Report from the Capital

September 1978

Carter Renews Pledge to Veto Tax Credit

By Stan L. Hastey

WASHINGTON—President Carter declared here that he will "have no hesitancy" to veto a tuition tax credit bill if such a measure reaches his desk for signature.

At a nationally televised news conference, the President reiterated his often-announced opposition to tuition tax credits as a means of providing relief for college tuition costs or for tuition paid by parents of nonpublic school pupils.

"I do not favor the tuition tax credit approach," the President said. He went on to declare that he opposes such aid at the elementary and secondary levels "even more strongly" for constitutional reasons of separation of church and state.

Carter took advantage of the question regarding his possible veto of such a bill to express generally his views on the presidential option of vetoing legislation. In a statement read at the outset of the news conference, the President had already announced his intention to veto a weapons procurement measure recently passed by Congress.

"A veto is a prerogative that a President is given under the Constitution," he said, an option that should be seen as "routine" in the American system. He stated further that exercising the veto is a "duty that falls on me."

Carter's threat to veto the tuition tax credit bill is only the latest in a long series of such statements both by the President and by HEW Secretary Joseph A. Califano, who often during the past months has been a presidential spokesman on the issue.

"I have not changed my position at all," the President stated.

The administration has openly encouraged the new Coalition to Save Public Education, for example. That group, which includes the Baptist Joint Committee on Public Affairs here, was formed earlier this year specifically to defeat tuition tax credit legislation.

On June 1, the House of Representatives for the first time ever, passed a tax credit bill which would allow taxpayers to subtract from their tax forms up to $250 by 1980 for college tuition and up to $100 for tuition paid to private elementary and secondary schools.

(See VETO, p. 4)

Senate Tax Credit Strikes Elementary, Secondary Aid

By Carol B. Franklin

WASHINGTON—The Senate rejected tuition tax credits for elementary and secondary school students but gave overwhelming approval to such credits for college and postsecondary vocational education, in actions taken Aug. 15.

Hollings

By a margin of 56-41 the Senate accepted an amendment by Sen. Ernest F. Hollings (D-S.C.) which removed all references to elementary and secondary education from the bill. Final passage of the measure was by a vote of 65-27.

The bill now goes to a conference committee with the House of Representatives. Sens. Russell Long (D-La.), Abraham Ribicoff (D–Conn.), Lloyd Bentsen (D–Tx.), Daniel Patrick Moynihan (D–N.Y.), Bob Packwood (R–Ore.), Robert Dole (R–Kan.), and William V. Roth (R–Del.) were appointed conferees. The House conferees will be appointed soon.

Six of the seven Senate conferees voted in favor of tuition tax credits for all levels. Bentsen opposed the credits for elementary and secondary students but voted for the measure in its final form.

The House version of the bill was passed on June 1 by a margin of 237 to 158. That measure includes elementary and secondary students in its provisions. The amount of credits offered in the House bill are smaller, however.

The Senate version would allow parents to claim a tax credit of 50 percent of tuition for college or postsecondary vocational students up to a maximum of $250 per student. This would become effective August 1 of this year. On October 1, 1980 the tax credit would increase to a maximum of $500.

The House bill would allow the taxpayer to reduce federal income taxes by 25 percent of the amount spent on college tuition up to a maximum of $100 per student this year, $150 in 1979 and $250 in 1980. At the elementary and secondary level the credit would allow 25 percent of tuition up to $50 per pupil this year and $100 in 1979 and 1980.

The Baptist Joint Committee on Public Affairs has actively worked against passage of any such measure by Congress.

The Carter Administration also opposes tuition tax credits. Carter has threatened to veto any tuition tax credit bill that comes to him. He and Health, Education and Welfare Secretary Joseph A. Califano are pushing expanded federal college scholarship programs for middle-income students.

Opposition to tuition tax credits has focused on the issue of the separation of church and state, the possible re-segregation of schools, the high cost of the credits, and benefits to upper-income taxpayers.

Catholic and private school groups have lobbied heavily for the bill claiming that the courts would rule tuition tax credits constitutional. (BPA)

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The Dilemma of the Bakke Decision

By James E. Wood, Jr.

On June 28, the U.S. Supreme Court handed down a decision, which many had come to believe was the most important civil rights case to come before the Court since 1954 when the Court outlawed racial discrimination in the public schools. Evidence of widespread public interest in the case may be found in the fact that more amicus briefs were submitted in *Regents of the University of California* v. *Bakke* than in any previous case in the Court's history.

Wood

The long awaited decision in the Bakke case, in spite of its complex and even ambiguous character on first reading, must be regarded as a landmark decision. In announcing its "judgment," in the absence of any clear majority, the Court seriously addressed itself to the dialectical character of civil rights in the United States, namely the protection of the civil rights of all citizens regardless of race and at the same time to uphold the policy of affirmative action as a redress for a long history of racial discrimination against black Americans and other ethnic minorities. In this respect, the Court gave serious consideration to the systematic injustices resulting from racism in a nation built upon the concept of a democratic society.

While the six opinions in the Bakke case added greatly to the complexity of the decision itself and virtually precluded any single, simple interpretation of it, the Court clearly managed to repudiate the quota system as a valid basis for admissions programs in colleges and graduate schools, and at the same time to affirm the validity of making race or ethnic identity a criterion for admissions into such programs. Even here, however, the Court was divided. Four Justices found the criterion of race to be in violation of civil rights legislation.

Obviously persons with different biases and diverse perspectives with regard to college admission programs may feel some support for their views from one part of the decision while being disquieted by another part of the Court's decision. In this regard, it must be said that in this decision the Court attempted to give serious consideration to both majority and minority rights. Not to have done this, the Court would have risked eroding the principle of civil rights and ultimately adversely affecting the elimination of discrimination and racism throughout American society. On the other hand, as Justice Lewis F. Powell, Jr., expressed it, the Constitution is not violated by an admissions program "where race or ethnic background is simply one element—to be weighted fairly against other elements—in the selection process."

The Court clearly did not bar race, for example, as a valid criterion for university admissions programs. However, "the guarantee of equal protection," Justice Powell wrote, "cannot mean one thing when applied to one individual and something else when applied to a person of another color. If both are not accorded the same protection, then it is not equal." While the Court ruled in favor of Allan Bakke, a white American, the Court joined with the California Supreme Court in not ruling against the affirmative action principle. Furthermore, the Court did not rule against the compelling need of increasing minority enrollments in the nation's medical schools, which stand today at only 8 percent. The Justices were divided over whether race should be used as the prime factor as the basis for the selection of students. Furthermore, the Court left undecided the question of how much weight may be given to race in the selection process.

To those Americans who have been outspoken critics of so-called "reverse discrimination" programs there is the interpretation that the Court's decision is a vindication of the right of Allan Bakke to enter medical school without being subject to racial or ethnic quotas. Admittedly, there is a real danger in the simplistic response of many persons who may not now feel that they may bring suit against an institution which denied them admission. Many others will view the decision as both a yes and a no on the part of the Court to appease disparate forces in our democratic society and thereby fail to see that the decision has considerable merit aside from mere pragmatic considerations of the moment. The decision was necessarily a complicated one because the situation posed by the Bakke case is far too complex to allow a simple resolution.

No easy answer may be given to so difficult an issue in contemporary American life. To be sure, racial discrimination in any form is to be deplored. It has rightly come to be regarded as incompatible with a free society and a clear contradiction to the Constitution of the United States. At the same time, this nation must commit itself to redress two centuries of blatant racial discrimination through affirmative action programs which will bring about full participation of all citizens, without any disabilities based on race or ethnic identity. To establish quotas and have them upheld by the courts would create new systemic forms of racism and racial discrimination so as to erode the very gains made in recent decades in the civil rights movement.

The real significance of this decision is not that Allan Bakke must be admitted to medical school, but rather that the Court approved race as an appropriate consideration in school admission policies, while denying the validity of quota systems as such. In doing so, the Court supported the concept of affirmative action programs which are aimed at bringing about real equality of opportunity and full social justice in American society. With only 8 percent minority enrollment at present in the nation's medical schools, affirmative action programs are sorely needed to bring minorities into the mainstream of American life. The struggle for affirmative action programs is reenforced all the more in view of the fact that the number of black medical students declined from 1954 to 1968, and that total minority enrollment in medical schools dropped by 100 during 1975–76. Hopefully, as Americans we

(See BAKKE, p. 8)

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ISRAELI AMBASSADOR to the United States Simcha Dinitz pledged his help in seeking a halt to harassment of Christians in Israel under the recently enacted anti-conversion law there. At a September 1 meeting arranged by BJCPA executive director James E. Wood, Jr., a group of prominent Baptists expressed the agency's concern over persistent reports that in some localities Christians are being harassed as a result of the new law, which according to Dinitz was written to offset actual instances of Christians' offering bribes and other "material inducements" for Jews to convert to Christianity.

THE BAPTIST LEADERS, including Southern Baptist Convention President Jimmy R. Allen and General Secretary Robert C. Campbell of the American Baptist Churches in the U.S.A., expressed optimism after the meeting that Dinitz' pledge will bring beneficial results. Full details will be reported in the October issue of Report from the Capital.

AT ITS RECENT MEETING in Manila, the General Council of the Baptist World Alliance adopted resolutions dealing with human rights, interracial conflict, religious freedom, and disarmament and world peace. These will be noted in detail in next month's issue.

A FLAGRANT NEW DENIAL of religious liberty in the Soviet Union was reported in late August by Religious News Service. Joseph Bondarenko, a Baptist preacher from Riga (Latvia), is reported to have been sentenced to three years in a "strict-regime" labor camp after organizing a demonstration last May. Bondarenko has already spent five years in labor camps.

DAVID M. WALTERS, President Carter's personal representative to the Vatican, has recently resigned, according to an announcement by Vice President Walter F. Mondale. Mondale, who had just returned from Rome where he met with Pope John Paul I, told a group of religion newswriters that Walters resigned "to make sure that the post is open in light of the fact that there is a new pope."

PRESIDENT CARTER has established a Presidential Commission on World Hunger to discover the causes of world hunger and malnutrition as well as to assess the success of present efforts to meet hunger and development needs. An interim report will be made to the President by July 31, 1979.

Congressional Update

Editor's note: During the long, hot summer of 1978, BJCPA congressional correspondent Carol B. Franklin has been called upon to cover a number of stories both inside and outside the halls of Congress. Among stories filed during August were the following.

Churches Oppose Prayer Amendment

WASHINGTON—Bipartisan opposition to possible floor action in the Senate on Monday, August 7 concerning prayer in the schools has formed here. Religious groups have also rallied to prevent the success of such action.

It has been reliably reported that Sen. Jesse Helms (R-N.C.) will propose an amendment to S. 3100, a bill dealing with the jurisdiction of the Supreme Court, which would prevent the federal courts from dealing with the question of state or school sponsored prayer in public schools.

Sens. Edward M. Kennedy (D-Mass.) and Charles McC. Mathias, Jr. (R-Md.) are spearheading the opposition to this move.

James E. Wood, Jr., executive director of the Baptist Joint Committee on Public Affairs, said in a letter sent to all members of the Senate, "Through the years the Baptist Joint Committee on Public Affairs. . . has expressed unalterable opposition to any efforts to circumvent or circumscribe the historic decisions of the U.S. Supreme Court of 1962 and 1963. Any such efforts we view as an abridgment of the First Amendment and in no way as an aid to religion or the religious exercise of prayer."

Wood said, "This is a deplorable strategy for dealing with what must be considered a fundamental constitutional question with regard to the integrity of the First Amendment respecting the establishment of religion."

Similar efforts to avoid federal court involvement in decisions regarding prayer in the schools have been made in the past. None has been successful.

Americans United for Separation for Church and State, the American Civil Liberties Union, and a coalition of the Church of the Brethren, United Church of Christ, American Jewish Congress, the

(See PRAYER, p. 5)

Private School Aid Cut from ESEA Bill

WASHINGTON—Direct federal aid to private and parochial schools has been removed from an education bill passed by the U.S. Senate.

By a vote of 60–30, the Senate accepted an amendment by Sen. Ernest F. Hollings (D-S.C.) which struck a $2.5 billion provision of direct grants to private and parochial schools from the Elementary and Secondary Education Amendments of 1978. This bill amends and extends the ESEA bill first passed in 1965.

The grants which were deleted from the bill would have been used for textbooks, standardized tests, speech and hearing diagnostic services, diagnostic psychological services, guidance and counseling, instructional equipment and materials, and transportation.

Hollings said during debate that the provision was "unconstitutional, fiscally unsound, and just generally undesirable."

Hollings pointed out three areas of concern in a letter sent to all members of the Senate. He noted that the grants would go only to nonpublic schools, 90 percent of which are parochial. He also said that the grants would be made directly to the schools rather than going to local nonsectarian educational agencies, an action which "patently assists religion." He charged also that the administration, review and auditing of the program would unduly involve the state with the church.

Sen. Jacob Javits (R-N.Y.) argued that there was no need to remove the provision from the Senate measure since the House version did not include a similar section.

(See ESEA, p. 5)

D.C. Representation Passes; States Next

WASHINGTON—By a one-vote margin the U.S. Senate approved a constitutional amendment that would give voting representation in the Congress to the District of Columbia.

The final vote was 67–32, one more than the two-thirds majority required for any amendment to the Constitution. The vote came after two days of often heated debate and numerous attempts to weaken the proposal with amendments.

At the present time the 690,000 residents of the District of Columbia can vote only for the president and vice president of the United States and for officials in the local government. There is now no voting congressional representation from the District of Columbia. Walter E. Fauntroy is the elected Delegate to the House of Representatives, but he has no voting rights in Congress.

The House of Representatives approved the measure March 2 by a vote of 289-127, which was 11 more than the required two-thirds majority.

Supporters of the resolution calling for voting rights for the residents of the District of Columbia said the proposal was a matter of civil rights or human rights for a predominantly black population.

Opposition centered on constitutional questions. Sen. William L. Scott (R–Va.), leader of the opposition, argued that the District gets plenty of representation in Congress as a result of its "uniqueness."

Sen. Edward M. Kennedy (D–Mass.), floor leader of the measure's supporters, retorted that the District is not unique when its young men are sent to Vietnam or its residents pay more taxes than 11 states.

The measure now goes directly to the state legislatures where at least 38 states must approve it within seven years before it is effective.

The proposal would give the District two senators and one or two representatives. The latter would be decided by the 1980 census. (BPA)

Veto

(Continued from p. 1)

The Senate passed a college tuition tax credit bill August 15 allowing a credit of up to $500 by 1980. Before passing the measure, however, the upper chamber defeated the elementary-secondary tax credit 56-41, on an amendment proposed by Sen. Ernest F. Hollings (D-S.C.).

The bill has been assigned to a conference committee composed of representatives from both chambers where differences between the two must be resolved. The final version would then go back for votes in both the House and Senate before going to the President.

Because of President Carter's firm indication at the August 17 news conference that he would veto any such measure, chances appear more dim that tuition tax credits will be enacted this year. A two-thirds majority in each House would be required to override the promised veto. (BPA)

Senate Seeks Ban on Ugandan Imports

WASHINGTON—All imports from Uganda and most exports to that African nation would be banned if action taken by the U.S. Senate survives the legislative process.

U.S. Sen. Lowell P. Weicker, Jr. (R–Conn.) introduced an amendment to a bill concerning U.S. participation in an aspect of the International Monetary Fund (IMF). The amendment, adopted by the Senate, would impose a trade embargo on Uganda until the President certifies that the Ugandan government is no longer committing gross violations of human rights.

Weicker cited atrocities committed against Ugandan citizens by President Idi Amin.

The bill, already passed by the House, must go through a Senate-House conference committee and then receive final approval by both bodies before being sent to the President for his signature.

Other human rights amendments adopted by the Senate would require annual reports to Congress on the observance of human rights in each country using IMF funds and would call on the U.S. representative to IMF to oppose loans to Uganda or Cambodia.

The Weicker amendment would prohibit direct or indirect imports from Uganda, prohibit exports to Uganda other than some food products, and direct the President to pursue international sanctions against Amin.

Sen. Frank Church (D–Idaho) offered an unsuccessful substitute motion urging the President to encourage and support international efforts to investigate and respond to conditions in Uganda, including economic restrictions. The U.S. House of Representatives recently passed the same resolution.

Church argued that his amendment would involve other nations in any sanctions against Uganda and therefore be more effective than unilateral action by the United States. He noted that the House action has already produced results with several major coffee importers boycotting Ugandan coffee. Coffee is Uganda's major export product, accounting for 95 percent of all the foreign exchange earnings of the Ugandan government.

Church's amendment would not have required an embargo against Uganda, nor would it have been binding upon the Administration as would the Weicker amendment.

"When is the issue of human rights going to become a fight rather than a slogan?" Weicker asked. "We are already too late in terms of hundreds of thousands of people in Uganda whose lives have been ended by Idi Amin. A man like Idi Amin does not respond to sense of the Senate resolutions. He only responds when it is clear this nation and, hopefully others on the international scene, will act. . . .I can assure all senators that Amin will take all the words we can dish out and he will not flinch one moment from his course of madness." (BPA)

BJCPA Communicates SBC Arms Resolution

WASHINGTON—Baptist concern for nuclear disarmament and a shifting of national priorities from nuclear weapons to "basic human needs" has been communicated to the President, Secretary of State, the U.S. Arms Control and Disarmament Agency and all members of Congress.

James E. Wood, Jr., executive director of the Baptist Joint Committee on Public Affairs, sent a copy of the resolution on multilateral arms control passed by the Southern Baptist Convention in June with a letter assuring support for any efforts "to achieve strategic arms limitations, to eliminate nuclear weapons, and to insure world peace."

The resolution calls on Baptists to "urge our representatives in Washington to move in imaginative and reconciling ways to seek mutual agreements with other nations to slow the nuclear arms race."

The resolution also calls for the United States and other nations "to shift funds from nuclear weapons systems to basic human needs, such as education, medicine, and relief from hunger."

Wood pointed out that this resolution is consistent with the stand of the Baptist Joint Committee on Public Affairs. On March 8, 1977, the Committee voted to commend the President for his commitment to limiting arms to domestic safety needs and ultimately to eliminating all nuclear weapons. (BP)

Georgi Vins Beaten; Condition Uncertain

WASHINGTON—Georgi Vins, imprisoned Soviet Baptist dissident, was "brutally beaten" on June 10, according to a British group which monitors religious developments in Communist countries.

The Centre for the Study of Religion and Communism at Keston, England reported on July 27 that Vins was beaten and placed in an underground isolation cell. No reason for the beating is known.

Vins, 50, has been reported to be in poor health for some time. According to reports from the Soviet Union, his condition had stabilized prior to the beating, but is now unknown. His wife, Nadezhda Vins, is "very concerned" about his health, especially his heart condition.

Vins is the leader of the unregistered Reform Baptists in the Soviet Union who refuse to register their congregations with the government. In 1975 he was sentenced to five years in a labor camp on charges of inciting citizens to commit "illegal acts"—holding unauthorized prayer meetings.

Vins' term is scheduled to expire next March but he then faces a five year term of internal exile.

Vins had found a job in the camp hospital, where he worked as an electrician for which he had professional qualification. He is reported to be ready to accept an invitation to join relatives in Canada.

The Centre reported on July 6 that Peter Vins, Georgi's son, was beaten on arrival at a Ukrainian labor camp to serve a one-year sentence for "parasitism." (BPA)

ESEA

(Continued from p. 4)

He said that a conference committee on the bill would probably remove that section anyway. That reasoning was apparently not acceptable to the Senate, however, as the vote was 2-1 in favor of Hollings' amendment. (BPA)

Prayer

(Continued from p. 4)

Lutheran Council, United Presbyterian Church, U.S.A., Unitarian Universalist Association, and the United Methodist Church have also written to all senators opposing the possible Helms amendment. (BPA)

Churches Should Observe Copyright Requirements

By Claude H. Rhea, III

WASHINGTON—Churches should be more careful in their use of copyrighted materials since the Copyright Act of 1976 (P.L. 94–553) became effective January 1, 1978.

According to experts, it will take years of court cases and bureaucratic regulations to clarify the confusing and even conflicting provisions of the new law. In the meantime, churches should be alerted to some of the ways the law affects religious functions.

Basic Revision

The Copyright Act of 1976 is the first revision of the nation's basic copyright law in 68 years. It affects all individuals and institutions who use copyrighted materials. Many areas of church work such as music ministries, puppet ministries, dramatic and educational activities, libraries, and church-sponsored broadcasts are significantly affected by the new law.

The copyright law is an attempt to balance the interests of "creators" and "consumers" of intellectual property. It assures copyright owners exclusive rights to reproduction, adaptation, publication, performance, and display of their works. However, these exclusive rights are limited by another provision which allows "fair use" of copyrighted works, without permission, by the public.

Although the law sets forth no clear-cut definition of what constitutes "fair use" in every situation, it explains that photocopying anything and everything at will is *not* permissible. For determining whether photocopying or any other use of a work is "fair," it provides four considerations: (1) the purpose and characteristic of the use, (2) the nature of the work, (3) how much of the work is being copied, and (4) how the potential market for, or value of, the work is affected.

Church Music

The copyright law notably affects church music ministries. There are few major departures from the old law in this area, but Congress requested representative groups of music composers, teachers, publishers, and performers to try to clarify the new law for musicians. They have formulated guidelines determining the "minimum standards of fair use" of copyrighted music. Although these recommendations do not have the force of law, Congress has termed them "a useful clarification."

Under the guidelines, "emergency copying to replace purchased copies (of music) which for any reason are not available for an imminent performance" is not a violation if "purchased replacement copies are substituted in due course." Permission from the publisher is not necessary for such emergency copying. However, the copying of music to avoid purchase or to replace lost parts is expressly prohibited, according to the guidelines.

It is important to note that the lyrics of most songs are copyrighted. In view of the law, duplicating "song sheets" containing lyrics is the same as copying the music.

If a particular piece of music is out of print, it is not necessarily out of copyright. Permission should be sought from the former publisher before copying it. Similarly, a hymn or other musical work may enter the public domain when its copyright expires. However, the particular arrangement of that work appearing in a hymnbook or other anthology may still be copyrighted. Permission should be obtained before photocopying from any hymnbook published since 1909.

The law grants copyright owners the "exclusive right. . .to prepare derivative works." This means that permission from the publisher to arrange a protected musical work is necessary. Permission is not necessary to arrange pieces in the public domain or to simplify or edit copies of purchased music. However, writing additional parts or new words to a song, even as a parody, is considered to be the same as arranging.

In order to protect a copyright owner's exclusive right to distribute his work, the law requires anyone wanting to record a protected song to obtain a "compulsory license" and to pay a royalty. The new law has raised the royalty paid to the copyright owner from 2¢ per song to 2 and ¼¢ per song or ½¢ per minute or fraction of a minute of playing time, whichever is greater.

If a church choir wants to make a record, the minister of music needs to file with the publishers of the selected songs a "notice of intention" for a compulsory license within 30 days of the recording session. Royalties should be paid to the publishers on a monthly basis as the records are sold.

"Non-dramatic literary or musical works" or "dramatico-musical works of a religious nature" may be performed freely "in the course of services at places of worship or at a religious assembly," without infringing upon any exclusive right of the copyright owner, according to the new law. This exemption does not apply, however, to secular operas or musical plays performed in a church even if they have an underlying religious theme and are performed in the course of a service.

Other Ministries

Materials used by puppet ministries and church drama groups may require permission, and possibly royalties, to be performed. When there is any doubt, it is best to check with the publisher or agent of such dramatic works. They make an effort to answer such questions promptly.

Broadcasts of church services which include the performance of a copyrighted anthem by the choir fall within the "religious services" exemption. However, a church-sponsored broadcast featuring music or drama not originating in a service may be subject to compulsory license requirements.

The law does not say whether churches can freely record services containing copyrighted music or drama. Presumably, no problem arises when a church provides tapes of its services to shut-ins. However, distribution to the congregation of such recordings, even at cost, falls within a "gray area" of the new law.

Helpful Hints

How does one obtain permission to perform, copy, or arrange a copyrighted work when it appears that the law requires it? First, locate the name of the copyright holder next to the copyright notice. The address of the holder is usually given. If it is not, or if it is inaccurate or inadequate, the Music Publishers' Association of the United States, 130 W. 57th St., New York City 10019, or the National Music Pub-

(See COPYRIGHT, p. 7)

**Claude Rhea served this summer as a Home Mission Board (SBC) intern with the BJCPA. He is a second year student at Cumberland School of Law, Samford University, Birmingham, Ala.*

Public Affairs . . . and the Churches

Sabbatarian Upheld

LOUISVILLE—The Kentucky Court of Appeals has ruled that the state's Department of Human Resources and Hazelwood Hospital discriminated against a woman who observes Saturday as the Sabbath by denying her a job.

Linda Nunn Bailey, a member of the Worldwide Church of God, filed a job-discrimination complaint with the state Commission on Human Rights in 1974 charging that the Department of Human Resources had refused to hire her as a nurse's aide trainee because of her religious beliefs, which prohibit her from working on Saturdays.

The commission found that the human resources department had committed an unlawful practice of discrimination because of religion. The department appealed to Franklin Circuit Court, which initially upheld the commission's findings but vacated its ruling recently on the basis that the U.S. Supreme Court's 1977 ruling in *Trans World Airlines* v. *Hardison* required a reversal.

But the Kentucky Court of Appeals has upheld Ms. Bailey's original complaint and the findings of the human rights commission. It said the Hardison case did not remove the duty of the employer "to make reasonable accommodations short of undue hardhsip to the religious needs of its employees."

The Hardison ruling, which also involved a member of the Worldwide Church of God, said that employers do not have to accommodate Sabbath observers if it would infringe on the seniority rights of other workers and cost extra money in overtime.

In its decision, the Kentucky appeals court said it did not believe "that the efforts made by the appellee to accommodate the religious beliefs of Mrs. Bailey were reasonable, and it is clear that additional efforts such as investigating the possibility of other employees' 'swapping time' with her could have been made without amounting to hardship."

The appeals court remanded the case to the circuit court for further action consistent with its ruling. (RNS)

Flag-Lowering Protested

The New Hampshire Civil Liberties Union is displeased with Governor Meldrim Thomson, who lowered state and U.S. flags to mark the death of Pope Paul VI. Thomson says he had the flags lowered "in acknowledgment of our sadness in the passing of one who has made immeasurable contributions toward world peace and individual freedom."

Jon Meyer, director of the civil liberties group, contends that though the pope "played an undoubted role in secular events," he was "primarily a religious leader. . . the state would have to recognize the deaths of all religious leaders under this precedent."

The CLU will not go to court over the matter, said Meyer, but it will pursue "the far more flagrant case of the Good Friday flag-lowering." Last spring the U.S. Supreme Court barred the governor from lowering the flags in observance of Good Friday. (Christian Century)

Copyright

(Continued from p. 6)

lishers' Association, Inc., 110 E. 59th St., New York City 10022, will undertake to supply that information.

Further questions about use of copyrighted materials should be addressed to a copyright attorney or to the U.S. Copyright Office, Library of Congress, Washington, D.C. 20559. (BPA)

Church-State Stand Needs Review: Maston

By Norman Jameson

FORT WORTH, Texas—Southern Baptists should form a committee to study the taxation aspects of their long revered position on separation of church and state says T. B. Maston, retired professor of Christian ethics at Southwestern Baptist Theological Seminary.

Maston, one of the Southern Baptist Convention's most respected Christian ethicists, said in an article distributed to Baptist newspapers that a growing "taxpayers' revolt" in the U.S. may cause the government to look to now tax exempt properties as a possible additional source of income.

He told Baptist Press that taxation of church property not directly used for worship or education is possible in the future, but not "probable."

Still, he said, Southern Baptists should "take the initiative," and he urged the SBC Executive Committee to name a study group by the time of the SBC annual meeting in June, 1979, to review the entire theory of separation of church and state.

"If we don't do it," Maston said, "governments on the state, local and possibly national levels, may take a good hard look at tax exempt property, and rightly so."

The Southern Baptist Convention owns six theological seminaries and 12 other national agencies but it does not own or operate numerous other Southern Baptist educational and benevolent institutions. Most are run by state Baptist conventions. Southern Baptist churches are autonomous. Such a committee, if appointed, could make recommendations to the Executive Committee and then the SBC. Any recommendations implemented by the SBC would directly affect only SBC-owned entities.

Tax free holdings of churches, hospitals, universities and other benevolent institutions have contributed to fiscal disasters, Maston said, like that in New York City, where 41 percent of the real property is exempt.

He feels that all income producing auxiliaries of the church should be taxed. Even local churches, whose only property is a building for worship and education should voluntarily pay something to local and county governments for police and fire protection, he said.

"Without it, citizens who aren't Christians, who aren't members of our churches, are carrying the load," he said, "and that's not right."

The church-state taxation issue is two-pronged, Maston said, in that not only do religious bodies enjoy tax exemptions, but some of their institutions are supported directly by grants and indirectly by student aid and other forms of help. (BP)

**Jameson is features editor for Baptist Press, Nashville, Tenn.*

BJCPA Sides with Catholic Bishop in Unionization Dispute with NLRB

By Carol B. Franklin

WASHINGTON—The Baptist Joint Committee on Public Affairs has filed a friend-of-the-court brief with the U.S. Supreme Court on behalf of the Catholic bishop of Chicago and the diocese of Fort Wayne-South Bend, Indiana in their dispute with the National Labor Relations Board (NLRB).

In June of 1977 the NLRB ordered the Fort Wayne-South Bend diocese to refrain from antiunion activities and reinstate two teachers fired illegally for union activities.

A federal court of appeals overturned the NLRB ruling in August on the grounds that First Amendment guarantees of freedom of religion would be violated by the order. The NLRB has appealed the lower court decision to the Supreme Court.

The Baptist Joint Committee brief, written by Leo Pfeffer, special counsel for the American Jewish Congress, agrees with the decision of the federal court. "The same constitutional principles under the Establishment Clause which this Court has held in many cases to bar governmental financing of the operations of religious schools beyond narrowly prescribed limits, bars equally governmental exercise of jurisdiction under the National Labor Relations Act," Pfeffer wrote.

Pfeffer asserted that enforcement of the NLRB ruling would inhibit the free exercise of religion and "result in unavoidable government entanglement with religion."

"Enactment of the National Labor Relations Act was not indispensable for the survival of the national government or of the United States," Pfeffer stated. "No one can contend that our nation would not survive and flourish if collective bargaining on the part of religious schools remained voluntary rather than governmentally mandated."

Pfeffer cited the response of Bishop William McManus of the Fort Wayne-South Bend diocese urging Catholic school administrators and teachers to "get busy" with contract negotiations. "It is not collective bargaining to which the religious schools object but rather to compulsion by law to participate in it," Pfeffer asserted.

Pfeffer noted that the Establishment and Free Exercise Clauses of the First Amendment stand on a different footing than the National Labor Relations Act. "Without denigrating in the slightest the importance of collective bargaining in our society, it is clearly not on par with the free exercise of religion," Pfeffer said. "We can envision an America without compulsory collective bargaining, but not one without the free exercise of religion."

"Imposing upon church schools the mandate of collective bargaining would obviously result in higher salaries for employees, else what is bargaining for," Pfeffer argued. "Unlike public schools, the Establishment Clause forbids the state to help religious schools meet the added financial burden of increased salaries for teachers. Hence, the only alternative for financially burdened church schools is to sacrifice their religious teachings at least in part. Can it be doubted then that the effect of compulsory collective bargaining would be an inhibition of religion?"

Pfeffer also pointed out that church schools are concerned with the personal religious commitment of their teachers. Dismissal of a teacher for doubts about that commitment could lead to investigation by the NLRB or the courts. "In many cases, the financial and administrative burden of justification would impel continuance of employment as the lesser of evils. The inevitable result thus would be a substantial inhibitory effect upon religion," Pfeffer argued. (BPA)

Bakke (Continued from p. 2)

shall commit ourselves with genuine vigor to the principles and programs of affirmative action on behalf of all minorities.

Even though there is no way the Bakke decision can be expected to satisfy completely any of the parties represented, it does represent a significant step toward protecting individual rights while giving serious consideration to redressing the wrongs of racism and racial discrimination in American institutions of higher learning.

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