



REPORT FROM THE CAPITAL

★ RELIGIOUS LIBERTY ★ BAPTIST PRINCIPLES
★ PUBLIC AFFAIRS

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ANALYSIS OF THE NEW NATIONAL DEFENSE EDUCATION ACT BILL LOAN PROGRAM

The House Committee on Education and Labor has now drafted and reported out a new or revised version of the 1958 National Defense Education Act, H.R. 7904. This bill is the committee's response to the Roman Catholic hierarchy's demands for a share of Federal educational funds. (This bill, along with the two other education bills, has just been tabled by the House Rules Committee as this Report goes to print.)

The response to the private-schools lobby shows up primarily in Title III, a section of the bill designed to give "Financial Assistance for Strengthening Science, Mathematics, Modern Language, and Physical Fitness Instruction." Sec. 305 under this Title proposes an extended program of loans to private non-profit elementary and secondary schools amounting to \$125 million per year for a three year period. These 40-year loans are to provide "special educational facilities" for teaching the above-mentioned subjects.

1. New Provisions

The amended provisions of this section propose the following changes in the 1958 version:

(1) The kind of facilities covered is enlarged. It would now provide for:

"...facilities to be used for the purpose of teaching science, mathematics, the English language to students whose primary language is not English, or modern foreign languages, and includes identifiable portions of buildings, and furniture, instructional materials other than textbooks, fire protection or resistant equipment or materials, and any other equipment, machinery or utilities necessary or appropriate for such teaching purposes, but does not include classrooms to be used for general or religious educational purposes."

It specifically provides for "designing, building, acquiring, altering, remodeling, improving, extending, or equipping" facilities for "physical development."

(2) The interest formula is adjusted by reducing the cost of administration increment from 1/4 to 1/8 per cent. This increment is added to the Treasurer's findings on the average cost of long term loans to the Government.

(3) The length of the loan is extended from 10 years (1958) to 40 years after the date when the loan was made.

(4) Newcomers are frozen out by the provision that:

"The Commissioner shall not make any loan under the provisions of this section to any private non-profit elementary or secondary school unless such school or the school system of which it is a part was in full-time operation during each of the four calendar years immediately preceding the date of enactment of the National Defense Education Act Amendment of 1961."

2. Analytic Comments

(1) The meaning of the word "system" in the above context is not clear. It could mean a "diocesan system" or perchance "the Roman Catholic system." While this clause is reportedly aimed to prevent fly-by-night schools and integration dodging, it would serve as effectively to prevent public loans for the new emerging Protestant school ventures.

(2) The reader should note that these church-school loans are to be made as part of a "national defense education" program, giving "financial assistance" to the churches so as to attain "national defense."

(3) This "defense" loan program is administered by the U.S. Commissioner of Education, not by the Pentagon, nor, indeed, by the Housing and Home Finance Agency, as the college dormitory loans are.

(4) The Commissioner is given such wide authority to inspect, to foreclose, to complete, to remodel, to "sell or exchange at public or private sale," and to reallocate funds to other states if not used by institutions in the initial state, that the ultimate disposition of these public funds cannot be predicted.

(5) Construction projects using these loans are assumed to be "public" projects to which the Davis-Bacon Act requiring certain pay scales and labor standards is applicable, but in the same paragraph /Sec. 305 (d) (1)/ it assumes that there may be "donated" labor for the purpose of reducing cost, as in a church project. It does not propose teacher salary standards for use of the buildings.

(6) Earlier drafts in the area contained clauses against "racial discrimination," but this proposal mentions neither racial nor religious discrimination. Apparently the private-school lobby's interests are deemed adequately protected by the freezing out of new schools and systems.

(7) There is now no provision for testing the constitutionality as was earlier proposed. It is now reported that Senator Wayne Morse's announced hearings on S. 1482, set for April 17, were cancelled partly because the National Catholic Welfare Conference was cool to Morse's idea of a constitutional text plan written into the private school aid bill.

3. Other Church-State Features

(1) Title V, the part of the bill which provides for guidance, counseling and testing, continues the authorization for the Commissioner to work directly with schools not served by State law:

"In any State which has a State plan approved under section 503 and in which the State educational agency is not authorized by law to make payments to cover the cost of testing students, who are in grade 7 and above, in any one or more elementary or secondary schools in such State to determine student abilities and aptitudes, the Commissioner shall arrange for the testing of such students and shall pay the cost thereof for the fiscal year ending June 30, 1959 and one-half of the cost thereof for any of the six succeeding fiscal years out of such State's allotment. Testing of students pursuant to this subsection shall, so far as practicable, be comparable to, and be done at the same grade levels and under the same conditions as in the case of, testing of students in public schools under the State plan under section 502 (a)."

This by-passing of the State department of education by having the U.S. Commissioner of Education provide an educational service in the State raises large questions of precedent for American federalism. Strangely, it has not been seriously challenged.

(2) The National Defense Fellowship program (Title IV) is continued and enlarged. In this, however, the line between church and state is now recognized by this provision:

"No fellowship shall be awarded to any individual under this title for study at a school or department of divinity, or awarded to an individual for study in religious or theological subjects to prepare himself for service as a minister of religion or in some other religious vocation, or for teaching in a school or department of divinity. For the purposes of this subsection, the term 'school or department of divinity' means a divinity school, theological seminary, or other institution, or department or branch of an institution, whose program is for the education of students to prepare them to become ministers of religion or to enter upon some other religious vocation."

(3) The loans to institutions for student loan purposes (Title II) are also continued and enlarged. It is now proposed to run through 1966 on full scale, tapering out possibly by 1970. The amounts involved

increase from \$47.5 million for 1958-59 to \$160 million for 1965-66.

In this Title the major church-state change is the extension of the 50% forgiveness feature for teachers to include also teachers in private nonprofit elementary or secondary schools.

CHURCH - STATE PROBLEMS ARISE IN PEACE CORPS

The Washington Post, daily newspaper, has joined other voices throughout the Nation in raising questions about the Peace Corps and its relation to the churches. It has been reported that about half of the projects assigned to voluntary agencies will be carried out by religious groups.

In an editorial the Washington Post said the use of church-related agencies by the United States to carry out projects of the Peace Corps will "raise serious questions of both policy and constitutionality."

Recently the New York Times had a three column story on the problems involved in the use of church agencies by the Government for Peace Corps projects.

The American Baptist Convention, the American Jewish Congress, and United Presbyterian Church in the U.S.A., and other groups have spoken both words of praise and caution concerning the Peace Corps. They all agree on the humanitarian objectives of the Peace Corps, but they are likewise cautious about the extent to which church agencies should be involved.

The Washington Post raised these questions: "What will the Peace Corps accomplish by supplying funds to religious groups already working in this field? Is it the intention of the Peace Corps to take over going projects supported by private funds?"

The Washington Post continued, "Is it possible to take a group that has been serving a religious and humanitarian purpose and convert it into a wholly humanitarian enterprise, without the religious connotations? Will the underlying motive (that of making converts) be changed when the Government begins to provide the funds? Will the recipients of the aid understand the changed motivation?"

The problem of confusing Peace Corps objectives, United States foreign policy, and church motivations was illustrated in the New York Times by a recent incident in Ghana. An American missionary discovered when he came to pay his hotel bill that the usual rate had been doubled. When he protested, the hotel owner said:

"Why do you worry? The U.S. Government is paying for it. The U.S. Government pays for all its overseas workers."

"I don't work for the Government," the American said. "I am a missionary."

The hotel owner shrugged. "Same thing," he said.

Then the New York Times raised "the more classical church-state problem" by asking, "Can religious agencies use Government funds and Peace Corps person-

nel in their projects and still preserve the constitutional requirement on separation of church and state?"

The American Baptist Convention in its recent meeting at Portland, Ore., highly commended the Peace Corps and urged Baptist young people to participate.

However, the American Baptists were careful to point out the church-state issue by saying, "We approve the stipulation that no project sponsored by the Peace Corps shall further any 'religious, sectarian, commercial or propaganda cause or release funds for such purposes,' as being in keeping with the separation of church and state."

Both the United Presbyterian Church in the U.S.A. and the American Jewish Congress have strongly protested the signing of overseas contracts by the Peace Corps with religious groups.

The Christian mission, said the Presbyterians, aims to give personal assistance in the underdeveloped countries. A spokesman for the group said that it had been working to separate the Christian mission "from the stigma of imperialism in the minds of the people overseas," and that taking Government aid would betray the church's position.

The Jewish group in a telegram to R. Sargent Shriver, Jr., director of the Peace Corps, expressed vigorous opposition to participation by religious groups.

"Of all the religious officials," the New York Times reported, "the Catholics appeared most wholeheartedly in favor of church participation in the Government projects." Catholic publications have urged their youth and church agencies to offer their services. A Peace Corps desk has been established at the headquarters of the National Catholic Welfare Conference in Washington.

The National Council of Churches has discussed its relationship to the Peace Corps, but no decision has been reached.

The National Association of Evangelicals, composed of some 50 smaller conservative denominations, has submitted to the Peace Corps some preliminary proposals for cooperative action.

The Friends Service Committee, experienced in Peace Corps type of activities around the world, has been in conference with officials of the Peace Corps, but the Friends are unwilling to release their programs to the Government or to grant the Government authority to select personnel and set policies.

While the Peace Corps officials recognize many of the problems involved in the use of church-related agencies, they say that solutions can be found. In that confidence they are pressing forward with their projects, with both Government and church agencies.

U. S. SUPREME COURT ACTS ON SUNDAY LAWS, RELIGIOUS TESTS, BIRTH CONTROL

Laws prohibiting business and commercial activities on Sunday are constitutional, according to a

recent decision by the United States Supreme Court.

The Court, in handing down decisions on four cases involving Sunday laws in Maryland, Pennsylvania and Massachusetts, ruled that such laws are legal if designed to promote a day of rest and recreation. However, such laws would be unconstitutional, the Court said, if on their face, or by examination of their legislative history, they are found to be primarily for the purpose of encouraging religious observance and church attendance.

Two of the cases, Maryland and Pennsylvania, involved the operation of discount stores on Sunday. By a vote of 8 to 1 the Court ruled that the states have a constitutional right to enforce Sunday closing laws.

In the two other cases, Massachusetts and Pennsylvania, the Court divided 6 to 3 in upholding enforcement of Sunday laws against Orthodox Jewish merchants who close their stores on Friday evening and Saturday and then are prevented by law from being open on Sunday.

The first ruling handed down after the historic decision that Sunday laws are constitutional involved the Sunday law of the State of Ohio. The Court ruled 8 to 1 against hearing an appeal brought by the Giant Tiger Drug Company.

The drug company complained that the Ohio law, prohibiting the sale of certain commodities on Sunday, was "vague, arbitrary, and discriminatory." The company had been fined \$25 for selling commodities at its Euclid, Ohio outlet that were not exempted from the Sunday sales ban.

The Supreme Court, however, in upholding Sunday laws, indicated that states may use their discretion in permitting commercial activity that is in the public interest and that only classifications which are not based on general principles will be viewed as denying "equal protection of the law." The Court turned down the Ohio appeal without written opinion.

The constitutionality of Sunday laws was upheld again when the Court rejected, by a vote of 7 to 2, an appeal to review South Carolina's law against the commercial exhibition of movies on Sunday.

South Carolina's law, enacted nearly 70 years ago before the days of movies, prohibits commercial entertainments on Sunday, and has been construed through the years as barring movies. South Carolina's supreme court in upholding it said the State had the power to enact such a law and if it was "out of step with the times" as opponents alleged, it was up to the legislature, not the courts, to amend it.

Since the several appeals against the Ohio and South Carolina Sunday laws raised virtually every constitutional issue which appellants could advance, it appears that the Supreme Court regards the Sunday law issue as now firmly settled.

Religious Tests

The State of Maryland cannot require that a public office holder believe in God, the U. S. Supreme Court

unanimously ruled. No religious test whatsoever may be applied by either the Federal Government or any state government to disqualify a person for public office, the Court said, and atheists have as much right to disbelieve as other citizens have to hold to their faith.

The ruling came in the case of Roy R. Torcaso of Silver Spring, Md., who was given a commission as notary public by Gov. J. Millard Tawes, but was denied the commission by the clerk of Circuit Court of Montgomery County when he refused to sign an oath that he had a belief in a Supreme Being.

The American Jewish Congress and the American Civil Liberties Union filed "friend of the court" briefs upholding Torcaso's petition and attorneys from their staffs represented him.

Article 37 of the Declaration of Rights of the Maryland State constitution declares, "No religious test ought ever to be required as a qualification for any office of profit or trust in this State other than a declaration of belief in the existence of God...."

Justice Hugo L. Black, who delivered the opinion of the Court, said, "There can be no dispute about the purpose and effect of the Maryland...requirement before us--it sets up a religious test which was designed to, and--if valid--does bar every person who refuses to declare a belief in God from holding a public office of trust or profit in Maryland."

This, Black pointed out, places the power and authority of the State on the side of one particular set of believers, those willing to say they believe in "the existence of God." He cited the Everson case (a 1947 case involving parochial school bus transportation) in which the Court said that neither the Federal Government nor any State can force "any person to profess a belief or disbelief in any religion."

He said the Court repeats and "again reaffirms" that no one can be forced to profess a belief or disbelief in religion nor can either Federal or State governments pass laws which "aid all religions as against non-believers."

The fact that no person is compelled to hold pub-

lic office, but instead voluntarily seeks it, does not mitigate the damage to his constitutional rights, Black said, adding, "the Maryland religious test for public office unconstitutionally invades the appellant's freedom of belief and religion and therefore cannot be enforced against him."

Birth Control

By a 5 to 4 vote the U.S. Supreme Court refused to rule on the constitutionality of Connecticut's 72-year old law banning the sale or use of contraceptives and the giving of advice on birth control, even by licensed physicians.

The Court's majority speaking through Justice Felix Frankfurter, said that Connecticut had "nullified" its own law by failing to enforce it and that the appellants could not show that their constitutional rights had been injured.

The Court found itself so badly divided that it required six opinions to deliver the decision.

The case arose when Dr. C. Lee Burton, dean of the Yale University medical school, and an eminent gynecologist, claimed that his constitutional rights as a physician were invaded by the Connecticut law. Two married couples whose wives are his patients, identified only as Jane Doe and Pauline Poe, brought suit, contending their natural marital rights were invaded by unwarranted State action. One wife has had four tragic miscarriages, the infants born hideously deformed; the other suffers from malignant high blood pressure and suffered a stroke at the age of only 25, making further pregnancies extremely dangerous.

The weakness of the cases was that, although the State's attorney, Abraham Ullman, who was defendant in the actions, conceded Dr. Burton would violate the law if he prescribed artificial means of birth control and the married couples would be punishable if they procured and used such medical devices, no actual prosecution had occurred.

As a matter of fact, Justice Frankfurter said, no prosecution has ever occurred under the 1879 law, except for a test case in 1940 when two doctors and a nurse invited prosecution. The courts threw out that case on a technicality.

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