

NATIONAL EDUCATION ASSOCIATIONRESEARCH BULLETINVol. XXXIV-No 4December-1956The State and Sectarian Education

## V. Summary

On the basis of state constitutional provisions, statutes, and court decisions, certain points can be stated as generally true. For exemple,

1. All states guarantee religious liberty to a greater or lesser degree.
2. Most states prohibit use of religious tests as qualifications for holding public office; a few states prohibit discrimination on the basis of religion in the employment of teachers.
3. Compulsory support of places of public worship is universally unconstitutional; the prohibition against compulsory support of sectarian education is widespread but not universal except by implication.
4. Differences in language of constitutional and statutory provisions rarely result in differences in application of the language in specific instances.
5. A tax levied for the benefit of a sectarian school is unconstitutional in all states; use of nonschool revenue for direct aid to sectarian education is unconstitutional also. But courts of the several states differ with regard to indirect aid - the crux being what is an what is not indirect aid. Indirect aid is usually, held valid only when the relationship between the public treasury and the recipients is so distant that the court can say that actually no aid is provided.
6. In a few states use of public-school equipment which in its general terms could be applicable to pupils attending sectarian schools as well as to those attending the public schools, or specific authorization to this effect, has been upheld under the child-benefit theory or under the police power or the state or as a matter of policy. But the majority of states have not so held.
7. Public and parochial schools cannot be combi-

ned legally. However, a public school can be maintained in a parochial-school building if the board of education retains control of the school and no religious tenets are taught therein.

8. Payment of rent to a church for the use of its building as a public school is usually not considered aid to the church if the local school-board acts under permissive legislation empowering it to rent school facilities. However, even in the face of such permissive legislation, such action would be invalid if the public-school authorities do not maintain control of the public school conducted in the church-owned building, even if religious education is eliminated from the curriculum.

9. Most states exclude sectarianism from the public schools at least to the extent that no particular religious tenets may be taught therein. Moral education can exist in the public schools, and to this end many legislatures have required or permitted the reading of the Bible. Most courts have held that the Bible is not a sectarian book. Two minority views, held by courts in several states, are (a) that reading of the Bible in the public school is a violation of the religious liberty of non-Christians and unconstitutional for that reason; and (b) that reading either the Protestant or the Catholic version of the Bible offends the religious liberty of the other group as well as of those who do not follow either version.

10. Public-school teachers may wear religious dress and insignia unless there is a law or regulation against the practice. The state, however, has power to enact prohibitory legislation, and such enactment is not a denial of religious liberty but merely the control of the state over its public servants.

11. Public-school pupils may be excused from school during school hours to attend religious instruction elsewhere, provided (a) public funds are not used in carrying out the plan, (b) no pupil is compelled to attend an exercise against his conscience, and (c) the board of education does not exercise control. When such classes are held on public-school premises during school hours, the practice is unconstitutional.

12. Church groups may use public-school building and facilities after school hours, in some states even for religious meetings. This situation has been held not to violate the

constitutional separation of church and state.

13. General legislation authorizing the state to supply free textbooks to pupils attending both public schools and sectarian schools has seldom been attempted by legislatures and rarely tested by the courts. The Supreme Court of the United States has upheld the practice; the books being furnished to children and not to sectarian schools.

14. The Supreme Court of the United States has held that transportation of parochial-school pupils at public expense does not violate the First Amendment to the federal Constitution. However, most state courts have held that this practice violates state constitutional provisions prohibiting use of public or public-school funds for sectarian education.

15. The state, under its police power, may regulate and supervise sectarian schools for the purpose of ensuring each child an education equivalent to the education offered in public schools. State statutes have not attempted to go beyond the state's police power (i.e., the state's power to safeguard the health, morals, and safety of its citizens).

These principles have not been tested judicially in all states. On an issue not previously tested in a particular state, the court would consider the general principles, as well as the majority and minority views of other state courts, but would not be bound by decisions of other states and would render its decision in terms of its own state law and the facts of the particular case.

Several of the Southern states have amended their constitutions and school laws to provide for the operation of a pupil assignment or a private-school plan with the avowed purpose of continuing segregated schools. In all such proposals, no action that has been taken appears to lead to state aid for sectarian schools. However, if these plans are actually put into operation, direct or indirect aid to sectarian education looms on the horizon as a possibility. The current controversy may change from one on segregation under the Fourteenth Amendment to one separation of church and state under the First Amendment.

# National Education Association

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