would be detrimental to public education in many areas of the country by causing a proliferation of new private schools by splinter groups of various kinds and by Federal financing of a very limited number of large church-controlled systems of religious schools openly competing with public schools; and
- (3) Federal funds for private schools would make the Federal Government more closely associated with sectarian local schools than with public local schools; more closely associated perhaps than is good for either public or private schools.

The Council's testimony on private schools, though not discussed before the subcommittee, was included in the permanent records of the hearings on the NDEA.

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