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Report from the Capital

MAY and JUNE 1975

Progress Made Toward Bicentennial Meeting

WASHINGTON—"Baptists and the American Experience" will be the theme of a Baptist National Convocation on the Bicentennial in Washington, D.C., January 12–15, 1976, according to an announcement by James E. Wood, Jr., executive director of the Baptist Joint Committee on Public Affairs.

More than two years ago, the North American Baptist Fellowship (NABF) determined that the nation's Bicentennial observance provided various Baptist groups with an opportunity to cooperate in a joint celebration.

The NABF, an alliance of Baptist bodies on the North American continent, asked the Baptist Joint Committee to take the lead and coordinate plans for the observance, now set for the Shoreham Americana Hotel in Washington.

Since that time, an ad hoc committee of leaders from several conventions and conferences of Baptists in the U.S. has met five times with the staff of the Baptist Joint Committee to lay the groundwork for the Convocation.

Wood's announcement indicated that the Convocation will focus not only on the past, but on the present and future as well. "While Baptists have had a significant role in the development of America," he said, "we feel that we must not dwell primarily on our past. Rather, the speakers and the seminar groups will address themselves to the present and the future as we seek on the occasion of the Bicentennial to discern the role of Baptists in the life of the nation."

Under the general theme, five plenary sessions are planned, each of which will deal with a distinct element of the Baptist contribution to the religious and social fabric of the nation. Topics of the plenary sessions include: "Baptists, Liberty, and the American Revolution;" "Baptists and Human Rights in the American Experience;" "Baptist World Mission Outreach and American International Affairs;" "Religious Liberty and Public Policy;" and "Baptist Pluralism and Unity."

Besides attending the plenary sessions, participants will be divided into four seminar groups on three separate occasions for discussion.

Preceding the first plenary session, a keynote speech, "The Meaning of Liberty in the American Experience," will be delivered by a major figure in public life.

Another highlight of the Convocation will be a mass worship service at the

(See, BICENTENNIAL, p. 6)

Pennsylvania Church School Aid Laws Declared Unconstitutional

WASHINGTON—In a landmark decision, the Supreme Court declared that two Pennsylvania laws providing aid to nonpublic schools violate the Constitution's prohibition of "an establishment of religion."

The laws called for the expenditure of tax funds for a wide variety of so-called "auxiliary services" and the provision on a loan basis of instructional materials and textbooks to students in nonpublic schools. The justices, by a 6–3 margin, struck down all the provisions except for the loan of textbooks.

Many observers here say that the high court's new decision is the most extensive yet in a long series of rulings seeking to set limits on the kinds of aid that can be provided nonpublic school pupils without violating the First Amendment's ban on the establishment of religion.

See article on "State Aid to Parochial Schools," by James E. Wood, Jr., page 2.

Among those seeking the overthrow of the Pennsylvania laws was the Baptist Joint Committee on Public Affairs here, which joined with a number of other organizations in filing a "friend of the court" brief supporting opponents of the state aid program.

James E. Wood, Jr., executive director of the Washington-based Baptist group, hailed the court's decision as a "reaffirmation of the rationale for its earlier positions outlawing public funds being used for nonpublic schools."

Wood noted that the decision "reinforces the position long maintained by the Baptist Joint Committee on Public Affairs" and in fact affirms the arguments contained in the group's brief in the present case. Those arguments, Wood continued, "are consistent with our commitment to the First Amendment and our conviction that the use of public funds be restricted to public schools which serve a uniquely *public* function."

Justice Potter Stewart, joined by Justices Harry A. Blackmun and Lewis F. Powell, wrote the majority opinion in the case, known as *Meek v. Pittenger*. Their opinion on the textbook loan provision was also joined by three others, Chief Justice Warren E. Burger and Associate Justices William H. Rehnquist and Byron R. White, who held in two separate opinions that the court should have upheld Pennsylvania's entire plan.

The majority opinion was supported except in the textbook provision by the other three justices, William O. Douglas, William J. Brennan, and Thurgood Marshall, all of whom said in still another opinion that Pennsylvania's entire package should be thrown out.

The two laws at stake, Acts 194 and 195, were enacted by the Pennsylvania General Assembly in 1972 in an effort to find some constitutionally valid means of assisting the state's private elementary and secondary schools. Two other programs from Pennsylvania had already been declared unconstitutional in previous Supreme Court actions.

Act 194 called for the provision of "auxiliary services," including counseling, testing, psychological services, speech and hearing therapy, teaching and other services for exceptional, remedial, and educationally disadvantaged pupils, "and such other secular, neutral, nonideological services as are of benefit to nonpublic schoolchildren."

Act 195 authorized Pennsylvania's secretary of education to lend textbooks without charge to children in nonpublic schools and to lend directly to such

(See, PENNSYLVANIA, p. 6)

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From the Desk of the Executive Director

State Aid to Parochial Schools

By James E. Wood, Jr.

I

The U.S. Supreme Court has delivered another severe blow to the hopes of those who have been anticipating the increased availability of state aid to parochial schools. Indeed, restrictions on state aid to parochial schools are steadily increasing. On May 19, 1975, in a major church-state decision, *Meek* v. *Pittenger*, the Court reaffirmed the unconstitutionality of the use of public funds for parochial and private schools. Consistent with its landmark decisions of 1971 and 1973, which clearly and categorically declared the impermissibility of public funds for nonpublic, schools, the Court has now ruled as also unconstitutional the Pennsylvania plan for state aid to parochial schools in the form of auxiliary services and educational materials.

Wood

For many years questions concerning public funds and nonpublic schools and religion in the public schools have been critical issues in U.S. church-state relations. During the past twenty-eight years no other church-state problems have provoked as much discussion and prompted as much litigation. Significantly, the two problems are indissolubly linked together in American church-state relations. On the one hand, the role of religion in public schools has been adjudicated on the basis that public schools are necessarily subject to public control and public policy by virtue of the fact that they are tax supported. On the other hand the use of public funds is in conflict with the private character of nonpublic schools, whether religious or secular. Such use of public funds is incongruous to the whole concept of American public policy which necessarily accompanies the expenditure of public funds.

The Baptist Joint Committee has long maintained an active role with regard to religion in public education and public funds and nonpublic schools. It has done so because of its commitment to the guarantees of the First Amendment respecting religious liberty and the separation of church and state, public control with the expenditure of public funds, and the uniquely public function of American public schools. Thus amicus briefs were filed by the Joint Committee many years ago in *Everson* (1947) and *McCollum* (1948). More recently amicus briefs were filed by the Committee in *Nyquist* (1973) and in *Meek* v. *Pittenger* (1975), both of which were filed in opposition to the expenditure of public funds for nonpublic schools.

II

Meek v. *Pittenger* should be viewed in the context of the Court's historic decisions of 1971 and 1973. The resounding decisions of 1971, *Lemon* v. *Kurtzman* and *Earley* v. *DiCenso*, marked the first time the Court struck down legislation on public funds to nonpublic schools. It was in fact the first opportunity the Court had to do so.

In a unanimous decision the Court ruled in *Lemon* that Pennsylvania's nonpublic Elementary and Secondary Act of 1968, which authorized the state to purchase such educational services as teachers' salaries, textbooks, and instructional materials for secular subjects, was unconstitutional. It did so on the ground that such aid would foster "excessive entanglement" between government and religion.

In an 8 to 1 decision, in *Earley* v. *DiCenso*, the Court declared also to be unconstitutional the Rhode Island Supplement Act of 1969, which provided for a 15 percent supplement to be paid to private school teachers of secular subjects using the same instructional materials as those used in public schools. There can be no question, the Court said, but that the intent of the First Amendment is to maintain a boundary between church and state.

Two years later in three separate opinions, *Committee for Public Education* v. *Nyquist*, *Levitt* v. *Committee for Public Education*, and *Sloan* v. *Lemon*, the Supreme Court again denied the use of public funds for nonpublic schools. In these three cases the Court struck down five programs of public assistance to parochial schools.

In *Nyquist*, in a 6 to 3 decision, the Court held as unconstitutional amendments to New York's Education and Tax Laws establishing three financial aid programs to nonpublic elementary and secondary schools: maintenance and repair of facilities and equipment and tuition reimbursement and tax credit plans for parents of children attending nonpublic schools.

In *Levitt*, in an 8 to 1 decision, the Court ruled as unconstitutional a 1970 New York program which allocated $28 million annually to reimburse nonpublic schools for educational testing and other "mandated services" imposed by the state on nonpublic schools.

In *Sloan*, the Court ruled as also unconstitutional, 6 to 3, a Pennsylvania law, the Parent Reimbursement Act for Nonpublic Education, which was designed to reimburse parents of nonpublic school pupils for part of the tuition expense ($75 for each dependent enrolled in an elementary school and $150 for each dependent in high school). The Court concluded its opinion with this reminder: "If novel forms of aid have not readily been sustained by this Court, the 'fault' lies . . . with the Establishment Clause itself. . . . With that judgment we are not free to tamper. . . ."

From almost any perspective, *Meek* v. *Pittenger* must be regarded as a major decision of the Court in church-state relations. Beyond its consistency with the decisions of 1971 and 1973, the decision substantially restricts still further the use of public funds for parochial schools. Both "educational materials" and "auxiliary services" (e.g. remedial and special learning classes, counseling, testing, and psychological services), even when provided by public school personnel, were found to be in violation of the Establishment Clause of the First Amendment. The direct loan of instructional materials and equipment to nonpublic schools, the Court said, "has the unconstitutional primary effect of establishing religion because of the predominantly religious character of the schools benefiting from the Act. . . . the inescapable result is the direct and substantial advancement of religious activity." Auxiliary

services were also found to be in conflict with the First Amendment's Establishment Clause because they "necessarily give rise to a constitutionally intolerable degree of entanglement between church and state."

In judging the constitutionality of legislation which affects religious institutions the Court has applied three tests: the statute must have a secular purpose; it must have a "primary effect" that neither advances nor inhibits religion; and its administration must avoid excessive government entanglement with religion. The Court found that *Meek* clearly failed two of these tests. Furthermore the Pennsylvania Act was found to provide opportunities "for political fragmentation and division along religious lines, one of the principal evils against which the Establishment Clause was intended to protect."

The Meek decision was a proper one and inevitable if the religion guarantees of the First Amendment are not to be violated. While the fight for state aid to parochial schools will doubtless continue, the possibilities of such aid have been substantially reduced and thereby the ban on governmental establishment of religion left intact.

FCC Will Not Eliminate Religious Broadcasting

In recent months there has been a flurry of panic mail to denominational offices, to Congress and to the Federal Communications Commission about an alleged attempt to eliminate all religious broadcasting from radio and television. John W. Baker, director of research services for the Baptist Joint Committee on Public Affairs, has thoroughly researched the matter. The article below should set the record straight. Again, we urge church people, when you hear ugly rumors about governmental restrictions on religion, don't panic. Get the facts, then act in an informed, rational manner.—Editor.

By John W. Baker

WASHINGTON—In spite of rumors to the contrary, there is no movement afoot in the Federal Communications Commission or in Congress to remove existing religious broadcasting from either radio or television. This could not be done under the First Amendment to the Constitution and it would constitute political suicide for an elected official.

Baker

However, the Federal Communications Commission will be considering a petition which, if accepted, could have an effect on religious broadcasting in the future. The facts are rather simple.

On December 5, 1974 Jeremy D. Lansman and Lorenzo W. Milam filed a petition with the Federal Communications Commission asking that it issue administrative rulings which would prohibit the assignment of any additional educational television or FM radio licenses to individuals or groups which would air only religious or quasi-religious programs. In so requesting, the petitioners were acting solely on their own behalf and were not representing any organized groups.

In this petition, which the Commission designated as RM 2493, it was argued that because there is a limited number of channels available to the listening and viewing public those channels should serve the interests of the broadest based public possible. It was asserted that it is contrary to the general public interest to have any additional educational television or FM radio channels devoted exclusively to religious programming.

The petition has generated a strong negative reaction among many people. Some of these have been exposed to only a part of the facts; many have received garbled information. However, many of those who had their information correct have not known how to make their opposition known to the government officials who will make the final decisions on the petition. The following may make the process clearer.

Though there is no action on the matter pending in Congress, the members serve as an effective conduit of opinion to the regulatory commissions. Letters to representatives are effective if they contain correct information and a sincere request for help.

The Administrative Procedures Act establishes the steps which an administrative agency must follow in determining what its regulations will contain. The staff of a regulatory commission conducts a study of the requests made in petitions which are received. After study the staff may make one of three recommendations to the full commission:

(1) It may recommend a set of proposed regulations which, if the commission approves them, must be published in the *Federal Register*. Opportunities must then be accorded to the opposition to make its case. Then revised rules are issued. These rules have the binding effect of law.

(2) The staff may recommend that a "notice of inquiry" be published in the *Federal Register* asking for further public input into the rule making process. After the staff has considered these new ideas, it will either recommend rules to the commission, or,

(3) the staff can recommend that the requests in the petition be dismissed. The commission usually accepts this recommendation.

Letters to members of the Federal Communications Commission may be effective in the period after the staff has made its recommendations. To be effective, these letters, like those to Congress, should mention RM 2493 and should reflect a realization that current religious broadcasting and any religious programming on commercial radio and television would not be affected if the petition were adopted and that the Constitution requires that government be neutral and not antagonistic in its dealing with religion.

There is no cause for any immediate alarm. Those charged with watching government activities must be vigilant.

Viewpoint of a Lutheran Observer

Changes in Church-State Concepts

The article below is a reprint from "Focus on Public Affairs," a semimonthly newsletter, published by the Office of Public Affairs and Government Relations of the Lutheran Council in the USA, Washington, D.C. It was written by Robert E. Van Deusen, executive director of the Lutheran office. Since 1945 Dr. Van Deusen has been an astute observer and participant in matters relating to church-state relations. He is one of the most respected church leaders on the Washington scene. He is retiring at the end of June 1975.—Editor

By Robert E. Van Deusen

During the past 30 years both church life and national life have experienced basic changes in pattern and emphasis. As part of this transition, traditional concepts of the relationship between church and state have changed.

New situations called forth new responses, and new responses created still different situations. Court decisions helped to identify the essential ingredients in a constitutionally acceptable church-state relationship. Significant changes were also hammered out on the anvil of experience and theological discussion.

Separation

Three decades ago the prevalent concept was that of separation of church and state. This was a constitutional principle embodied in the "establishment clause" of the First Amendment. But it also had roots in the experience of the colonists with state churches in Europe. Freedom to practice religion without domination and repression was part of the American experiment in self-government.

The principle of separation was often narrowly construed in practice. To many church members, it meant that the church should not involve itself in governmental concerns of public policy. The mission of the church was thought of primarily in personal terms without full awareness or appreciation of the social implications of the gospel. This was perhaps more true of the Lutheran churches than of other Protestant denominations or the Roman Catholic Church.

Cooperation

After World War II a new situation developed. Overseas relief and rehabilitation programs and the movement of refugees called for extensive cooperation between the churches and the government. The idealism and expertise of church agencies was needed, and the task was so massive it was financed largely through government funding.

In relation to these programs special relationships developed between the churches and the government. Carefully structured patterns of cooperation protected the interests of both partners. Safeguards were built into the system to ensure the freedom of church groups to retain their identity and distinctive style of operation. At the same time the government, to the extent it provided operational funds, reserved the right of review and financial audit.

Van Deusen

A similar pattern of cooperation developed in connection with the U.S. foreign aid program. Large amounts of government owned surplus food were made available for distribution to areas of hunger overseas, with the government reimbursing church agencies for the cost of ocean freight. A great deal of money was provided by the churches for processing and packaging the food and for inland transportation at both ends of the journey. The whole program thus became in effect an exercise in church-state cooperation toward mutually desired ends.

Rethinking the Implications

Church leaders began to weigh the implications of those cooperative relationships with the government. They realized the importance of the principle of separation of church and state as a protection against domination of church life by the government and against privileged status and special influence by any one religious group. But they realized too that the separation concept was an inadequate description of the full relationships between the churches and the government.

Realization came gradually that the principle of separation of church and state is essentially a negative concept. It stresses the conviction that church and state are and must remain separate entities, with neither infringing on the other's prerogatives. But it does not deal with the corollary question of what positive relationship they shall bear to each other.

The growing complexity of modern society made clear that both church and state have an important stake in solving problems that affect the lives of people. The church had to find how to relate to government in order to achieve common objectives or be relegated to the sidelines.

The development of a new rationale had to keep in mind and preserve the values imbedded—though somewhat obscured—in the phrase, "separation of church and state." These were the rights guaranteed by the First Amendment: the right to exist and function freely as a church, and the right of all religious groups to be treated equally and without favoritism by the government.

The solution was simple but difficult to achieve: to persuade people to drop the

phrase, "separation of church and state," and to go through the semantic discipline of finding other words to express what they really meant: for example, the *autonomy* of the church—its right to make its own decisions without government interference; or the *integrity* of the church—the necessity for the church to be what it is, the body of Christ, rather than a channel for carrying out government policy; or its *freedom to witness*—the moral necessity of expressing its inner convictions, even when they run counter to political expediency.

Functional Interaction

One study under the aegis of the Lutheran Church in America coined the phrase, "institutional separation and functional interaction," to describe the broadened spectrum of church-state relationships. This concept had far-reaching effects.

It provided the basis for church participation in *government-sponsored* programs, such as resettlement of refugees and distribution of food. But it also opened the door to government *funding of church-sponsored* programs, in which church agencies and institutions have to meet government specifications for eligibility to comply with government regulations in the use of funds.

In the last two decades government funding of church programs has grown to massive proportions. The largest amounts of aid have gone to church-related educational and welfare institutions for such purposes as the construction of dormitories, classroom buildings, laboratories, hospitals and clinics. Substantial amounts have also gone to a wide variety of programs for human betterment, many of them local in nature.

In terms of benefits to large numbers of individuals and to society, the results have been substantial. This aid has made possible social welfare programs that would probably never have come into existence. Church agencies have brought their organizational experience and staff expertise to bear on community problems which were of concern to both the churches and federal and local governments.

Hazards

But certain risks have been involved. In qualifying for aid and complying with government regulations, church organizations and institutions have forfeited part of their autonomy. In some circumstances church agencies are seen by the public as agents of government policy rather than purveyors of Christian compassion. In other situations churches are perceived as benefiting organizationally from government aid rather than as filling a community need with public funds.

A longer-term hazard has been the danger of government control over internal policies. Money received "with no strings attached" can prove later to be the basis of government regulations, authorized by subsequent legislation. The freedom of institutions to make their own decisions may be subject to unwelcome limitation.

In 1964 I wrote an article for *The Lutheran* commenting on a lower court decision left standing by the Supreme Court's declining to review it. A hospital in North Carolina was required to end its practice of racial segregation since it had earlier received federal funds under the Hill-Burton Act. While welcoming the end result of the decision, I saw implications for the future: "This time it was racial segregation that was involved. Suppose 10 years from now it was 'religious discrimination' . . . and that this was defined to include the choice of a Lutheran president or employing Christian faculty members in a church-related college? Suppose the earlier acceptance of government grants should make it possible for the government to rule out the use of any religious yardstick in staffing church institutions?

Such a development is not likely, but not impossible. Underlying the problem are the basic questions with which we started: When does a private institution cease to be private? What does a church-related institution lose when it is no longer supported by the church and gradually becomes a quasi-public institution?"

The result I saw as unlikely then is almost literally true today in the contract compliance program of the Labor Department. Colleges and hospitals have learned to live with government regulations as part of the price of massive infusions of money essential to survival and growth. The corollary has been a decrease in the degree of church-relatedness.

Government funding of some of the churches' programs is probably here to stay. Perhaps this is a signal to the churches to choose deliberately which areas of its life are so central to its existence and mission that they must be earmarked for *full* support by their own members, with complete autonomy and freedom as a result.

Corporate Action

Another kind of functional interaction between church and state which underscores the value of institutional separation is the area of social and political action. In the past decade church leaders have become increasingly sensitive to the need for objective study of public policies and exercise of influence on those policies from the vantage point of moral and ethical values.

Some church members still question the appropriateness of the churches' influencing public policy in a corporate way. The traditional posture of the churches has been to sit on the sidelines, study issues and make pronouncements, leaving church members in their capacity as citizens to engage in political action. The trend toward corporate action by the churches has met considerable resistance among their own laity.

In spite of this, denominations and their agencies have increasingly addressed specific issues: poverty, hunger, conscientious objection, welfare reform, foreign aid, the criminal justice system, environmental concerns. As a major part of the thrust, they have informed the church constituency so they may act responsibly. Along with that, positions taken by the churches have been communicated to the legislators, or to policy-makers in the executive branch, in the hope of influencing the outcome.

Salutary Lessons

In the process the churches have learned some salutary lessons. One is that in order to have significant influence, they must engage in hard study of the many-sided issues so they do not propose simplistic solutions to complex problems. Another is that they are not taken very seriously unless the viewpoint they express is shared to a substantial degree by the rank and file of their own members.

In the marketplace of ideas, the churches have learned a degree of humility, acknowledging that the solutions they espouse may not be the best ones. In fact, they have come to realize that some times the conscience of the state outruns that of the church, discerning human values which the churches have been slow to point out. Classic examples are the Supreme Court decisions outlawing segregation in the public schools, the launching

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Pennsylvania Church School Aid

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schools other "instructional materials and equipment." That category included periodicals, photographs, maps, charts, sound recording, films, "or any other printed and published materials of a similar nature," as well as projection, recording and laboratory equipment.

The case was brought to the Supreme Court by a number of private individuals and groups who objected to Pennsylvania's program after a U.S. district court ruled against them.

The high court majority rejected the "auxiliary services" provided for in Act 194 on grounds that they would inevitably produce "excessive entanglement" between church and state. In addition, the majority held that provision of such services "creates a serious potential for divisive conflict over the issue of aid to religion."

As to Act 195, the court divided sharply on the majority's distinction between loans of textbooks and other instructional materials and equipment. The majority, citing a 1968 Supreme Court decision in a textbook case from New York, held that lending textbooks either directly to nonpublic school children or indirectly to the schools to be passed on to children does not "offend the constitutional prohibition against laws 'respecting an establishment of religion.' "

Justice Brennan, writing also on behalf of justices Douglas and Marshall, stated that "in light of the massive appropriations involved (nearly $5 million in the 1973–74 school year), the Court would be hard put to explain" the difference between lending textbooks and other materials and equipment. Brennan also insisted that "it is pure fantasy" to assume that free textbooks are an aid to students and not to schools themselves.

Chief Justice Burger, in a bitterly worded dissent, castigated the majority for what he called a "crabbed attitude." He went on to declare that the religion clauses of the First Amendment were not designed "to discriminate *against* or affirmatively stifle religions or religious activity."

He said also that the denial of auxiliary services and other benefits to children solely because they attend a church-related school "does not simply tilt the Constitution against religion; it literally turns the Religion Clause on its head."

But the solid 6–3 majority felt otherwise, stating at one point that state aid to nonpublic schools, "though earmarked for secular purposes . . . has the impermissible primary effect of advancing religion."

Bicentennial

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National Baptist Memorial Church here, a church built jointly in 1906 by the Southern Baptist Convention and the Northern Baptist Convention (now the American Baptist Churches in the U.S.A.) and dedicated to religious liberty. The occasion will feature special bicentennial music and preaching.

Among major speakers who will be appearing during the convocation are Winthrop S. Hudson, Colgate Professor of American Christianity at Colgate-Rochester Divinity School, Rochester, N.Y.; Edwin S. Gaustad, professor of history at the University of California, Riverside; Gardner Taylor, Pastor of the Concord Baptist Church of Christ, Brooklyn, N.Y.; James Ralph Scales, President, Wake Forest University, Winston-Salem, N.C.; C. Penrose St. Amant, President, Baptist Theological Seminary, Ruschlikon-Zurich, Switzerland; and W. Morgan Patterson, Dean of Graduate studies and professor of church history at the Southern Baptist Theological Seminary, Louisville, Ky.

Invitations to the Convocation are now being sent out to a large number of Baptists throughout the nation. An open invitation to the Baptists of the U.S. is to be extended in June.

Changes

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of war on the causes of poverty, and expansion of the Social Security System to include the disabled.

Church leaders acknowledge that they have no claim to omniscience and accept the fact that the courses of action they espouse must compete on their own merits in the rough and tumble of legislative pressures. But they have discovered that accepting social responsibility means seeking possible solutions—and moving courageously toward them at the risk of being proven wrong.

Court Voids 2 State Parochial Aid Plans

By Stan Hastey

WASHINGTON—The U.S. Supreme Court cleared the docket of cases dealing with parochial aid plans for its current term by issuing rulings against proponents of such programs in a pair of cases from Ohio and Minnesota.

Just one week after announcing a historic decision invalidating Pennsylvania's "auxiliary services" law, the high court struck down a similar plan in Ohio and let stand a Minnesota Supreme Court ruling outlawing tax credits to parents whose children attend nonpublic schools.

In the Ohio case, *Wolman v. Essex*, the court held that a state law which funneled more than $81 million to nonpublic schools during the 1973–74 school year violates the establishment clause of the First Amendment. That clause in the Constitution states that "Congress shall make no law respecting an establishment of religion."

When first enacted in 1967, the Ohio statute provided just over $3 million in state funds for auxiliary services to nonpublic schools. But when the U.S. Supreme Court ruled in 1973 that Ohio's companion law granting substantial tax credits for parents of nonpublic school children violated the First Amendment, the state legislature diverted those funds to its auxiliary services program.

The disputed services included guidance, testing and counseling programs; programs for deaf, blind, emotionally disturbed, crippled and physically handicapped children; audiovisual aids; speech and hearing services; remedial reading programs; educational television services; and programs for the improvement of the educational and cultural status of disadvantaged pupils.

In an effort to counteract arguments that the plan would violate the establishment clause, Ohio's legislature included in the law the provision that "no school district shall provide services, materials, or programs for use in sectarian religious courses or devotional exercises."

Before the case came to the Supreme Court, a U.S. district court in Ohio ruled, by a 2–1 margin, that the disputed law did not violate the Constitution's ban on an establishment of religion.

The nation's highest tribunal disagreed, nevertheless, holding that the facts and arguments in the Ohio case were similar

to those it had invalidated a week earlier in *Meek v. Pittenger*, the case which successfully challenged Pennsylvania's similar plan.

In announcing its ruling, the high court sent the Ohio case back to the district court with orders that the lower tribunal make a new ruling consistent with the *Meek* decision.

In a related action, the court declined to schedule for oral argument a case involving Minnesota's tax credit law. The effect of that action is to let stand a 1974 decision by that state's Supreme Court declaring the statute unconstitutional.

The Minnesota law, which was enacted in 1971, provided an income tax credit to parents or legal guardians of children enrolled in the state's nonpublic kindergartens and elementary and secondary schools.

As in Ohio, Minnesota state legislators sought to anticipate the inevitable argument that its law violated the establishment clause by including the provision that "even in religiously-affiliated schools, the basic secular subjects must be taught by teachers whose qualifications are essentially equivalent to the public school teachers."

As a further safeguard, the Minnesota law stipulated that the purchase of religious textbooks was to be excluded.

In addition, the state legislature worked out a complicated formula which sought to insure that in no case could the tax credit exceed 80 percent of the "actual current cost in each nonpublic school of educating a child."

In declaring the tax credit on the state income tax form, a parent was required to choose among the 80 percent "restricted maintenance" plan, the amount actually spent in sending a child to a nonpublic school, or a flat credit ranging from $50 to $140 depending on the grade level of the pupil. The law further stipulated that the parent had to choose the smallest tax credit among the three alternatives.

A companion suit in the Minnesota challenge argued that the action of the state's Supreme Court invalidating the program amounted to preferring the "establishment clause" over the First Amendment's "free exercise" clause. The latter states that Congress cannot "prohibit the free exercise" of religion.

The Supreme Court's action is consistent, however, with a long series of decisions dating to 1947 that no tax in any amount shall be levied for the support, direct or indirect, of religious institutions.

In an important precedent to the Minnesota case, the high court held in 1973 that a New York law calling for both tax credits and tuition reimbursements violated the establishment clause.

By its latest actions, the court appears to have signaled that all state plans to provide funds for the support of sectarian elementary and secondary schools are in similar danger of being struck down.

ABC Counsel Faults Ford's Legal Board

WASHINGTON—The chief legal officer for the American Baptist Churches in the USA criticized President Ford's appointees to the proposed Legal Services Corporation Board in testimony before a Senate committee here.

The proposed board is designed to provide free legal services to the poor who otherwise would be unlikely to obtain legal counsel. It will not begin to operate until Congress has approved at least six of the President's appointees.

Earl W. Trent, House Counsel for the 1.5-million-member Baptist body with headquarters in Valley Forge, Pa., told the Senate Committee on Labor and Public Welfare that the President's appointees should represent not only the legal profession, but the poor as well. Trent was also critical that Ford has failed to appoint a single woman to the 11-member board.

The American Baptist attorney, who began his own career in Philadelphia as a legal service lawyer, supported the creation of the new board. His denomination, Trent asserted, has "long realized that common legal problems afflicting the poor can only be dealt with in our society through a system organized for the deliverance of legal service in an efficient, experienced and dedicated manner."

He noted further that legal service attorneys fight an uphill battle in seeking "to overcome the notion that there is disgrace in being poor and that the poor should be deprived of the same legal remedies available to those of greater means."

Members of the new board, Trent concluded, must be "sensitive to the problems of poor people." Moreover, because of the fact that 60 to 70 percent of those seeking legal service aid are women, Trent urged the Senate committee to "make clear to the President that no excuse will be sufficient to justify the absence of women from this Board."

Baptists Participate in Bicentennial Meet

WASHINGTON—Several Baptist leaders joined other representatives of the nation's religious community for a two-day meeting here designed to discuss the upcoming bicentennial observance from a religious perspective.

The consultation was co-sponsored by the American Revolution Bicentennial Administration (ARBA) and Project FORWARD '76, an interfaith group formed last year to provide research and technical help to groups interested in giving a religious dimension to the bicentennial celebration.

Porter Routh, executive secretary-treasurer of the Executive Committee of the Southern Baptist Convention (SBC), was one of 17 co-convenors of the Washington gathering. Routh, who is also a Sponsor of Project FORWARD '76, presided at one of the sessions.

Besides hearing speeches from John W. Warner, the administrator of ARBA, and several religious leaders, participants spent more than five hours in 10 different seminar groups which discussed various aspects of the religious dimension of the bicentennial observance.

One of the seminar convenors was James E. Wood, Jr., executive director of the Baptist Joint Committee on Public Affairs here, whose group discussed the problems of civil religion. Wood also served on the planning committee for the consultation.

Other Baptist participants included Carl W. Tiller, associate secretary of the Baptist World Alliance (BWA); Robert T. Handy, professor of church history and dean of graduate studies at Union Theological Seminary, New York; Deborah Partridge Wolfe, professor of education at Queens College, New York City; George W. Hill, pastor of Calvary Baptist Church, Washington, D.C.;

C. Welton Gaddy, director of Christian citizenship development for the Christian Life Commission, SBC; A. Ronald Tonks, assistant executive secretary of the Historical Commission, SBC; Bobbie Sorrill, supervisor of the General Administration Department of the Women's Missionary Union, SBC.

R. H. Edwin Espy, who is also a Baptist, serves as chairman of Project FORWARD '76. Espy is a former general secretary of the National Council of Churches (NCC).

High Court Postpones Student Aid Decision

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WASHINGTON—The U.S. Supreme Court, in an unusual action, disclosed here that it will not hear a Tennessee higher education case it had agreed to hear less than two months before. Instead, the case will be returned to a lower federal court for reconsideration there.

The case, *Blanton v. Americans United for Separation of Church and State*, was brought to the high court by Tennessee officials seeking to have reversed a U.S. district court decision that the state's Tuition Grant Program for students enrolled in all Tennessee colleges and universities is unconstitutional.

The lower court held last year that the state's program, which provides a cash stipend to residents of Tennessee to stay in the state to pursue their college education, violates the First Amendment's prohibition of an establishment of religion.

In announcing its new decision, the Supreme Court noted that since it announced in March its willingness to hear the case, the Tennessee legislature has amended the tuition grant law so as to insure that state funds will not be used to aid sectarian teaching in the state's nonpublic, church-related colleges and universities.

Tennessee officials, led by Governor Ray Blanton, had filed the request that the court send the case back to the U.S. District Court for the Middle District of Tennessee, where it originated. The state's memorandum to the Supreme Court noted that the lower court had indicated at the time its decision declaring the plan unconstitutional was made that if a "secular use restriction" clause were included in the law, the outcome might well be different.

The memorandum called attention to the amendment to the tuition grant plan passed by the Tennessee General Assembly last month, which specified that colleges and universities receiving state funds "shall use those funds solely for secular purposes, and shall maintain such records as are necessary to allow verification that (they) are used for secular purposes."

Tennessee maintained in its request to the high court that the legislature's action had "cured the constitutional defect" invoked by the district court in its rejection of the program.

Americans United countered with a memorandum urging the high court to turn aside Tennessee's request and to proceed to hear the case as previously announced. The Washington-based group insisted that the amendment to the tuition grant program passed by the Tennessee legislature "addresses itself to the manner in which the funds are used by the school" instead of facing the more primary question of the "eligibility of the school itself."

The memorandum argued that even if a "substantially sectarian institution" did spend state funds solely for secular activities, that would "not negate the fact that the state has purchased for (the) recipient students an education that includes sectarian as well as secular content."

Calling attention to a series of Supreme Court decisions holding similar plans on the elementary and secondary school levels unconstitutional, Americans United argued further that "tuition grants, though channeled through the conduit of the student, provide aid to the school itself."

The memorandum also questioned whether the administrative machinery which the revised law would require to insure that the state funds are used for purely secular purposes would not result in excessive "entanglement" of church and state. It further warned of "political divisions along religious lines of the sort that the First Amendment was designed to prevent" which might result from the program.

The new Supreme Court action probably merely delays the day when it will be faced with the case again. Regardless of the outcome at the district court level, the losing party is likely to appeal once more to the high court.

The action does not affect another higher education case which the court had already agreed to hear at the same time it would have heard the Tennessee case. In that case, a Maryland law which channels state funds directly to both public and sectarian colleges and universities is under challenge.

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