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Charles L. Dibble

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Christian State,"⁸² met the same argument with which the Illinois Court had been confronted, as follows:

"The use of a public school-building for Sabbath . . . schools, religious meetings . . . which, of necessity, must be occasional and temporary, is not so palpably a violation of the fundamental law as to justify the courts in interfering. Especially is this so where, as in the case at bar, abundant provision is made for securing any damages which the taxpayers may suffer by reason of the use of the house for the purposes named. With such precaution the amount of taxes any one would be compelled to pay by reason of such use would never amount to any appreciable sum. . . . Such occasional use does not convert the schoolhouse into a building of worship within the meaning of the constitution."⁸³

82. 1872, *Townsend v. Hagen*, 35 Iowa 194, 198.

83. *Davis v. Boget*, 50 Iowa 11, 15, 16. See Notes, 32 Am. Cas. 303; 81 L. R. A. (N. S.) 698; L. R. A. 1917 D., 462.

Specific Legal Provisions On Week-Day Schools*

CHARLES L. DIBBLE

The movement for week-day religious education, during school hours but under the control of the several denominations, has resulted in numerous experiments and proposals. These, for convenience, may be grouped roughly into three classes, involving somewhat different legal problems. Of these types there are numerous modifications; but it is believed that the principles here discussed can be applied without difficulty to individual cases.

TYPE A. A room is set apart in the public-school building, to which any denomination is at liberty to send a teacher for religious instruction during school hours. Children whose parents so request are sent to this room from their class rooms at the time assigned to their denomination.

TYPE B. Courses in religious instruction are established by one or more denominations in their own church buildings at hours (during school hours) agreed upon; children whose parents so request are sent from their school buildings to these classes; the courses of instruction are more or less under the supervision of the public-school authorities and credit is given for work completed in the church school, and attendance enforced under the truancy law.

TYPE C. Same as Type B, except that the instruction is not in any way subject to the supervision of the public-school authorities and no credit is given. Attendance is not enforced under the truancy law. If, however, the child habitually absents himself from the church school, that fact is reported to the public school, and the privilege of attendance withdrawn.

*Mr. Charles L. Dibble, Attorney, of Kalamazoo, Michigan, prepared a report for the Episcopal Synod of the province of the Midwest on "Legal Aspects of Religious Education in the States Comprising the Province of the Midwest." This dealt with the Constitutional Provisions as well as with the particular applications of legislation. Mr. Dibble kindly granted permission for the publication of that part of his report which will supplement the preceding paper by Mr. Zollman. While he is discussing the legal provisions of the states of Wisconsin, Illinois, Michigan, Indiana and Ohio, he takes up the points which occur most frequently in any state. It must be remembered, in reading, that the first part of Mr. Dibble's paper, dealing with general principles and constitutional provisions, is omitted.—(THE EDITOR.)

LEGAL DECISIONS

The question of specific religious instruction does not appear to have been anywhere adjudicated, except in the case of

State, ex rel. Dearle vs. Frazier, (Wash.) 173 Pac. 35.

In that case the state constitution provided:

"All schools maintained or supported wholly or in part by the public funds shall be forever free from sectarian control or influence No public money or property shall be appropriated for or applied to, any *religious* worship, exercise, or *instruction*, or the support of any religious establishment."

It was held that a scheme whereby children were instructed in denominational schools in the Bible from a literary standpoint, the course being mapped out by the superintendent of schools, the examination prepared by the principal of the high school, papers graded by public school teachers, and credit given, was in violation of these provisions. The scheme, it was held, made the religious instruction a part of the regular school curriculum and hence that part of the school work was placed under "sectarian control and influence." It was also held that, since the plan required considerable time, of the school teachers, for which they were paid by the state, it amounted to "appropriating public money for religious instruction."

In the writer's opinion the reasoning is not sound. As to the first objection, it would seem that the constitutional prohibition against "sectarian control or influence" was intended to prevent exclusive control or monopoly by one sect as against the others, either by way of financial support or enforcing attendance of non-adherents, as Cooley puts it, giving an advantage to one sect over another. But the plan in question favored no denomination; nor did it require any person to attend the instruction against his conscience. Still less could objection be made to the plan considered in this brief, in which the religious instruction is not even confined to the Bible. So long as Catholic and Protestant, Jew, Mohammedan and Free Thinker are alike permitted to participate, and each may instruct his youth in his own way, the scheme can hardly be called sectarian. In other words, it is only discrimination between sects which the constitution intends to bar. Such must have been the intent. For we find most of the courts commending religious training, and the constitution of Ohio and Michigan naming it as one of the objects of the schools; yet there can be no religious (as distinguished from ethical) instruction which does not involve religious belief. As to the second objection, it may be said that the amount of time required of the public-school teachers in the work of supervision is so small as to be negligible. In the words of the maxim, "*De minimis non curat lex.*" It is no more an appropriation of money for religious instruction than is the exemption from taxation which is accorded to church property. In most states there is provision for the inspection and supervision of parochial schools by the State Superintendent of Public Instruction; and this has never been held to be a wrongful use of public money.

However that may be, the authority of the Washington case is diminished by the fact that the language of the constitution of the state of Washington, quoted above, differs from that of the constitutions of most of the states of the Union. The prohibition against "religious instruction" contained in the Washington constitution is very much broader than "sectarian instruction."

Another angle from which these constitutional provisions have been discussed by the courts is upon the question as to whether a school board has the right to permit the use of the school building, at such time as not to interfere with the regular school hours, for religious services or instruction, or for the use of lodges or other purposes not connected with regular school work.

On this question the courts are hopelessly at variance.

On the one hand it is held that such use is improper.

Hysong vs. School District, 164 Pa. 629; 26 L. R. A. 203, is particularly interesting, because it involves a state of facts on all fours with the question we are discussing under Type A, and because the opinion goes very thoroughly into the authorities and is exceedingly well reasoned. We quote one paragraph which seems to sum up the argument of the court.

"The use of the public school building in imparting religious instruction after school hours, in the manner detailed by us in our conclusions of fact, is not only a violation of the fundamental law of the state in that the instruction, being purely and essentially sectarian in character, is prohibited, but the directors exceeded their authority in permitting any such use to be made of the building. It is very clear to us that the prohibition of the appropriation of money raised for the support of the public schools to sectarian schools includes the use of the public school buildings erected by such money, for any sectarian purpose. But there is a further reason for restraining the use of public school buildings for this purpose, as well as for any other purpose foreign to public school instruction; and that is that the building having been erected for a particular corporate purpose, the corporate authorities cannot authorize its use for any other."

Substantially the same holding in the following cases:

Bender vs. Streabich, 182 Pa. 251; 37 Atl. 853.

Lewis vs. Bateman, 26 Utah 434; 73 Pac. 509.

Scofield vs. School District, 27 Conn. 499.

Dorton vs. Hearn, 67 Mo. 301.

Spencer vs. School District, 15 Kan. 259; 22 Am. Rep. 268.

On the other hand a considerable line of authorities take the other view.

In the case of

Nichols vs. School District, 93 Ill. 61; 34 Am. Rep. 160, the argument is stated thus:

"Religion and religious worship are not so placed under the ban of the constitution that they may not be allowed to become the recipient of any incidental benefit whatsoever from the public bodies or authorities of the state. That instrument itself contains a provision authorizing the legislature to exempt property used for religious purposes from taxation; and, thereby, the same as is complained of herein, there might be indirectly imposed upon the taxpayer the burden of increased taxation, and in that manner the indirect support of places of worship."

Sustaining this view are the following:

Sugar vs. Monroe 108 La. 677, 59 L. R. A. 723.

Sheldon vs. School District, 25 Conn. 224.

Greenbanks vs. Boutwell, 43 Vt. 207.

Barnes's Appeal, 6 R. I. 591.

Chaplin vs. Hill, 24 Vt. 528.

Townsend vs. Hagan, 35 Iowa 194.

Davis vs. Boget, 50 Ia. 11.

Cost vs. Shinault (Ark.) 166 S. W. 740.

The decisions in the following states are as follows:

Illinois, in the Nichols case quoted above, held that a statute permitting the use of the building outside of school hours for religious worship was not unconstitutional. This case has been followed by the following:

Lagow vs. Hill, 238 Ill. 428; 87 N. E. 369.

School District vs. Toll, 149 Ill. App. 541.

In *Wisconsin*, on the other hand, it was held in the early case of

School District vs. Arnold, 21 Wis. 657,

that even a vote of the electors of the school district may not authorize the incidental use of a school building for meetings other than those connected with the school. That case has recently been quoted with approval in the case of

Tyre vs. Krug, 159 Wis. 39; L. R. A. 1915, C. 624.

In *Indiana* it seems to have been held in the case of

Hurd vs. Walters, 48 Indiana, 148,

that the use of a school house for other than school purposes might be authorized by a vote of the tax-payers.

But in the later case of

Baggerly vs. Lee, 37 Ind. App. 139; 73 N. E. 921,

it was held that the statute authorizing such use of the building when not used for school purposes should be construed to apply only to summer vacations and periods when the school was entirely closed. As to whether or not a statute authorizing the use of the building after school hours would be constitutional the court has not expressed an opinion.

In *Michigan* the question does not seem to have been passed upon directly, although it would appear that such use might be permitted or refused by a vote of the electors of the school district.

Eckhardt vs. Darby, 118 Mich. 199, 76 N. W. 671.

In *Ohio* in the case of

Weir vs. Day, 35 Ohio State, 143,

the court declared invalid a lease of the school building to a private school; but in doing so said:

"We do not mean to say that a court of equity will interpose its extraordinary power, by writ of injunction, against every casual or temporary use of such property for other than public school purposes."

The question does not appear to have been further elucidated by the Ohio court.

II. STATUTORY PROVISIONS

We now pass to the statutory provisions of the several states in so far as they affect the three plans for week-day religious instruction.*

In considering statutory provisions it should be borne in mind that, underlying the three types of religious instruction which we have indicated, there are two theories whereby such instruction is sought to be justified: (a) On the theory that such religious instruction forms a proper part of the regular school curriculum, and (b) that such instruction does not form a part of the public school curriculum, but that the child is to be deemed excused from school while taking this instruction.

With this thought in mind we will consider the statutory provisions as to (a) whether religious instruction may form a part of the regular curri-

*See the analysis of "Types" at the opening of this paper.

culum and (b) whether the truancy laws are so framed as to permit excusing the child from school for religious instruction.

As to the curriculum of the schools, the statutes of Ohio, Indiana and Wisconsin list certain elementary subjects which are to be required in every school. In the other states one or two special subjects are mentioned, but the curriculum in general is in the discretion of the local school board. Even in Ohio, Indiana and Wisconsin it is held that, provided the subjects laid down by law are taught, the local board has entire discretion to provide for instruction in additional subjects not prohibited by law.

It will thus be seen that in none of the states of this Province* is there any *statutory* regulation which would prevent making religious instruction a part of the school curriculum. The matter is entirely in the discretion of the local board, subject however in all cases to the *constitutional* restrictions, as they have been interpreted and applied by the courts of that particular state.

We will now note the truancy laws of the several states as bearing upon the legality of excusing children from school for religious instruction, under the second theory, namely that the religious school does *not* form a part of the public school curriculum.

WISCONSIN. "Any person having under his control any child between the ages of seven and fourteen years . . . shall cause such child to be enrolled in and to attend some public, parochial or private school regularly (regular attendance for the purpose of this statute shall be an attendance of twenty days in each school month unless the child can furnish some legal excuse), in cities of the first class during the full period and hours of the calendar year (religious holidays excepted) that the public, parochial or private school in which such child is enrolled may be in session; in all other cities not less than eight school months and in towns and villages not less than six school months in each year (here follow provisions excepting children not in proper physical condition to attend school, or living more than two miles from a school house, or having already completed the work of the first eight grades). Instruction during the required period elsewhere than at school, by a teacher or instructor selected by the person having control of such child, shall be equivalent to school attendance, provided that such instruction received elsewhere than in school be at least substantially equivalent to instruction given to children of like ages in the public, parochial or private school where such children reside."

ILLINOIS. "Every person having control of any child between the ages of seven and sixteen years shall annually cause such child to attend some public or private school for the entire time during which the school attended is in session, which shall not be less than six months of actual teaching, provided however that this act shall not apply in case the child has been or is being instructed for a like period in each and every year in the elementary branches of education by a person or persons competent to give such instruction. . . . Or in case the child is excused for temporary absence for cause by the principal or teacher of the school which said child attends."

OHIO. Every boy between eight and fifteen and every girl between eight and sixteen is required to attend a public, private or parochial school

*Wisconsin, Illinois, Michigan, Indiana, Ohio.

"for the full time that the school attended is in session, which shall in no case be less than twenty-eight weeks . . . unless the child is excused therefrom by the superintendent of the public schools . . . upon satisfactory showing . . . that the child is being instructed at home by a person qualified, in the opinion of the superintendent, to teach the branches named in the next preceding sections."

INDIANA. "It shall be the duty of every parent, guardian or other person having control or charge of any child, to cause such child to attend regularly a public, private or parochial day school, . . . for a term or period not shorter than that of the common schools of the school corporation in this state where the child resides. This section shall apply to every child not physically or mentally disqualified, as hereinafter provided, who shall be of the age of seven years and of not more than fourteen years."

MICHIGAN. "Every parent, guardian or other person having control or charge of any child between the ages of seven and sixteen years shall be required to send such child . . . to the public schools during the entire school year, and such attendance shall be continuous and consecutive for the school year fixed by the district in which such parent, guardian, or other person in parental relation may reside. . . . Provided, that in the following cases children shall not be required to attend the public schools: (a) Any child who is attending regularly and is being taught in a private or parochial school which has complied with all the provisions of this act, . . . or who upon completion of the work in such schools shall present satisfactory evidence that he has completed sufficient work to entitle him to an eighth grade diploma. . . . (f) Any child twelve to fourteen years of age while in attendance at confirmation classes conducted for a period of not to exceed five months in either of said years."

We have in the case of each state omitted sections which have no bearing upon this question, and which provide for relaxation of the compulsory school law in case of children having a permit to work or who reside a certain distance from the school house, or being excused for physical disability, et cetera.

It will be seen by comparing these statutes that the law of Wisconsin, Illinois and Ohio provides that the child shall attend for the entire time during which the school attended is in session, except for the exceptions enumerated above. In Illinois, Ohio and Wisconsin the parent is permitted to provide for private instruction, if it is substantially equivalent to that given in the public school and is given by a competent person. In Indiana and Michigan such private instruction is not permitted.

It would seem therefore that, if the religious school is not to be regarded as a part of the public school curriculum, but request is to be made that the child should be excused from school for attendance, that such request should, in the states of Indiana and Michigan, be based upon the theory that there is nothing in the compulsory school law requiring attendance during the entire period of each day. In the states of Illinois, Ohio and Wisconsin, where attendance is required during all the school hours, it should be based upon the proviso contained in those statutes, that the child may receive *equivalent* private instruction.

It may be that the courts will apply a somewhat more liberal construction to the phrase, "the entire time during which the school is in session"

than I have applied here. However, as I have just stated, assuming that this is given a strict construction, the request that the child be excused from school may in those states having such provision be based upon the provision for equivalent outside instruction.

III. CONCLUSIONS

Let us apply these principles of law to the three plans for religious instruction described at the outset.

TYPE A. This type, in addition to presenting all of the problems involved in the other types, raises also the question of the right to use part of the school building for religious instruction. If the light, heat and janitor service were furnished by the school district, it would probably be construed as an improper appropriation of public money. If the various denominations paid a rental sufficient to cover these items and compensation for the use of the room, there would be no legal objection to the plan in Illinois, and probably not in Indiana, Ohio and Michigan. In Wisconsin, however, it seems that such use of the school building would not be permitted under any conditions.

TYPE B. This type involves the question as to the right of the school board to give credit in the public school for work done in the denominational school. Two legal objections interposed against this plan were stated and discussed in connection with the Frazier case.

What our courts may hold we may only conjecture from the not very analogous cases concerning prayer and Bible reading. The proposed plan might be regarded as more objectionable than Bible reading, because it is frankly dogmatic. Or it might be regarded as less objectionable, because more purely voluntary. The plan certainly obviates the argument advanced against religious school exercises by the Wisconsin and Illinois courts, that it is unfair to place the child not wishing to attend in the position of having to be specially excused. In the proposed plan, the reverse is true,—the child is not permitted to attend, unless specially requested by his parents.

As a mere conjecture we should say that the plan would be approved by the courts of Michigan, Ohio and Indiana and disapproved in Wisconsin, with Illinois doubtful.

TYPE C. This scheme contemplates a complete divorce of the church school from the public school system. No credit is asked for work accomplished; and attendance is not enforced under the truancy law. If the child is habitually truant from the church school, he is simply reported to the public school authorities and the privilege of attendance is withdrawn. The work of the church school is, then, in no sense a part of the school curriculum. In legal effect the child is excused from school in order to attend the church school on the ground that the absence is for his well-being and presents reasonable ground for that privilege.

This plan presents none of the features which might, in some jurisdictions, militate against the other two. It does not involve the use of a public building, or any expenditure of the time of the public-school teachers, nor does it make the religious instruction in any way a part of the public-school curriculum.

It does, however, raise the question as to whether the compulsory

school law authorizes the local authorities to permit the child to absent himself from school during the school hours.

By reference to section II of this brief it will be noted that in Michigan and Indiana there is no statutory requirement that the child should attend the public school during each hour of the day that it is in session. On the other hand, in Illinois and Wisconsin, where there is such a requirement, it is mitigated by the proviso that the parent is permitted to instruct the child privately, so long as the instruction is substantially equivalent to that given in school and the instructor is a competent person. There would therefore, seem to be no legal objection in any of the states to this plan of religious instruction.

CONCLUSION. It should not be understood that the three types discussed in this brief exhaust all possible plans for week-day religious education. There are endless variations and combinations to suit local conditions. But for clearness it has been deemed best to arrange them as has been done. Deductions can easily be drawn from the cases here digested to apply to the individual case. It would seem that, while the first type would be objectionable in many states and the second type in a few states, the third type would be entirely legal in any state having laws such as the states of this Province.

PAROCHIAL SCHOOLS*

SUMMARY OF INSPECTION, LANGUAGE, CERTIFICATION AND ALLEGIANCE LAWS

INSPECTION

Altogether 12 states require some sort of inspection:

Connecticut	New York
Indiana	Pennsylvania
Kansas	Rhode Island
Michigan	South Dakota
Nebraska	Virginia
New Hampshire	Wisconsin

5 states authorize *full inspection* of parochial schools: Michigan, Nebraska, New Hampshire, Rhode Island, South Dakota.

2 states prescribe inspection of instruction in *civic subjects*: Kansas and New York.

4 states provide for *sanitary or medical inspection*: Indiana, Michigan, New Hampshire, Virginia.

3 states require private and parochial school *registers* to be inspected: Connecticut, Pennsylvania, Wisconsin.

8 states require approval of private and parochial schools, but inspection is not stated as a condition: Kentucky, Maine, Massachusetts, New Mexico, North Dakota, South Carolina, Washington, West Virginia.

*Data furnished by The Bureau of Education of The National Catholic Welfare Council.