REPORT FROM THE CAPITAL

★ RELIGIOUS LIBERTY ★ BAPTIST PRINCIPLES
★ PUBLIC AFFAIRS

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SUPREME COURT AGREES TO HEAR CASE ON CONSTITUTIONALITY OF PRAYER IN SCHOOL

Are daily prayers in public schools constitutional?

The Supreme Court has agreed to decide this question in a case presented by five parents who object to the daily recitation of a nonsectarian prayer in the public schools in New Hyde Park, N. Y. The case centers in a prayer approved by the New York Board of Regents in 1951 for use in the public schools of the state. Its words are:

"Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers, and our Country."

The practice is to repeat the prayer in each class right after pledging allegiance to the flag. The teacher or one of the class leads the rest of the students.

The parents, two Jewish, one Unitarian, one a member of the Society for Ethical Culture, and one an agnostic, have told the Supreme Court in their appeal that the prayer "favors religious belief over non-belief." They state that it violates their own beliefs and that of their children. They ask an injunction to prohibit the school from directing the recitation of the prayer during opening exercises in the public school classrooms.

Judge Bernard S. Myer of Nassau County, N. Y., heard the original petition and denied it. He was assured that the children were not compelled to participate in the prayer. He commented that in 17 state court decisions that he could find involving religious practices in public schools, ten upheld the schools and seven struck down the practices, leaving the precedents unclear.

The New York state Supreme Court of Appeals upheld Judge Myer and voted 5 to 2 to deny the injunction. The dissenting justices argued that the prayer is a form of state sponsored religious education which they felt should be declared unconstitutional.

The Supreme Court is expected to hear oral arguments in the case sometime in February or March.

Never before in the running dispute on the proper boundry between church and state has the court agreed to look at the practices in many public schools of opening each day's classes with Bible reading and a prayer.

The justices have previously dealt with such problems as the teaching of religious classes on school time and in public classrooms, the transportation of students to parochial schools, and the purchase of books and supplies for students in parochial schools.

The New York Board of Regents entered the case as a friend of the court, opposing a review by the Supreme Court. Counsel for the Board said that the prayer was recommended because the board was "aware of the dire need, in these days of concentrated attacks by an atheistic way of life upon our world... of finding ways to pass on America's moral and spiritual heritage to our youth through the public school system."

SCRIPTURE PRESS FOUNDATION APPEALS TAX CASE TO UNITED STATES SUPREME COURT

An appeal has been filed with the United States Supreme Court which, according to the counsel for the appellant, may set a precedent for revoking tax exemption of all religious publishing houses.

The Scripture Press Foundation of Wheaton, Ill., has appealed to the Supreme Court against a ruling of the Commissioner of Internal Revenue revoking its tax exempt status.

The case first arose in 1953 when the Commissioner of Internal Revenue reviewed the tax exempt status of Scripture Press as a religious and educational organization and held that "your principal activity is the sale of religious periodicals, publications, and supplies." While this might aid the churches buying the supplies in carrying out their ministry, the commissioner said, "The manufacture and supply thereof does not constitute a religious activity in itself but is a business of a kind ordinarily carried on for profit."

The commissioner, on appeal, reaffirmed this ruling in 1954 (a new commissioner having taken office) saying that "the preparation and sale of this (religious) material is not a religious activity within itself but is secular in nature."

In a letter from an attorney for Scripture Press the viewpoint of the appellants is as follows:

"The whole basis for our claim to tax exempt status is the fact that the field of publishing Sunday school lesson material is almost entirely occupied by non-profit religious organizations, and that in this field there is no competition with ordinary commercial concerns.

"Our belief is that Congress, in enacting amendments in 1950 and 1951 to the exempt tax status for religious, charitable, educational and scientific organizations to prohibit feeder corporations from being exempt and taxing unrelated business income (supplemental U income) at ordinary tax rates, did not intend to remove the tax exempt status of organizations such as ours."

The attorney's letter continued, "The publication and dissemination of Sunday school lesson material is almost entirely performed by so-called denominational presses. These denominational presses, as we know them, operate precisely the same as our organization. The only difference, which is no legal significance, is that the denominational presses are controlled by the church hierarchy, whereas our organization is independent of any church organization, although it is closely affiliated with the National Association of Evangelicals and the National Sunday School Association. The board of directors of Scripture Press, like many non-profit charitable, educational or religious organizations, is self-perpetuating."

The attorney further explained, "Actually, what we are seeking to have the Supreme Court decide is whether the test of tax exempt status is the source of a religious publishing organ's funds or the use to which these funds are put. We feel that the latter is the proper test under the law."

The letter concluded, "If the Court of Claims decision is allowed to stand, we feel that the Commissioner of Internal Revenue is obligated to review all non-profit publishing houses and to likewise declare them to be taxable. We do not feel that there should be discrimination in this field and all religious publishing houses should be similarly treated."

SUPREME COURT STRIKES DOWN FLORIDA NON-COMMUNIST OATH AS TOO VAGUE

The United States Supreme Court has unanimously struck down a non-Communist oath required of all public employes in the state of Florida.

The Florida law requires, among other things, that every state or local government worker swear that he has not and will not lend "aid, support, advice, counsel or influence to the Communist party."

Justice Potter Stewart, writing the opinion of the court, said the provision was too vague to be constitutional, and that it would inhibit perfectly lawful expression of opinion. He added that while ruling against the Florida requirement, the Supreme Court was not questioning the power of the state to safeguard the public service from disloyalty.

The oath was challenged by David Walton Cramp, Jr., a teacher in Orlando, Fla. It was discovered in [illegible] that Cramp, who had been teaching for nine years, had never signed the oath. When asked to do so he refused. He was dismissed in 1960.

Cramp asked the state courts to declare the oath unconstitutional. He said that he was a "loyal American" and had never supported the Communist party but that he objected to the oath on principle.

Justice Stewart noted that the particular portion of the oath in question did not speak of Communist party membership or advocacy of the government's overthrow. He questioned the meaning of the phrases "aid," "support," "advice," "counsel," "influence."

"In the not-too-distant past," the justice said, "Communist party candidates appeared regularly and legally on the ballot...Could one who had ever cast his vote for such a candidate safely subscribe to this legislative oath?"

The justice further questioned, could a journalist who had ever defended the constitutional rights of the Communist party take such an oath, or could a lawyer who had ever represented the Communist party or its members?

"Indeed, could anyone honestly subscribe to this oath who had ever supported any cause with contemporaneous knowledge that the Communist party also supported it," he asked.

The Florida oath includes other passages dealing with party membership and belief in violent overthrow of the government. These were not at issue in the Supreme Court case.

SUPREME COURT REVERSES NEGRO SIT-IN CONVICTIONS OF DISTURBING PEACE

The Supreme Court unanimously reversed the convictions of 16 Negro students in Louisiana for disturbing the peace by "sitting-in" at lunch counters.

The reason given for the decision by Chief Justice Earl Warren was not on the question of the right of private business to exercise racial discrimination but rather on the question of disturbance of the peace. The court reversed the convictions because there was no evidence that the peaceful behaviour of the students either had produced a public disturbance or had been likely to do so.

Warren said that the convictions "are so totally devoid of evidenciary support as to render them unconstitutional under the due process clause of the 14th Amendment." (The portion of the Constitution referred to says, "Nor shall any State deprive any person of life, liberty, or property, without due process of law.")

The cases, known as Garner et al vs. Louisiana, involved 16 Negro students at Southern University at Baton Rouge, La. They were convicted of disturbing the peace by sitting at lunch counters where they were refused service.

This decision did not deal with the question of sit-in convictions for violating trespass laws.

the cases now on their way to the Supreme Court trespass, rather than breach-of-the-peace convictions.

Although Justices W. O. Douglas and J. M. Harlan reed with the reversal of the Louisiana convictions, y disagreed on the question of possible violence ising from the sit-ins. They recognized the possility of disturbance in segregated communities.

Justice Douglas would have reversed the decision r a more sweeping reason that was given by the ief Justice. He said that no restaurant operating der a state or local license should be allowed to clude customers on account of race.

Some reporters have observed that the Constitution hibits only racial discrimination stemming from e governmental action. It has been the opinion t it does not touch private discrimination.

However, Justice Douglas said that restaurants e "affected with a public interest." Evidence of is public interest is that in most areas restauts are licensed and must meet health standards.

"I do not believe that a state that licenses a siness can license it to serve only whites or only cks or only yellows or only browns," Justice glas said.

Justice Harlan took his position on a different und. He said that the constitutional right of Negro students to express opinions had been adged without proof of any opposite "overriding terest" of the state. He said that the Negro stuts were propagating ideas by their sit-in demonrations.

No state can curb such expression, Justice Harlan id, without passing a particular statute, demonrating that it presents "a clear and present danger the welfare of the community."

MC LEGAL DEPARTMENT STUDY SAYS ROCHIAL SCHOOL AID CONSTITUTIONAL

Another big gun was fired here in the battle to tain public funds for parochial schools. The Legal partment of the National Catholic Welfare Conferce released an 82-page study which concludes that a deral program of federal aid to education which inudes church-related schools is constitutional.

The Catholic legal study crashed head on with the emorandum on the Impact of the First Amendment to e Constitution upon Federal Aid to Education" isued by the United States Department of Heath, Educaon and Welfare on March 28, 1961. The memorandum ates that "across the board" loans and grants to urch-related elementary and secondary schools are constitutional.

At a news conference in the Bishops' Room at the tional Catholic Welfare Conference under the bright re of television lighting and before a battery of irty news people, William R. Consedine, director of e Legal Department, declared:

"Education in church-related schools is a public function which by nature is deserving of public support."

Consedine shared the spotlight with William B. Ball of Harrisburg, Pa., executive director and legal counsel of the Pennsylvania Catholic Welfare committee. Together for an hour they answered questions on the legal position of the National Catholic Welfare Conference.

Observers noted that little new has been introduced by the 82-page legal study but that it is largely a compilation of the various Catholic arguments that have been used all along for obtaining governmental funds for the parochial school system.

Explaining the purpose of releasing the study to the public, Consedine said that it is "our hope that it will serve to clarify constitutional issues and to cause a more widespread recognition of the massive contribution of church-related and other private schools to the common welfare."

He said that in the event their objective is not achieved "it is our hope that we will at least have provided a basis for a continuing public dialogue respecting these problems."

Thus it is clear that the question of public aid to church schools will continue to be a problem for many years to come, regardless of the outcome of the current drive.

Specifically, the Catholic legal study narrowed the scope of its inquiry to this question: "May the federal government as part of a comprehensive program to promote educational excellence in the nation, provide secular educational benefits to the public in private nonprofit schools, church-related as well as nondenominational?"

Three related questions were not treated: (1) the basic constitutionality of federal aid to education, (2) the constitutionality of federal aid to education exclusively in public schools, and (3) the constitutionality of federal aid to religious instruction.

Consedine emphasized in the press conference that it is the public service rendered by the parochial schools and the secular portion of the educational process that should be subsidized by public funds. He asserted that a method of accounting could be devised to determine which part of the teaching should be paid for by the church and which should be paid for by the public.

Under questioning Consedine denied that the inclusion of religion or a religious interpretation in a history class would constitute a barrier to public support for the secular content of the course. This would apply to the other courses of the curriculum.

The Catholic legal study came to four conclusions:

(1) Education in church-related schools is a public function which, by its nature, deserves governmental support.

(2) Parent and child have a constitutional right to choose a church-related educational institution

meeting reasonable state requirements, as the institution in which the child's education shall be acquired.

(3) Government in the United States is without power to impose on the people a single educational system in which all must participate.

(4) There is no constitutional bar to aid to education in church-related schools in a degree proportionate to the value of the public function it performs. Such aid to the secular function may take the form of matching grants, or long-term loans, to institutions, or of scholarships, tuition payments or tax benefits.

The study further found that other forms of aid "doubtless will be conceived. What is important here is not a complete catalog, but the conclusion that the major forms of aid in current discussion are constitutional as applied to education in church-related schools. The form is important only as it safeguards the national purpose."

In the press conference a reporter observed that providing educational funds to church schools through the income tax would mean Presbyterians giving to support Catholic schools and Catholics giving to support Presbyterian schools. He then asked, "Would this not be denying a constitutional right in giving funds to the school of your choice?"

Consedine replied, "We do not think so."

The legal study elaborated on the economic and social benefits of the Catholic parochial school system to the nation. For instance, it said that "for the year 1960 alone, the Catholic educational system saved American taxpayers one billion, eight hundred million dollars."

The study also enunciated the standard Catholic interpretation of the first amendment. It pointed out that opponents of aid to church-related institutions rely on the constitutional statement, "Congress shall make no law respecting an establishment of religion."

The study asserted, "When this clause was drafted it was understood to mean that Congress could not create a National Church or give any religion a preferred status. This 'No Establishment' clause was aimed at preventing governmental transgressions on religious liberty and not at preventing all relationships--even certain cooperative relationships--between church and state."

Continuing its view on the first amendment the study said, "Certainly it was never understood to mean that religious institutions which perform public services are disqualified to receive compensation for them through the governmental organs of the society which has benefited by the services. Neither was it understood to mean that government may proffer its assistance to the health and education of our citizens only through secularized governmental institutions."

After its legal considerations the study asked what would be the probable future consequences of programs of massive federal aid to public education which would exclude church-related education. It answered that the parochial school system would be weakened and many of the church-related schools would be closed and that a practical governmental monopoly of education would result.

The study did not face the question of what would happen to the public school system if parochial schools shared in public funds.

The releasing of the Catholic document at this time means that any aid to education proposal that does not include church schools faces a long, bitter fight with the Roman Catholic Church. The nation may face an educational impasse, and it may become split into warring religious groups. There seems to be no feeling of compromise either by the supporters of federal aid to parochial schools or by the opponents of such programs.

TENNESSEE BOARD RULES AGAINST COLLEGE LOANS

The Executive Board of the Tennessee Baptist Convention has adopted the following statement: "Because we believe in the time-honored principle of separation of church and state, and because there are many threats throughout the nation to the preservation of this principle, therefore it is our conviction that the borrowing of public funds by religious institutions is in violation of this principle." Both Texas and Virginia Baptists have expressed similar views.

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