



REPORT FROM THE CAPITAL

★ RELIGIOUS LIBERTY ★ BAPTIST PRINCIPLES

★ PUBLIC AFFAIRS

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CHURCH-STATE LEGISLATION OF 85TH CONGRESS REVEALS RELIGIOUS LIBERTY PROBLEMS

By W. Barry Garrett

The 85th Congress enacted into law legislation that will have far-reaching results in the area of church-state relations. It is not a simple matter to know all that is involved in legislation affecting religious liberty and separation of church and state. Some would have us think that all that is necessary is for a good reader to sit under the legislative hopper and read the bills as they come through. It would be easy if it were that simple.

Difficulties in the Way

The difficulties of discerning all that affects church-state relations are noteworthy.

1. The number of bills involved. There were 20,706 bills and resolutions introduced into the 85th Congress (1957-58). From these 936 public laws were enacted. The overwhelming problem of volume alone makes careful scrutiny by the legislators or by the public almost impossible.

2. Technicalities in the bills. Many of the bills introduced and passed are long and complicated and replete with legal and technical language and references to previous legislation. The significances of the provisions and changes is difficult to discern or predict.

3. Lack of unified concepts. Neither the legislators nor the church people are united on the meaning of separation of church and state. Many times there is little agreement as to whether or not a church-state issue is involved. The "grass-roots pressures" come from institutional and group interests that fail to view the total scene and the long-run results.

4. Policies of administration. The bureau or agency assigned to administer the legislation may interpret the law liberally or conservatively, and policies may be set that were unanticipated when the law was passed.

Church-State Legislation

While it is difficult to see and report all that the 85th Congress did in church-state legislation, there is much that is obvious and that merits attention. Here is a "laundry list" of legislation that concerns the field of religious liberty and separation of church and state. Much of it is no doubt good legislation, but we doubt that all of it has been adequately analyzed in terms of long run effects on the freedom of the churches and on the freedom of the taxpayer's conscience.

1. National Defense Education Act of 1958. This is perhaps the most important and far-reaching piece of church-state legislation of the 85th Congress. During the debate on the floor of the House of Representatives the "religion" problems in the bill were glibly passed by as if they had been removed or as if they were non-existent. The proponents were so anxious for an education bill that every effort was made to keep as many controversial phases from coming into prominence as possible.

The Education Act provides \$887.9 million for four years for student loans, for equipment and teaching aids for science, mathematics and modern foreign languages, for area vocational education programs, for guidance, counseling and testing work, for summer institutes for teachers, for language study centers, for graduate fellowships, for experimentation on educational uses of television, radio and audio-visual aids, and for improved educational statistical services. In several instances the money is available alike to both public and private schools.

During the formulation and debate period of the Education Act, C. Emanuel Carlson, executive director of the Baptist Joint Committee on Public Affairs, warned: "These cooperative arrangements for 'national defense' and 'to meet critical national needs' may present problems for schools which seek to remain church agencies. How much government supervision will be necessary in order to carry out the 'conditions of agreements,' as specified in the bill and as they will be developed in administration of the bill, is difficult to conjecture, but the door is open."

Apparently neither legislators nor church leaders of the country thought that serious dangers to religious liberty were involved, because there was an amazing silence on the part of church educators.

But it was not long after the bill's passage that the light began to appear and Carlson's predictions were vindicated. In a speech to Roman Catholic teachers at Baltimore, Md., Bertha S. Adkins, undersecretary of the Department of Health, Education and Welfare, stated that the new National Defense Education Act of 1958 would be of "immeasurable service" to parochial and other non-profit private schools.

U. S. Commissioner of Education Lawrence G. Derthick has called the act "an historic piece of legislation." "It is historic," he told a conference of chief state school officers and Office of Education officials, "because never before have we had such a program of Federal assistance to strengthen education at critical points across the board. Its impact will be felt from the elementary grades through the graduate school. And we have a formula which will meet important national needs within the priceless tradition of State and local control. This vital new legislation is an extremely significant milestone in the Federal effort to offer leadership without domination and to render assistance without interference."

2. Public Health Service Act (Hill-Burton). The 85th Congress extended the Hill-Burton Act for another five years. This bill provides for government grants for the construction of hospitals and other facilities, and by the end of 1956 more than \$138 million had been given to sectarian hospitals.

Since most Baptist hospitals refused to accept government grants to expand their facilities, Congress this year made special provision that the Hill-Burton funds could be obtained as loans on the same basis as the grants were made. Low interest rates and long term loans will now make it easy for Baptist and other groups to get government money for their hospitals.

In another amendment to the Public Health Service Act the federal grants for medical research facilities were extended three years. For this purpose \$30 million a year was authorized.

A special enactment by Congress provided \$1,020,000 for hospital construction in the District of Columbia. This was not within the framework of the Hill-Burton Act. Over \$500,000 of this went to the Georgetown University (Roman Catholic) hospital. Under terms of a 1957 law providing that the Government may put up half the cost of new non-profit private hospital construction in the District of Columbia, a \$4,374,000 grant has been offered for construction of the new Sibley Memorial Hospital, a Methodist institution.

3. Alien spouses and adopted children of missionaries. By this special legislation the adopted children and alien spouses of American missionaries may become naturalized citizens of the United States without completing the ordinary requirements, if

they are otherwise qualified for citizenship. This puts alien spouses and adopted children of missionaries in the same category as those of United States military personnel serving overseas.

4. School lunches, milk for children, and summer camps. The National School Lunch Act provides \$93.6 million for the 1958-9 school year. The program is administered by the state departments of education, but in states which are prohibited by law from disbursing funds to private schools the program is administered by the federal Agricultural Marketing Service.

The special milk program for children in non-profit nursery, elementary and secondary schools was extended three years. \$75 million for each year was provided. Summer camps, child-care centers, and similar non-profit institutions were included in this program.

The Agricultural Act of 1949 was amended to permit the donation of federal surplus food to non-profit summer camps for children. In the past the Department of Agriculture has considered summer camping as an extension of school activities and has accordingly donated surplus food to non-profit camps. This new law gives specific authority for such procedure.

5. Tax exemption. Someone has said that one of the favorite sports on Capitol Hill is to find more ways to exempt religious agencies from taxation. The 85th Congress was active in this area. Now private schools and colleges have the same exemption from federal tax on phone calls, transportation, automobiles and school buses as is enjoyed by public schools. This will reduce the tax income by \$3 million, of which \$1 million will go to Catholic schools and the remainder to other groups and privately controlled colleges and universities.

Exemption from federal admissions taxes was extended to certain musical performances and athletic events in non-profit schools.

The Tariff Act of 1930 was amended to allow free import of certain sound recordings, films, slides and transparencies for educational institutions, and for religious vestments and regalia which are presented without charge to a church or certain charitable institutions.

6. Historic sites and parks. Two public laws were enacted to preserve and develop certain church sites as a national historic site and a national historic park. The area around Gloria Dei (Old Swedes) Church in Philadelphia, Pa., is slated for improvement in such a manner as "to provide a dignified open setting" for the church. This Protestant Episcopal church will remain privately owned and operated. The area around it is a slum section, but within the same block is federally-owned land. The new bill authorizes the development of the whole area as a national historic site.

Another church in Philadelphia, Old Christ Church, Episcopal, at Independence National Historical Park, is near a \$7.25 million development by

the federal government. George Washington worshiped there and Benjamin Franklin and other patriots are buried in the churchyard.

7. Alaskan statehood. Steps were taken to safeguard the separation of church and state in the new state of Alaska, according to a similar pattern in the other states. The Constitution of Alaska "shall not be repugnant to the Constitution of the United States and the principles of the Declaration of Independence."

Five per cent of the proceeds of the sale of public lands in Alaska "shall be paid to the State to be used for the support of the public schools within said State." It is further explicitly stated that "the schools and colleges provided for in this Act shall forever remain under the exclusive control of the State, or its governmental subdivisions, and no part of the proceeds from the sale or disposal of any lands granted herein for educational purposes shall be used for the support of any sectarian or denominational school, college or university."

8. Postal Policy and Postal Rate Increase Acts of 1958. Two titles of Public Law 85-426 have a direct bearing on church-state relations. One is the postal policy spelled out by Congress, and the other is the postal rate applied to religious matter.

Congress specifically stated that "it would be an unfair burden upon any particular user or class of users of the mails to compel them to bear the expenses incurred by reason of special rate considerations granted or facilities provided to other users of the mails." In other words, the users of first class mail are not to pay a rate to make up the loss incurred by the Post Office Department in distributing other classes of mail at below-cost rates.

Who is to pay this loss and what is the official attitude of the Congress toward such below-cost services? Congress declared that public below-cost postal service is advantageous to the nation "in the promotion of social, cultural, intellectual and commercial intercourse among the people of the United States." Religious publications and services for religious institutions are included in this definition.

The Congress then specifically stated its viewpoint concerning the governmental subsidy for below-cost public services of the Post Office Department. It said, "the sum of such public service items as determined by the Congress should be assumed directly by the Federal Government and paid directly out of the general fund of the Treasury and should not constitute direct charges in the form of rates and fees upon any user or class of users of such public services, or of the mails generally."

Hence, the Congress regards below-cost postal services as "loss" which is subsidized directly out of the public treasury.

The services thus subsidized by Congress for churches, their publications, and certain other postal services for their institutions and agencies

are reflected in the second, third and fourth class rates, some of which are more than 50 per cent less than rates charged to other mail users, some are specifically 50 per cent less, and the rate for certain items of fourth class mail is considerably below cost and below the rate charged to commercial users of the same service.

The Postal Policy Act of 1958 poses a neat package of church-state problems which cannot be taken lightly, lest other policies follow in other departments of the government, the outcome of which may be far more devastating to religious liberty than can be foreseen at present.

Concluding Observations

There were other items of legislation in the 85th Congress that affected church-state relations, but the above were among the most prominent. Other bills were introduced in the 85th Congress but were either never reported out of committee or were not passed by both houses. They remain, however, very live issues and probably will be re-introduced in the next Congress. Such items as the following fall into this category: the proposed "Christian Amendment" to the U. S. Constitution, privileged communications involving clergymen in the District of Columbia, income tax deduction for parents sending their children to private and parochial schools, federally paid bus transportation for private and parochial school children in the District of Columbia, and transportation tax exemption for churches.

It appears that the government more and more regards religion as a part of the American culture and more and more special legislation is considered and passed to hand out favors, make special concessions, and to make specific provisions for religious activities.

Will the churches continue to be happy to receive government aid for their agencies and institutions, or will they stand on the principle that religion is the business of the churches and that the churches must finance their own interests?

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CHURCH-STATE PROBLEMS IN NEW EDUCATION BILL BEGINNING TO EMERGE

By C. Emanuel Carlson

The ground rules for the administration of the new Defense Education Act (Public Law 85-864) are still in the process of formulation. We cannot overemphasize the significance of the policies shaping up as part of "the formula" which the Department of Health, Education and Welfare is evolving for federal support to education.

Dr. Arthur S. Flemming, Secretary of Health, Education and Welfare, has announced that several important conferences are being arranged during November and December as one means of providing adequate channels of communication with institutional and educational leaders.

While the policies being formulated pertain to public educational interests, nonetheless many of them will seek those public objectives through agreements with church-related institutions. When the policies have been made and the use of the formula has been enlarged, will these schools be church institutions or will they be public institutions?

Some of the areas needing special attention in this formative period are listed below:

1. The agreements which are and will be offered to institutions of higher education as the basis for receiving government loans, grants, etc., should be carefully scrutinized.

Many government departments and agencies are already making loans and grants of various kinds to institutions of higher learning. These provisions have grown up to meet exigencies with a minimum of publicity or public discussion. The total program now seems to be at the point of crystallizing into an established manner of financing certain aspects of higher education.

2. Sec. 305 reserves funds for (12 per cent of Title III) and authorizes the granting of loans "to private nonprofit elementary and secondary schools" for the acquisition of equipment, including minor remodeling, for the strengthening of instruction in the sciences, mathematics, and modern foreign languages. This makes a beginning of the same policies in elementary and secondary education. Undoubtedly this represents substantial encouragement to parochial interests. The continuation on this course can contribute to produce a proliferation of private and sectarian educational efforts.

3. Title IV of the law places the U. S. Commissioner of Education in a position to grant 1000

fellowships the first year and 1500 for each of the three succeeding years. Each fellowship may provide as much as three years of study. The Commissioner is to approve the candidates and the new or expanded graduate programs. Obviously, selective policies must be established and these policies will significantly influence the American public mind of the future.

4. Sec. 504 (b) contains another important part of the new formula. In any state which sets up a counseling plan (under Title V of this law) but in which the state law does not authorize payments for testing and counseling, the U. S. Commissioner of Education is authorized to arrange for such testing and counseling, making payments from the funds earmarked for that state. This means that the state legislatures no longer can decide whether or not to use tax funds for this purpose, nor to determine the schools or pupils to be tested and counseled. Apparently the new formula should be studied from the viewpoint of state control of expenditure of tax funds for educational purposes in that state.

The whole program projected in Title V has also raised large questions in the minds of educators regarding the future role of the United States government in the processes of vocational guidance. There is no concept that is more vital to church interest than that of "vocation" in the broad sense of life stewardship. Churchmen will do well to keep in close contact with this program.

These are illustrative of the complicated and far-reaching provisions of the new program. The entire law calls for immediate and careful study by all interested and responsible citizens.

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