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THE LEGAL ASPECTS OF PRIVATE USE OF PUBLIC SCHOOL FACILITIES

by

Warren L. Hollar

A Dissertation Submitted to
the Faculty of the Graduate School at
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in Partial Fulfillment
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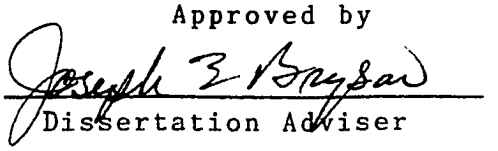

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APPROVAL PAGE

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Date of Final Oral Examination

HOLLAR, WARREN L., Ed.D. The Legal Aspects of Private Use of Public Elementary and Secondary School Facilities. (1984) Directed by Dr. Joseph E. Bryson. pp. 255.

This study is an investigation of the legality of private use of public elementary and secondary school facilities during nonschool hours as determined by the laws of the fifty states and the District of Columbia; additionally, analysis of selected court cases relevant to the issue are presented.

The following conclusions were reached:

1. Decisions of courts are made in light of statutory and constitutional issues relating to specific uses.

2. Courts will not interfere with decisions of local school boards unless violations of statutory and constitutional issues are found.

3. School authorities may prohibit use that interferes with the regular school program.

4. Temporary, casual, and incidental use of school property is allowed under board discretion.

5. School boards must not allow use in an arbitrary, capricious, discriminatory, or illegal manner.

6. School boards may deny all requests for use when allowed by statutes.

7. Permissability of use by religious groups is evaluated in light of the First Amendment to the Constitution of the United States.

8. Once school boards open facilities to use by political groups, constitutional rights of freedom of speech, assembly, and access to a public forum must not be abridged.

9. School boards and state legislatures cannot require nonsubversive oaths as a condition for use.

10. Burden of proving a group is subversive or may damage school property belongs to the school board.

11. School facilities cannot be used for commercial purposes when the primary purpose is personal gain.

12. School boards have a legal right to operate school stores and cafeterias.

13. School facilities cannot be leased for permanent businesses on school grounds.

14. School boards must operate within their own rules and regulations, statutory entitlement, state constitutions, and the Constitution of the United States.

Legality of private use of school property continues to be in a state of flux because of the diversity of state statutes. Generally, decisions relating to private use are made first in light of state statutes and state constitutions and then in light of prevailing rulings concerning the United States Constitution.

ACKNOWLEDGEMENTS

I wish to express my appreciation for the guidance and direction Dr. Joseph E. Bryson has given me in the writing of this dissertation and for his assistance throughout my doctoral program. Special thanks are also given to Dr. Dale Brubaker, my committee chairman; Dr. Dwight F. Clark; and Dr. John A. Humphrey for their encouragement and willingness to give their time to assist me during my entire graduate program.

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CHAPTER I

INTRODUCTION

Use of public school facilities by private groups is a much litigated question in recent times. Citizens frequently request use of school facilities because of the prevailing attitude that "school buildings belong to citizens because they were paid for with tax dollars."[1] School boards and administrators who receive requests from private groups must address requests in view of the many legal implications presented by state statutes and litigation.

School officials have attempted to conserve school system resources for student use and concurrently to acquiesce to demands of current political and economic conditions which invite shared decision-making in school operations.[2] Many state legislatures have taken the broad view of community use of school facilities as a method to win broader support for public schools.[3] N. L. Englehardt placed the question of school use in this perspective:

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[1]Phillip K. Piele and James R. Forsberg, School Property: The Legality of Its Use and Disposition (Topeka, Kansas: National Organization of Legal Problems in Education, 1974), p. 4.

[2]Ann M. Dellinger, North Carolina School Law: The Principal's Role (Chapel Hill, N.C.: Institute of Government, 1981), p. 86.

[3]"Turn your Schools into Centers of Community Activity, and Win Broader Citizen Support," The American School Board Journal, May, 1982, p. 35.

> In a democracy, is enhancing the life opportunities of its citizens important in terms of the cost of reducing the service life of its physical properties?[4]

A review of state statutes indicates a movement toward answering Englehardt's question positively. States vary widely in statutory regulations. Court decisions have varied widely in the interpretation of statutory provisions. Because of divergent statutes, litigation, and use requests, school officials have been seeking a clear definition of the various legal principles established by state legislatures and courts to establish guidelines for use by nonstudent groups.

The study of state statutes and judicial decisions has helped many school boards and administrators to understand the complexity of legal issues as well as their responsibility for permitting private use of public school facilities. Their understanding of what kinds of requests for use of school facilities are being made and why is important. If school administrators are aware of controversial issues and how they have been addressed previously, their ability to deal with issues without great harm coming to policy making and administrative processes should be enhanced. Indeed, if controversies cannot be solved locally, lengthy judicial processes

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[4]N. L. Englehardt, Planning the Community School (Boston: American Book Company, 1940), p. vii.

may result. This study is designed to contribute to positive local solutions to questions of private use of public school facilities.

Status of Private Use of Public School Facilities

School properties and facilities represent an investment of well over one hundred billion dollars in the United States.[5] Individual units of this investment are at once an adult education center, a recreation building, a political arena, a lyceum, a forum, and a neighborhood school, as well as a facility for education of the young.[6]

Inasmuch as public education is a state function, public school property is state property held in trust for the state by the local school authority.[7] Whatever authority school boards have over school property is conferred by the state.[8]

State governments are vested with plenary control over educational policy.[9] States commonly express educational

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[5]E. Gordon Gee and David J. Sperry, Education Law and the Public Schools: A Compendium (Boston: Allyn and Bacon, Inc., 1981), p. S-2.

[6]M. Chester Nolte, Guide to School Law (West Nyack, New York: Parker Publishing Company, 1969), p. 144.

[7]Lee O Garber and Newton Edwards, The Law Governing School Property and School Building Construction (Danville: The Interstate Printers and Publishers, 1964), p. 3.

[8]Ibid.

[9]Lee O Garber and Newton Edwards, The Public School in Our Governmental Structure (Danville, Illinois: The Interstate Publishers and Printers, Inc., 1970), p. 9.

policy through legislation which often provides "ends" and "means".[10] Subject to constitutional limitations, state legislatures have complete power to develop educational policy.[11]

In general, the governments of the fifty states and the District of Columbia leave decisions on use of school facilities by private groups to the discretion of local school boards.[12] However, California, one of five states with public use mandated, has a statute which reads:

> There is a civic center at each and every public school building and grounds within the state. . .[13]

Statutes vary from California's which flatly states that facilities will be used, to varying degrees of discretion.[14] Where statutes detail requirements or limitations, school board discretion is presumably limited to determining whether specific applications for use are appropriate.[15]

Litigation often develops in instances where, because statutes are silent on allowable uses of facilities, school

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[10]Ibid, p. 10.

[11]Ibid, p. 11.

[12]Edward Bolmeier, The School in the Legal Structure (Cincinnati: W.H. Anderson Company, 1973), p. 179.

[13]California Education Code, 16556.

[14]Piele and Forsberg, p. 3.

[15]Ibid.

boards are forced to use discretionary authority which may be challenged.[16] Most school districts have been granted either specific or implied authority to manage and control school buildings and grounds.[17]

Discretion granted school officials must not be abused or exercised in an arbitrary and capricious manner.[18] Historically, courts have not interfered with decisions of school authorities regarding use of school facilities unless discretion is abused.[19]

In general, no legal recourse for individuals or groups denied use of school buildings is provided in the absence of state statutes.[20] In most cases which question school board authority over school facility use, courts have turned to state constitutions and state legislation.[21] Conversely, cases which deal with constitutional rights such as freedom of speech and religion and equal protection have been viewed

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[16]E. Edmund Reutter, Jr., Schools and the Law (Reston, Virginia: National Association of Secondary School Principals, 1981), p. 82.

[17]LeRoy J. Peterson and others, The Law and the Public School Operation (New York: Harper and Row, Publishers, 1969), p. 169.

[18]Peterson and others, p. 171.

[19]Ibid.

[20]Bolmeier, p. 179.

[21]Piele and Fosberg, p. 5.

in light of leading interpretations of the United States Constitution.[22]

Short-term use of facilities by religious organizations for educational, cultural, or even some religious purposes,[23] has been upheld. Courts in various locations have permitted religious groups to use school facilities for worship during nonschool hours on the same basis as nonreligious groups.[24] In Country Hills Christian Church v. Unified School District Number 512 and Resnick v. East Brunswick Township Board of Education, courts ruled:

> The secular purpose of maintaining school facilities as open forums for community activities during non-school hours, that activities under such policies are sufficiently divorced from the official activities during the school day to avoid the implications of official school support, and that such open door policies require no entangling supervision.[25]

Use by political and subversive groups has further complicated private use of public school facilities. Unconstitutional bars to groups whose beliefs and doctrines are

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[22]Ibid.

[23]Richard D. Gatti and Daniel J. Gatti, New Encyclopedic Dictionary of School Law (West Nyack, New York: Parker Publishing Company, 1983), p. 71.

[24]Benjamin Sendor, "The Wall Between Preaching and Teaching in the Public Schools," School Law Bulletin 15 (July, 1983), p. 6.

[25]Ibid.

disapproved by school boards have frequently resulted in litigation. Chester Nolte clarified constitutional concerns:

> The distinction between freedom of expression on a theoretical plane and expression that presents clear and present danger must be clearly maintained. The former is everywhere protected by the First Amendment, but the latter is everywhere prohibited.[26]

School officials have often been forced to determine whether free enterprise will be hindered by particular uses. While the courts have been in agreement that facilities cannot be used for personal gain, questions have arisen as to whether gain has come from incidental use.[27] Questions have also been raised concerning legality of school stores and cafeterias.[28] Whatever their nature, questions continue to be raised concerning the nature of school property and constitutional and statutory rights for private use of school property.

This study, then is significant in that it provides educational leaders an analysis of the legal aspects of use of public school facilities by private groups. Furthermore,

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[26]Nolte, p. 145.

[27]Peterson and others, pp. 174-175.

[28]Ibid.

the study provides historical perspective on a variety of judicial decisions as well as a review of state statutes dealing with private use of school facilities. The study may also provide direction to school districts when questions concerning facility use arise.

Purpose of the Study

The purpose of this study is to determine the legality or private use of public elementary and secondary school facilities through analysis of statutory provisions of the fifty states and District of Columbia and through analysis of selected court cases. This study is being developed in a factual manner. It will deal with the legal questions, and no attempts will be made to relate these questions to social or economic factors. To serve as guidelines for the conduct of the study, the following basic questions were formulated:

1. What are the major legal issues regarding private use of public elementary and secondary school facilities?
2. What major legal principles emerge from landmark judicial decisions that are applicable to the statutory provisions of the states?
3. Based on recent court cases, what issues related to private use of public school facilities are being litigated, and are likely to be?
4. What trends can be determined from analysis of statutory provisions of the states?

5. Based on established legal precedents, what are the legally acceptable criteria for private use of public school facilities?

Scope of the Study

This is a historical study of the legal ramifications of private use of public elementary and secondary school facilities as determined by the laws of each state and analysis of selected court cases. The research describes the extent to which private use of public elementary and secondary schools for nonschool purposes has been challenged and litigated, the reasons for the litigation, and the results or effects of the judicial decisions.

Legal questions arising from long-term lease of facilities are not addressed. No research is presented in the areas of tort liability during nonschool use, use of school buses for private purposes, the legality of private schools using public school facilities, or the legality of released-time programs for sectarian purposes.

Methodology

The basic research technique of this historical research study was to examine and analyze the available references concerning the legal aspects of private use of public and secondary school facilities.

In order to determine whether a need existed for such research, a search was made of Dissertation Abstracts for related topics. A computer search from the Educational Resource Information Center (ERIC) was also completed to determine related dissertation topics. Journal articles related to the topic were located through use of such sources as Reader's Guide to Periodical Literature, Education Index, Index to Legal Periodicals, and the Legal Resource Index.

General research summaries were found in the Encyclopedia of Educational Research, various books and guides to school law, and in a review of related literature obtained through a computer search from Educational Resource Information Center (ERIC).

Federal and state court cases related to the topic were located through use of the Corpus Juris Secundum, American Jurisprudence, the National Reporter System, American Digest System, and Shephard's Citations. Recent court cases were found by examining case summaries contained in issues of the Nolpe School Law Reporter. All of the cases were read and placed in categories corresponding to issues noted from the general literature review.

Definition of Terms

For the purposes of this study, the following selected terms are defined:

Commercial use: any use by a group having financial profit as the primary aim.

Community school program: the composite of those educational, cultural, social, and recreational services provided to the citizens of a community exclusive of those services normally provided through the regular instructional program.

Political use: use by any organization of individuals, parties, or interests that seek to control the appointment of those who manage the affairs of a state.

Private group: any group not affiliated with the public schools.

Private purposes: any activity not associated with the regular school program.

Public school: any school established under law of the state (usually regulated in matters of detail by local authorities), maintained at the public expense by taxation, and open with or without charge to the children of all the residents of the district.

Public school facility: any educational facility under the jurisdiction of a local school board, whether termed an elementary school, middle school, junior high school, high school, or union school.

Religious use: use of school facilities by sectarian groups.

Subversive use: use by any group advocating the overthrow of the government of the United States or any state by force, violence, or other unlawful means.

Design of the Study

This study is an investigation of the legality of private use of public elementary and secondary school facilities as determined by analysis of the statutes of the fifty states and District of Columbia and selected court decisions. Chapter I serves as an introduction which establishes the existence of a valid question, describes the scope and design of the study, and defines pertinent terms.

The remainder of the study is divided into four major parts. Chapter II contains a review of related literature on the use of public elementary and secondary school facilities by private groups.

Chapter III encapsulates a thorough review and analysis of statutory provisions of the fifty states and District of Columbia concerning private use of public elementary and secondary school facilities. The information in the statutes is presented in a continuum ranging from mandated use to broad discretion by local boards. Examples of permitted uses are presented in tabular form; use by religious,

political, and subversive groups is discussed. Complete codes to all statutory provisions are included in the Appendices.

Chapter IV includes a narrative discussion of the major legal issues relating to private use of public elementary and secondary school facilities. An attempt is made in this chapter to show the relationships between legal issues and state statutory provisions and in some cases federal constitutional issues.

Chapter V contains a general review, analysis, and discussion of selected court cases and landmark decisions, which have increased private use of public elementary and secondary school facilities.

The final chapter contains a summary and conclusions obtained from review of literature, review of statutes, and review of court decisions. Finally, legally acceptable criteria for private use of public elementary and secondary school facilities are provided.

Chapter II

REVIEW OF LITERATURE

The expanded use of school facilities is a product of changes in American society. Traditionally, schools in rural areas were made available to citizens who assembled for civic, educational, or social purposes. Often the schools were the only facilities available for community use. Because the educational process was confined strictly to instruction of an academic nature and the number of organizations requesting use was small, such use could be allowed.[1]

As educational purposes expanded to include a variety of extracurricular activities, school boards began to condone a variety of activities in school buildings. Expanded use included athletic contests, science fairs, adult classes, parties, etc.[2]

The civic center movement opened schools to further public use. Community discussion led to more efficient use of public school space including extended library services, adult classes, little theatre, and similar activities.

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[1]M. Chester Nolte, "Courts Becoming More Liberal Permitting Non-School Use of Public School Buildings", American School Board Journal, February, 1966, pp. 63-64.

[2]Ibid.

The number of groups in society has increased tremendously. As taxpayers, members of these groups have looked to public schools as public property available for their private use. Increased legal and community pressure on school boards has resulted. Therefore, a review of the historical development of public attitudes and consequent development of legal trends is valuable to this study.

Use of Early American School Buildings

The design of American schools in seventeenth and eighteenth-century America had progressed little beyond ancient Greek ideas.[3] During the Hellenistic era (500 B.C.-200 B.C.) school buildings did not exist as we know them today. Instructions were generally conducted in the open air, sometimes in the shadow of temples, or in enclosures barely protecting students from the elements. Meeting places were not important to instruction.[4] In early America, schools were still basically shelters in which pupils and teachers came together, although they did include some furniture--benches and tables for students and a podium for the teacher.[5]

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[3]Basil Castaldi, The Evolution of Educational Facilities (Boston: Allyn and Bacon, 1977), pp. 8-9.

[4]Edgar W. Knight, Education in the United States (3rd ed.; Boston: Ginn and Company, 1951), p. 416.

[5]Ellwood P. Cubberley, Public Education in the United States, (Boston: Houghton and Mifflin, 1934), p. 328.

One-room schoolhouses of early America were not strictly limited to use by children. School buildings were the community's responsibility and could in case of need be used as shelter, storehouse, and emergency hospital.[6] Variety of use was necessary in early days for survival of the community.[7]

According to Ellwood P. Cubberley, in rural districts "a weather-boarded box" or an old log schoolhouse, with two or three windows on each side, a few wooden benches, and an unjacketed stove in the middle of the room, answered all needs. Many buildings were also in sad repair because funding was sparse.[8]

Even in cities, building conditions were poor well into the middle of the nineteenth century. Edgar Knight described:

> The great majority of the schools of New York State in 1844 were officially described . . . as naked and deformed, in comfortless and dilapidated buildings with unhung doors, broken sashes, absent panes, stilted benches, yawning roofs and muddy moultering floors . . . Only one-third of the schoolhouses were reported in good repair, another third in comfortable circum-

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[6]Building for School and Community (Paris: Organization for Economic Co-operation and Development, 1978), p. 11.

[7]Ibid.

[8]Cubberley, op. cit. p. 328.

stances, while more than 3,300 were unfit for reception of man or beast.[9]

Nineteenth Century Use

Educational Trends

In nineteenth-century America, some major changes in attitudes concerning education and schools came about. The industrial revolution created a radical shift in school functions. Enormous numbers of new jobs requiring specialized training were created.[10] As organized labor developed, it struggled against conditions which permitted children to work long hours in factories.[11]

The first free, graded elementary schools appeared in the United States about 1848.[12] The 1872 landmark Kalamazoo case virtually settled the issue of establishing a tax-supported free public school system in the United States. While, much remained to be done to develop effective free public schooling, American public schools--supported by general taxation, freed from pauper-

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[9]Knight, op. cit., p. 417.

[10]Edgar W. Knight, Twenty Centuries of Education, (Boston: Ginn and Company, 1940), p. 233.

[11]John C. Almack, Modern School Administration: Its Problems and Progress, (Boston: Houghton Mifflin Company, 1933), pp. iv-v.

[12]Guide for Planning Educational Facilities, op. cit., p. 11.

school taint, free to all, under direction of representatives of the people, and independent from sectarian control--had permanently been established through efforts of many educational leaders.[13]

In Public Education in the United States, Ellwood P. Cubberley outlined reasons for development as follows:

> Up to the time of our Civil War we were engaged in the laying of foundations and establishing principles of action. . . The great stream of immigration which has come to our shores, the vast industrial revolution which has taken place, the destruction of the old-type home, the virtual disappearance of the apprenticeship system of training, the institution of compulsory education, new conceptions as to the education of delinquents and defectives, new child welfare legislation, and the rise of a rural-life problem of great dimensions--these are the important changes and forces which have necessitated extensive modifications in almost every aspect of educational service. To enable our schools to meet these new problems of our changing democratic life we have been forced to change and adapt our schools to the new needs of society.[14]

In 1791, the Tenth Amendment of the United States Constitution provided "powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to

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[13]Cubberley, op. cit., pp. vii-viii.

[14]Ibid.

the people."[15] The Tenth Amendment placed responsibility for public education upon the states. Education in the earlier days of American history had a local origin and was organized from the community and upward. As states began to exert control over education, educational standards were developed that could be tested through litigation.[16]

When states decided that schools should be free and equally open to all, an end was put to tuition charges, and the concept that public schools were only for poor people disappeared. When states ruled schools should be free of church control, limits on public aid to denominational schools were established. State compulsory attendance legislation superseded the authority of parents in deciding the importance of providing education for children.[17]

Legal Trends

Numerous legal issues arose from the development of free public school systems. Questions on private use of school facilities were present even during the late nineteenth century.

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[15]U. S. Constitution, Amend. X.

[16]Cubberley, An Introduction to the Study of Education, (Boston: Houghton Mifflin, 1933), p. 57.

[17]Ibid, pp. 58-60

Early concepts of use of facilities were that the schools were public corporations of the state for the primary purpose of educating the young.[18] The opinion of the courts appeared to be that school buildings were to be used only for educational instruction. And while this opinion was firmly held, the only relaxation of this attitude was toward inclusion of private educational instruction which could take place in public school buildings, but only after regular school hours.[19]

Court rulings give evidence to the opinion that facilities could be used only for school purposes. In George v. School District Number 47, the justices ruled:

> that a school district would have no authority to construct a school building to accommodate societies, lecturers, dramatic exhibits, or for any other purpose other than that of a district town school.[20]

The Chaplin v. Hill case held that a school district had authority to permit a private school to be conducted on public school premises provided no public school instruction was being given at the time.[21]

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[18]M. Chester Nolte, "Board has Right and Duty to Predetermine that School Premises Shall not be used in Contravention of the Law," American School Board Journal, March, 1965, pp. 59-60.

[19]American Law Report, Vol. 94, p. 1277 (1967).

[20]George v. School District Number 47, 6 Met. 497, (Massachusetts) (1843).

[21]Chaplin v. Hill, 24 Vermont 532, (Vermont) (1852).

These two cases followed trends developed in other states during this era. The court rendered the following opinion in School District Number 8 v. Arnold:

> The statute has not given the board, nor the electors of the district, any authority to permit a schoolhouse to be used for meetings of the Sons of Temperance, or anything of this kind . . . This action of the electors in voting that the Sons of Temperance might have the use of the schoolhouse to hold their sessions in, was doubtless taken upon the notion that as the schoolhouse was the property of the district, the electors might permit it to be used for such purposes as they might think proper. But although the schoolhouse is the property of the district, it does not follow that the electors may divert it from its original use. There may be others besides the electors interested in the school building, and whose rights would be affected. Tax-paying females, non-resident taxpayers and others might have reason to complain if the building was used for other than school purposes. Certainly the schoolhouse is not property of the electors in such a sense that they may control its use as they would that of their own property.[22]

During the same time in Connecticut, a school district, which was authorized by statute to build and maintain public schools and to levy taxes for that purpose, voted to construct a school buidling containing a hall to be used for school society meetings and lectures. The court in Shelton v. Centre School District maintained:

> the uses of the hall did not render the vote illegal inasmuch as school society

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[22]School District Number 8 v. Arnold, 21 Wisconsin 665 (Wisconsin) (1867).

meetings were not customarily held frequently, and it could be assumed that the giving of lectures for adults would be an occasional happening.[23]

Chaplin v. Hill and Russell v. Dobbs helped establish that a public schoolhouse could be used for the purpose of giving instruction at a time other than regular instructional periods. But the court pointed out that private instruction could not be accepted for a set duration of time and thereby declared it not fixed in duration.[24]

For the next quarter century, as seen in cases ranging from New England to the midwest region, trends of limited private use of school facilities seemed to prevail. In Kansas in 1875, the courts directed that schools could not be used for nonschool purposes:

> The public school house cannot be used for any private purposes. The argument is a short one. Taxation is invoked to raise funds to erect the building; but taxation is illegitimate to provide for any private purpose. Taxation will not lie to raise funds to build a place for a religious society, a political society, or a social club.
>
> What cannot be done directly, cannot be done indirectly. As you may not levy taxes to build a church, no more may you levy taxes to build a schoolhouse and then lease it for a church. Nor is it an

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[23]Shelton v. Centre School District, 25 Connecticut 224 (Connecticut) (1865).

[24]Chaplin v. Hill, 24 Vermont 528 (Vermont) (1852): Russell v. Dobbs, 37 Vermont 497, (Vermont) (1865).

> answer to say that its use for school purposes is not interfered with, and that the use for the other purposes work little, perhaps no immediately - perceptable injury to the building, and results in the receipt of impecuniary benefit. The character of the use is the only legitimate question. A municipal bond of five cents in aid of a purely private purpose, is as void as one of a thousand dollars, and that, too, though the actual benefit to the municipality far exceeds the amount of the bond. The use of a single religious or political gathering is legally as unauthorized as its constant use therefor.[25]

Essentially the same judicial concept was assumed by a Pennsylvania court in the 1897 Bender v. Streabich decision. The court found:

> Although the use of school buildings by the community at large for the holding of meetings for public discussion of general interest might be educational in nature, such use was not that intended by law. The public school system was designed for the exclusive benefit of youthful students and that school premises could not be used for any purpose not directly related to their instruction.[26]

Early Twentieth-Century Use

Educational Trends

The twentieth century brought new consciousness about the role of education. The efforts and ideals of society

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[25]Spencer v. Joint School District, 22 American Reporter 268 (Kansas) (1875).

[26]Bender v. Streabich, 37 Atlantic 853 (Pennsylvania) (1897).

are symbolized through two ideas--democracy and education. Democracy represents the goal and education represents the instrument for attainment of the goal.[27]

Several educational theorists continued to question ways newly developed systems of free public schools could be improved. Influences of such men as John Dewey, Johann Heinrich Pestalozzi, and William James resulted in more liberal approaches to education.[28] Creative participation, the learning-by-doing concept, quickly replaced earlier passive recitation and rote memorization. Observation, investigation, discussion, evaluation, and self-expression opened doors not only to new instructional methods but to whole new ideas of community participation in the educational process.[29] In 1900, John Dewey, writing in his widely read School and Society, planted the idea of expanded services of public schools by saying: "Learning certainly, but living primarily and learning through and in relation to this living."[30]

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[27]Ellwood P. Cubberley and Edward C. Elliott , State and County School Administration, (New York: Macmillan, 1915), p. 3.

[28]Ellwood W. Cubberley, An Introduction to the Study of Education, (Boston: Houghton Mifflin Company, 1933), p. 12. See also Cremin, Lawrence. The Transformation of the School (New York: Random House, 1961).

[29]Guide for Planning Educational Facilities, (Columbus, Ohio: Council of Educational Facility Planners, 1969), p. 12.

[30]John Dewey, Schools and Society, (Chicago: University of Chicago Press, 1900), p. 37.

Expansion of tax-supported public school systems in the early twentieth century aided understanding of the real meaning of public education. Cubberley and Elliott, in State and County School Administration, defined the purpose of public education as:

> any socially organized project which has for its justification the communizing of intelligence--the essential prerequisite for the attainment of popular culture; whether the culture be expressed in terms of a bettered physical condition of life, a higher standard of social conduct, an enlarged sphere of common appreciation and sympathy, or an improved economic productivity.[31]

Progressive education, although a controversial movement, stimulated a variety of innovations and vigorous public interest in all activities of public schools. Expansion of the role of public schools gained impetus through a number of early laws promoting wider use of school facilities. In 1911, Wisconsin authorized school directors to establish "evening schools, vacation schools, reading rooms, library stations, debating clubs, gymnasiums, public playgrounds, public baths, and similar activities."[32] Additional provisions included that "nonpartisan, nonsectarian, and nonexclusive associations of citizens shall

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[31]Cubberley and Elliott, op. cit., p. 386.

[32]Clarence A. Perry, "Recent Progress in Wider Use of School Plant," Report of the United States Commissioner of Education (Washington, D.C., 1915), p. 471.

have use of schoolhouses free of charge."[33]

According to Charles Zeublin, by 1914, seventeen states had provided "wider-use" legislation--five in the East, five in the Midwest, four in the far West, and three in the South.[34] Many of the "wider-use" statutes came as a result of the Community Center Movement which had an aim of "organizing America into a society where the schoolhouse is the society's home and clubhouse in each local unit."[35] Neighborhood schools are agencies "through which the economic, social, intellectual, political, and religious conditions in neighborhoods were to be transformed according to the spirit of order, progress, and national well-being."[36]

Ellwood Cubberley and Edward Elliot described expanded use of school facilities during the era:

> It is obvious that the schoolhouse is in most communities used only during certain hours of the day, those hours when the rest of the community is busily engaged in bread-winning work . . . Inasmuch as the schoolhouses belonged to the community it was perfectly legitimate that

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[33]Ibid.

[34]Edward W. Stevens, "Social Centers, Politics, and Social Efficiency in the Progressive Era," History of Education Quarterly, Spring, 1972, p. 16.

[35]Ibid, p. 22.

[36]Ibid.

> the community should use them for its own entertainment and schooling when the young people were not occupying them, and that, therefore, it would be a good idea to have there all sorts of gatherings, for social purposes, for purposes of entertainment, for purposes of conference, for any legitimate thing that might bring neighbors and friends together in the school houses.[37]

This new national awakening of the purposes of public schools and facilities brought an increase in the number of state statutes allowing expanded use. Accompanying the new statutes, many questions concerning legality of particular uses arose.

Legal Trends

Near the turn of the century and for the next thirty years, court cases indicated an opening of schools to communities for a variety of purposes. Some of the activities accepted during this period have remained with public education and become an integral part of the system. A number of cases, particularly in areas from the Midwest to the Pacific, have documented expansion of nonschool use.

In the 1909 Lagow v. Hill case, school directors were supported in granting temporary use of an unused assembly hall when not occupied by schools for purposes of religious meetings, Sunday Schools, evening schools, literary societies,

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[37]Cubberley and Elliot, op. cit., p. 387.

and civic groups such as Modern Woodmen, Odd Fellows, and Royal Neighbors. Organizations were permitted to use facilities for holding their meetings and conducting their fraternal affairs.[38]

The court maintained in 1913 in Royce Independent School District v. Reinhardt that the school trustees could lease a portion of the school grounds to a private organization for use as a baseball field during the summer recess of the school for "financial advantages accruing to the school district from the rentals."[39] Financial advantage was also the reason given in the Cost v. Shinault case which sustained the school district's right to lease property for a profit to benefit the school district.[40]

Recreation was the issue in California in McClure v. Board of Education. A statute which permitted the citizens of the respective school districts, with permission from the school board, to use school buildings for recreational activities to include dancing as a form of social activity was upheld.[41] The same was held to be true in Nebraska in

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[38]Laglow v. Hill, 87 N.E. 369 (Arkansas) (1914).

[39]Royce Independent School District v. Reinhardt, 159 S.W. 1010 (Texas) (1913).

[40]Cost v. Shinault, 166 S.W. 704 (Arkansas) (1914)

[41]McClure v. Board of Education, 176 Pacific 711 (California) (1918).

Brooks v. Elder when a school board was permitted to allow supervised dances for students in a high school gymnasium after school hours.[42]

A variety of cases were heard during this period. Trends were toward increased use by religious, political, cultural, social, and recreational use of school facilities.

Modern Era: 1930 to Present

Expanded Public Schools

By the great depression of the 1930s teachers, principals, curriculum supervisors, and superintendents had become well acquainted with concepts of early twentieth-century educational reform through college classes and professional journals. Experimentation was considered evidence of professional competence; innovation was rewarded with journalistic attention.[43]

The stock market collapse and closing of banks in 1931 partially paralyzed the nation. People were forced to apply their knowledge and inventiveness to the resources in their local communities. Many communities turned to

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[42]Brooks v. Elder, 134 (Nebraska) (1922).

[43]Maurice F. Seay, Community Education: A Developing Concept (Midland, Michigan: Pendell Publishing Company, 1974), p. 21.

schools for leadership during the emergency. Schools had buildings and equipment which were centrally located for convenience of families; they also had staffs which were familiar with innovation. Results varied, but there was renewed emphasis on school-community cooperation.[44]

When another national emergency, World War II, came during the 1940s, many communities responded by developing cooperative programs of school use such as volunteer war service projects, adult evening classes, etc.[45]

The fifties brought the uneasy years of the "cold war" and Russia's Sputnik and fear reactions in the United States. Pressure grew from citizens who thought schools should be more efficient, more "accountable." The 1954 Supreme Court decision, Brown v. Board of Education, plunged public schools into the social commotion of integration.[46]

Social upheaval in the sixties showed that the political and economic views of American people had diverged. The two ends of the spectrum--human needs and technological

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[44]Ibid., page 23.

[45]Ibid., page 26.

[46]Ibid.

needs--tended to push schools to try to develop a mix of human values in American culture along with technological skills.[47]

The decade of the seventies brought clearer understanding of the limitations of resources to meet both the technological needs and human needs. Litigation in all areas of discretion of school boards increased during the decade. State legislatures chose to encourage facility use by private groups through passage of community school legislation in a number of states. New avenues for use also brought a coresponding amount of litigation questioning these avenues.

Legal Issues Affecting Use of Facilities

Reflecting the change in social concerns, during the mid-forties and early fifties almost entirely new issues dealing with private use of school facilities began to appear in the courts--issues such as overthrow of the government, controversial speakers, Communist groups, religious groups, danger to public order, and individual versus group use.[48]

Goodman versus Board of Education in California established that a school board must prove that a group

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[47]Ibid., page 27.

[48]American Law Reports, Vol. 94, p. 1280.

advocated the overthrow of the government by force, violence, or other unlawful means before it could be denied by statute from using school buildings as a meeting place.[49] Another case in California, Payroll Guarantee versus Board of Education, substantiated the previous case when the board had in its possession substantial evidence that at another meeting at which the same speaker had appeared there had been extended picket lines, boisterous disturbances, noisy demonstrations, and public disorder.[50]

Several landmark decisions regarding use of school property occurred in 1946. One situation saw members of the San Diego Civic Liberties Committee filing an application with the school board for use of a high school auditorium for a series of meetings on the general theme of "The Bill of Rights in Postwar America." An affidavit saying they did not advocate the overthrow of the government by force, violence, or other unlawful means was required with the application. The committee would not sign on the contention that this requirement unlawfully deprived citizens of rights of freedom of speech and peaceable

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[49]Goodman v. Board of Education of San Francisco United School District, 164 Pacific 2d. (California) (1941).

[50]Payroll Guarantee Association v. Board of Education of San Francisco United School District, 163 Pacific 2d 433 (California) (1945).

assembly guaranteed by the United States Constitution and the Constitution of California.[51]

A resulting case, Danskin v. San Diego United School District, came to trial. The justices declared that although the state was under no duty to make school buildings available for public meetings that once it had elected to do so, it could not then arbitrarily discriminate between different individuals or groups seeking to secure privilege of assembly and public discussion on school property. The court quickly added that the state cannot prohibit persons or groups classified as subversive elements from exercising the rights of free speech and assembly at places where others are allowed to speak and assemble except under conditions of clear and present danger, and that they cannot be required to furnish proof that they are not subversive elements as a prior condition of the right to assemble peaceably and engage in free discussion.[52]

An increasing number of recent suits in state and federal courts have presented the question of whether public schools may constitutionally permit religious groups the use of unoccupied buildings, facilities, or grounds for

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[51]Danskin v. San Diego Unified School District, 171 Pacific 2d 885 (California) (1946).

[52]Ibid.

religious purposes during noninstructional hours. Cases have arisen as religious congregations have sought temporary use of unoccupied school buildings after school hours for worship services or religious instruction. In Southside Estates Baptist Church v. Board of Trustees, School Tax District Number 1, the Supreme Court of Florida held that public schools could be used temporarily as a place of worship during nonschool hours. The court indicated that its decision might have been different had the case involved a situation where a church contemplated permanent use of school facilities.[52]

In Resnick v. East Brunswick Township Board of Education, an action was brought charging that use of public school facilities by religious groups during noninstructional hours violated a state statute governing the operation of public school facilities and the federal and state constitutions. The New Jersey Supreme Court stated that religious groups which fully reimburse school boards for related out-of-pocket expenses may use school facilities for religious services as well as educational classes. No violation of the establishment clause of the state constitution or the

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[52]Southside Estates Baptist Church v. Board of Trustees of School Tax District Number 1, 115 Southern 2d 697 (Florida) (1960).

tripartite test developed by the Supreme Court of the United States was found.[53]

The Country Hills Christian Church v. Unified School District Number 512 case expanded these ideas to say that a school district could not, consistent with the First Amendment, close their doors to groups wishing to rent facilities for the purpose of religious worship during nonschool hours.[54] The establishment clause did not provide defense for the action according to the decision in the case.

As a school board uses discretion in allowing use of school facilities, equal treatment of various groups is questioned. Such was the case in East Meadow Community Concerts Association v. Board of Education of Union Free School District Number 3. The action reiterated a school board's right not to make school buildings available unless mandated by statute. In the East Meadow decision the justices maintained that if a school board elected to make buildings available for private use, such use must be granted in a reasonable and nondiscriminatory manner, equally applicable to all and administered with equality.[55]

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[53]Resnick v. East Brunswick Township Board of Education, 389 Atlantic 2d (New Jersey) (1978).

[54]Country Hills Christian Church v. Unified School District Number 512

[55]East Meadow Community Concerts Association v. Board of Education of Union Free School District Number 3, N.Y.S. 2d 341, 219 N.E. 2d 172. (New York) (1966).

Legal trends in the modern era are toward liberalization of use of school facilities. The judicial system has played a major role in areas of constitutional rights, board responsibility to protect property, equal treatment, etc. Enabling legislation such as community education acts has presented new and fertile ground for litigation. Recent decisions continue to fall back on state constitutions and statutes for broad determinations of use. Courts also continue to depend on the major interpretations of the United States Constitution when the questions deal with freedom of speech, freedom of religion, equal protection, and other constitutional issues.

CHAPTER III

ANALYSIS OF STATE STATUTES CONCERNING PRIVATE USE OF PUBLIC AND SECONDARY SCHOOL FACILITIES

The legislatures of most states have enacted statutes providing guidelines for use of public school facilities by private groups. Laws range from very specific to very broad methods of expression.

Three broad classifications appear from review of these statutes: (1) statutes mandating broad use of school facilities subject to school board regulations; (2) statutes describing use for specific or general purposes as allowed by local school boards; (3) statutes not specifically addressing conditions of private use. These are shown in Tables I, II, and III.

The first classification (Table I) is composed of statutes with language mandating use by private groups. The intent of these statutes is that use will be granted subject to regulations developed by local school boards.

TABLE I

STATES HAVING MANDATED USE STATUTES

1. California
2. Hawaii
3. Maryland
4. Ohio
5. Utah

Utah's statute is representative of a mandated-use statute:

> There shall be a civic center at all public school buildings and grounds where the citizens of the respective districts may engage in supervised recreational activities, and where they may meet and discuss any and all subjects and questions which in their judgement may appertain to the educational, political, economic, artistic, and moral interests of the citizens of the community; but such use of public school buildings and grounds for such meetings shall in no wise interfere with any school function or purpose.[1]

Hawaii's relevant statute illustrates clearly the intent to grant wide use:

> The fullest freedom shall be given citizens of the state to use for lawful purposes all public school buildings throughout the state during the hours the structures are not in use for strictly educational purposes; provided, that the person vested with the proper authority over the building shall issue a permit to the applicant, when the proposed use is shown to be lawful by the applicant.[2]

Maryland's statute is also indicative of this classification:

> If written application is made to the county superintendent, the county board shall provide for the use of a public school facility . . .[3]

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[1]Utah, Code Annotated (1981), vol. 5B, chap. 53, Sec. 21-1.

[2]Hawaii, Revised Statutes (1976), Vol. iv, sec. 298-24.

[3]Maryland, Education Code Annotated (1978 and Supplement 1983), Sec. 7-108.

Table II shows that thirty-five states and the District of Columbia have statutes describing uses for specific or general purposes as allowed by local school boards. Language in this category encourages use but does not mandate use. Typically, statutes included terms such as "may allow" or "may permit" instead of "shall allow".

TABLE II

STATUTES DESCRIBING GENERAL OR SPECIFIC PURPOSES AS ALLOWED BY LOCAL SCHOOL BOARDS

1.	Alabama	13.	Maine	25.	North Dakota
2.	Alaska	14.	Massachusetts	26.	Oklahoma
3.	Arizona	15.	Michigan	27.	Oregon
4.	Arkansas	16.	Minnesota	28.	Pennsylvania
5.	Colorado	17.	Mississippi	29.	South Dakota
6.	Connecticut	18.	Missouri	30.	Texas
7.	Florida	19.	Nebraska	31.	Tennessee
8.	Illinois	20.	Nevada	32.	Virginia
9.	Indiana	21.	New Hampshire	33.	Washington
10.	Iowa	22.	New Jersey	34.	West Virginia
11.	Kansas	23.	New York	35.	Wisconsin
12.	Kentucky	24.	North Carolina	36.	District of Columbia

Section 162.050 of Kentucky Revised Statutes is representative:

> The board of education of any school district may permit the use of the schoolhouse, while school is not in session by any lawful public assembly of educational, religious, agricultural, political, civic, or social bodies under rules and regulations which the board deems proper.[4]

Oklahoma's statute is very similar:

> The board of education of any school district may, under such regulations and conditions as it may prescribe, open any school building and permit the use of any property belonging to such district for religious, political, literary, cultural, scientific, mechanical, or agricultural purposes, and other purposes of general interest and may make a reasonable charge to cover the cost of the use of such building and property.[5]

New York has a very complete description of allowed uses at school board discretion:

> Section 16.414. Use of schoolhouse and grounds out of school hours. Schoolhouses and the grounds connected therewith and all property belonging to the district shall be in the custody and under the control and supervision of the trustees or board of education of the district. The trustees or board of education may adopt reasonable regulations for the use of such schoolhouses, grounds, or other property, when not in use for school purposes, for such other public purposes as are herein provided. Such regulations shall not conflict with the pro-

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[4]Kentucky, Revised Statutes Annotated (1980), Vol, VII, Sec. 162.050.

[5]Oklahoma, Statutes Annotated (1970), Title 70, Sec. 5-130.

visions of this chapter and shall conform to the purposes and intent of this section and shall be subject to review on appeal to the commissioner of education as provided by law. The trustees or board of education of each district may, subject to regulations adopted as above provided, permit the use of the schoolhouse and rooms therein, and the grounds and other property of the district, when not in use for school purposes, for any of the following purposes:

1. For the purpose of instruction in any branch of education, learning of the arts.

2. For public library purposes, subject to the provisions of this chapter, or as stations of public libraries.

3. For holding social, civic, and recreational meetings and entertainments, and other uses pertaining to the welfare of the community; but such meetings, entertainment and uses shall be nonexclusive and shall be open to the general public.

4. For meetings, entertainments and occasions where admission fees are charged, when the proceeds thereof are to be expended for an educational or charitable purpose; but such use shall not be permitted if such meetings, entertainments and occasions are under the exclusive control, and the said proceeds are to be applied for the benefit of a society, association or organization of a religious sect or denomination, or of a fraternal, secret or exclusive society or organization other than organizations of veterans of the military, naval and marine service of the United States and organizations of volunteer firemen.

5. For polling places for holding primaries and elections and for the registration of voters and for holding political meetings. But no political meetings shall be permitted unless authorized by a vote of a district meeting, held as provided by law, or in cities by the board of education thereof. Except in cities, it shall be the duty of the trustees or board of education to call a special meeting for such purposes upon the petition of at least ten percent of the qualified electors of the district. Authority so granted shall continue until revoked in like manner and by the same body as granted.

6. For civic forums and community centers. Upon the petition of at least twenty-five citizens residing with the district or city, the trustees or board of education in each school district or

> city shall organize and conduct community centers for civic purposes...[6]

As shown in Table III, ten states are without statues or have statutes not specifically addressing private use of school facilities. States in this classification generally have statutes that describe methods of accountability of school boards for control of school property. Lack of direct statutes enhances discretionary power of local school boards to determine extent of use and regulations for private use.

TABLE III

STATUTES NOT SPECIFICALLY ADDRESSING PRIVATE USE OF SCHOOL FACILITIES

1. Georgia	6. Idaho
2. Montana	7. Louisiana
3. South Carolina	8. New Mexico
4. Wyoming	9. Rhode Island
5. Delaware	10. Vermont

The statutes in this classification often provide lists of suggested activities and are not compulsory in nature. School boards may or may not allow the suggested activities. Other possible activities are not forbidden simply because they are not listed. Often school board authority is en-

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[6]New York, Education Law (1969), vol. 16, chap. 16, Sec. 414.

hanced through guidelines for development of rules and regulations.

In South Carolina, lawmakers adopted Section 59-19-90 which reads.

> "General powers and duties of school trustees shall include. . .
> (5) Control school property. Take care of, manage, and control the school property of the district; . . .[7]

Vermont legislators chose to enact requirements as follows:

> Each town district shall provide, furnish, maintain and control schoolhouses suitable for schools.[8]

Discretion in varying degrees is provided in each classification. In states with mandated-use statutes, school board discretion is limited to determining which uses fall into limited or permitted classifications. Greater freedom is allowed school boards when state legislatures create statutes with broad-use language. The latitude of discretion forces school boards to make a range of value judgments that frequently result in litigation.

A review of statutes listed in Appendix A shows uniformity in delegating a governmental body to enforce requirements of individual statutes. A Louisiana statute is typical

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[7]South Carolina, Code Annotated (1977), vol. 20, Sec. 59-19-90

[8]Vermont, Statutes Annotated (1947), Title 16, Sec. 3741.

of the delegation to local school boards or boards of trustees as administrators of statutory requirements. The statute provides:

> Each school board is authorized to make such rules and regulations for its own government, not inconsistent with law or with the Louisiana State Board of Education, as it may deem proper.[9]

Statutes are also uniform in clarifying that private use may not interfere with regular operation. An Arkansas statute is indicative of this point:

> The facilities of any school district shall be used primarily for the purpose of conducting the regular school curriculum and related activities. . .[10]

Statutory Responsibility for Cost of Private Use

Table IV denotes statutory intent for covering costs incurred by private use of school facilities. Seventeen states have chosen not to mention cost of use specifically, thus leaving school boards wide discretion to determine costs. Twenty-seven state statutes make direct mention of user responsibility for costs incurred. Fourteen states provide funding from state sources for certain categories of use. Seven states provide funding through community school programs or civic center programs.

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[9]Louisiana, Revised Statutes Annotated (1982), Vol. 13, Sec. 17.81.

[10]Arkansas, Statutes Annotated (1980), vol. 28, Sec. 19-3605.

TABLE IV

RESPONSIBILITY FOR COST OF PRIVATE USE

	No specific mention of Fee Payment	Direct mention of Use Responsibility for Cost of/certain - Uses	Direct Mention of State Responsibility for Cost of Certain Uses	Funds for Civic Center or Community School Programs	Mention of Responsibility for Damage to Property
Alabama		X			X
Alaska			X	X	
Arizona		X	X	X	X
Arkansas		X			
California		X	X	X	X
Colorado		X	X	X	
Connecticut	X				
Delaware	X				
Florida	X				
Georgia	X				
Hawaii		X	X		
Idaho	X				
Illinois	X				

TABLE IV (Continued)

RESPONSIBILITY FOR COST OF PRIVATE USE

	No specific mention of Fee Payment	Direct mention of Use Responsibility for Cost of certain Uses	Direct Mention of State Responsibility for Cost of Certain Uses	Funds for Civic Center or Community School Programs	Mention of Responsibility for Damage to Property
Indiana		X			
Iowa		X	X	X	X
Kansas	X				
Kentucky	X				
Louisiana			X		
Maine		X	X		
Maryland		X	X		X
Massachusetts	X				
Michigan		X	X		X
Minnesota		X			X
Mississippi	X				
Missouri		X	X		X
Montana		X			

TABLE IV (Continued)

RESPONSIBILITY FOR COST OF PRIVATE USE

	No specific mention of Fee Payment	Direct mention of Use Responsibility for Cost of certain Uses	Direct Mention of State Responsibility for Cost of Certain Uses	Funds for Civic Center or Community School Programs	Mention of Responsibility for Damage to Property
Nebraska		X			
Nevada			X		
New Hampshire			X		X
New Jersey		X			
New Mexico		X			
New York	X				
North Carolina			X	X	X
North Dakota		X			
Ohio		X	X		X
Oklahoma		X			
Oregon		X	X		
Pennsylvania		X			X
Rhode Island	X				

TABLE IV (Continued)

RESPONSIBILITY FOR COST OF PRIVATE USE

	No Specific mention of Fee Payment	Direct mention of Use Responsibility for Cost of certain Uses	Direct Mention of State Responsibility for Cost of Certain Uses	Funds for Civic Center or Community School Programs	Mention of Responsibility for Damage to Property
South Carolina	X				
South Dakota		X			X
Tennessee	X				X
Texas		X			
Utah		X		X	
Vermont	X				
Virginia	X				X
Washington	X				
West Virginia			X		
Wisconsin		X			X
Wyoming	X				
District of Columbia		X			

Statutes Allowing Religious Use

Table V reveals sixteen states with laws specifically addressing use by religious groups. All sixteen states allow use of public school facilities for religious meetings under regulations determined by school boards or boards of trustees.

TABLE V

STATUTES SPECIFICALLY MENTIONING RELIGIOUS USE IN PROVISIONS

1. Arizona	9. New Hampshire
2. California	10. New York
3. Illinois	11. North Dakota
4. Kentucky	12. Ohio
5. Maryland	13. Oklahoma
6. Massachusetts	14. Oregon
7. Michigan	15. Washington
8. Minnesota	

California Education Code, is specific in describing allowed religious use:

> The conduct of religious services for temporary periods by any church or religious organization which have no suitable meeting place for the conduct of the services, provided the governing board charges the church or religious organization using the school facilities or grounds, a fee. . .[11]

[11] California, Education Code (1984), vol. 27, Sec. 40041.

TABLE VI

EXAMPLES OF USES ALLOWED BY STATUTES

	Religious Use	Recreational Use	Civic Use	Social Use	Cultural Use	Political Use	Use as Polling Place	Educational Use	Child Care Use	Use as Public Library
Alabama		X	X	X			X			
Alaska		X			X			X		
Arizona	X	X	X	X	X	X	X	X		
Arkansas	X	X	X							
California	X	X	X	X	X	X	X	X	X	
Colorado		X	X	X	X			X		
Connecticut						X	X	X		
Delaware							X			
Florida							X			
Georgia										
Hawaii		X						X	X	
Idaho										
Illinois	X			X	X			X		
Indiana		X	X	X						
Iowa		X	X			X	X	X		

TABLE VI (Continued)

EXAMPLES OF USES ALLOWED BY STATUTES

	Religious Use	Recreational Use	Civic Use	Social Use	Cultural Use	Political Use	Use as Polling Place	Educational Use	Child Care Use	Use as Public Library
Kansas										
Kentucky	X		X	X		X		X		
Louisiana								X		
Maine		X						X		
Maryland	X	X	X	X	X	X	X	X	X	
Massachusetts	X	X	X	X	X	X		X		
Michigan	X	X	X	X						
Minnesota	X					X	X	X		
Mississippi										
Missouri			X	X				X		
Montana							X			X
Nebraska										
Nevada		X	X					X		
New Hampshire	X				X					
New Jersey		X	X	X	X	X	X	X		

TABLE VI (Continued)

EXAMPLES OF USES ALLOWED BY STATUTES

	Religious Use	Recreational Use	Civic Use	Social Use	Cultural Use	Political Use	Use as Polling Place	Educational Use	Child Care Use	Use as Public Library
New Mexico								X		
New York	X	X	X	X	X	X	X	X		X
North Carolina		X	X		X	X	X	X		
North Dakota	X	X	X	X	X	X				
Ohio	X	X	X	X	X	X	X	X		
Oklahoma	X		X		X	X		X		
Oregon	X	X	X		X	X		X		
Pennsylvania		X		X		X	X	X		
Rhode Island										
South Carolina										
South Dakota										
Tennessee		X	X			X	X	X	X	
Texas		X					X			
Utah		X			X	X		X		
Vermont										

TABLE VI (Continued)

EXAMPLES OF USES ALLOWED BY STATUTES

	Religious Use	Recreation Use	Civic Use	Social Use	Cultural Use	Political Use	Use as Polling Place	Educational Use	Child Care Use	Use as Public Library
Virginia							X			X
Washington					X	X		X		
West Virginia		X	X		X			X		
Wisconsin		X	X	X			X	X		
Wyoming										
District of Columbia		X	X	X	X			X	X	

Chapter 122, Section 10-22.10 of the Illinois statutes is similar:

> . . .to have the control and supervision of all public school houses in their district, and to grant the temporary use of them, when not occupied by schools, for religious meetings and Sunday schools . . .[12]

In several of the sixteen states, legislation includes sections specifically stating that religious affiliation is not to be used to disqualify use. The Massachusetts statute reads:

> . . .The affiliation of any association with a religious organization does not disqualify such association from being allowed such a use for such a purpose.[13]

Many state statutes include reference to rulings by attorney generals of the state. "Notes of Decisions" accompanying Missouri Section 177.031 reads:

> Public school boards may allow use of public school property by churches . . . for civic, social, and educational purposes that do not interfere with prime purposes of school property . . .[14]

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[12]Illinois, Annotated Statutes (1984) chap. 122, Sec. 10-22.10.

[13]Massachusetts, Annotated Statutes (1978), chap. 71, Sec. 71

[14]Missouri, Annotated Statutes (1984), vol. 21A, Sec. 177.031.

Statutes Allowing Political Meetings or Use as Polling Places

Table VI indicates that twenty-six states permit use of school facilities for political purposes or as polling places. Statutes vary in descriptions of political or election use. Several allow political use only following a vote of the people. New York offers an excellent example:

> For polling places for holding primaries and elections and for the registration of voters and for holding political meetings. But no political meetings shall be permitted unless authorized by a vote of a district meeting...[15]

State election codes often specify schoolhouses as precinct voting places. The Texas Election Code is indicative of codes allowing schoolhouses to be used for election purposes:

> In all cases where it is practicable to do so, all elections--general, specific, or primary--shall be held in schoolhouses, firehouses . . . No charge shall be made for the building. . .[16]

Other states are more specific concerning the role of school boards in granting use to political groups. North Carolina General Statutes are very specific:

> The governing authority having control over schools or other public buildings which have facilities for group meetings, or where polling places are located, is hereby authorized and directed to permit the use of such

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[15]New York, Education Law (1969) vol. 16, chap. 16, Sec. 414.

[16]Texas, Election Code Annotated (1967), vol. 19, Art. 2.03.

> buildings with out charge, except custodial and utility fees, by political parties . . . for the express purpose of annual or biennial precinct meetings and count and district conventions. Provided that such use by political parties shall not be permitted at times when school is in session or which would interfere with normal school activities or functions normally carried on in such school buildings, and such use shall be subject to reasonable rules and regulations of the school boards and other governing authorities.[17]

Still other states set limits on types of political groups which may use school facilities. Maryland's statute limits political groups which poll a certain percentage of votes cast:

> Each county board may permit a partisan political organization that has polled 10 percent or more of the entire vote cast in this State in the last general election to use public school facilities for programs and meetings that relate to a political campaign for nomination or election of a candidate to public office.[18]

State statutes sporadically prohibit use for political activity. Maine's legislature chose to say "use of school buildings may not be denied to a person solely because use is requested for a political activity.[19] The North Dakota law provides equal protection to political

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[17]North Carolina, General Statutes (1983), Vol. 3A, Part 2, Sec. 115C-527.

[18]Maryland, Education Code Annotated (1978 and 1983 Supplement), Sec. 7-108.

[19]Maine, Revised Statutes Annotated (1983), Title 20-A, Sec. 1001.

parties by stating "equal rights and privileges shall be accorded to all political parties."[20]

Of the twenty-six states with statutes on political use or use as polling places, single word mention is the most common method of describing allowances. States with mandated-use statutes tend to have the most complete descriptions of political use.

Statutes Allowing Use by Subversive Groups

Court cases involving use of school facilities by subversive groups has prompted four states to enact statutory sections concerning subversive-group use. Although most cases have pertained to use of college and university campuses, California, Maryland, Nevada, and New York have statutes relating to public elementary and secondary school facilities.

Section 393.0715 of the Nevada Revised Statutes is illustrative:

> No school property, buildings or grounds may be used to further any program or movement the purpose of which is to accomplish the overthrow of the Government of the United States or of any state by force, violence or other unlawful means.[21]

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[20]North Dakota, Central Code, Vol. 3B, Sec. 15-35-14.

[21]Nevada, Revised Statutes (1979), Vol. 16, Sec. 393.0715.

As in other areas, the California Education Code contains complete guidelines for dealing with subversive groups, providing methods for determining intent as well as a form for statement of information.[22]

Summary

Forty-four states and the District of Columbia have statutes providing guidelines for private use of public school facilities. Laws range from very specific to very broad provisions.

As shown in Table VI, thirty-four state legislatures have provided specific examples of activities allowed in public school facilities by private groups, with educational and recreational uses most frequently cited. Thirty states have listed educational use and twenty-seven have listed recreational use.

Authority for control and regulation of school facilities is usually vested in local school boards or boards of trustees. State constitutions often vest this power in local boards. Arizona's constitution is typical of this delegation;

> The general conduct and supervision of the public school system shall be vested in a State Board of Education, a State Superintendent of Public Instruction, County Superintendent of Schools, and such governing

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[22]California, Education Code (1984), Vol. 27B, Sec. 40044-40045.

boards for the institutions as may be provided by law.[23]

Cost of use of school facilities has been addressed by many state legislatures. Twenty-seven state statutes make direct mention of user responsibility for cost incurred. Fourteen states have some type of governmental funding of facility use by private groups. Wider discretion is provided in seventeen states by lack of statutory direction for payment of incurred costs.

Sixteen states mention use by religious groups in statutes. All sixteen states authorize local school boards to determine use regulations.

Twenty-six states cite use of school facilities for political purposes or as voting places. Descriptions include information on fees, regulations for use, and authority of school boards.

Although diversity best describes the statutes of the fifty states and District of Columbia, common factors include delegation of authority for control and regulation of school facilities and no interference with regular school programs.

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[23]Arizona, Revised Statutes Annotated (1983) Vol. 1, Art. 2, Sec. 2.

CHAPTER IV

LEGAL ASPECTS OF PRIVATE USE OF PUBLIC ELEMENTARY AND SECONDARY SCHOOL FACILITIES

As shown in Chapter III, statutes governing private use of school facilities vary greatly--from general to specific, and from strict to permissive. Most recent court decisions have tended to allow school boards broad discretion in types of private use allowed.

The purpose of Chapter IV is to review selected major legal issues relating to private use of public elementary and secondary schools. The relationship between state statutes and major litigation is investigated in four major parts of the chapter: (1) court decisions dealing with use of public school facilities by religious groups; (2) court decisions dealing with use of public school facilities by political or subversive groups; (3) court decisions dealing with use of facilities for commercial purposes; and (4) court decisions dealing with use of facilities for other than religious, political or commercial purposes. Each section of this chapter will have subsections to arrange categories of cases for greater clarity of presentation.

Decisions Dealing with Religious Use

Public schools have been a principal battleground for controversies dealing with church and state relationships. A number of suits have arisen concerning questions of whether

public schools may constitutionally permit religious groups use of school facilities during noninstructional hours.

The United States Supreme Court has had no occasion to rule on the constitutionality of voluntary religious meetings by religious groups on public school property during noninstructional hours.[1] In some states, courts have said religious use is allowed if there is no interference with the regular school program. Discretion is granted local school boards even in the absence of statutes.

In other states, courts have ruled that religious use of public school facilities is not allowed unless permitted by specific statute or approved by voters of the district. Lack of harmony of state statutes has increased litigation in the area. Diversity of court rulings has resulted as courts have developed individual state statutory interpretations. Pertinent cases show diversity of judicial decisions, but also justify that many of the diverse rulings can be explained by reviewing the substantial differences in facts, statutes, or constitutional provisions involved in individual cases.

The purpose of this section is to review selected cases and decisions to identify these diverse issues and principles as well as trends concerning private religious use of public

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[1]Douglas W. Abendroth, "Property: The Constitutional Dimension of Church-State Neutrality," Loyola of Los Angeles Law Review, 15 (1981), 105.

school facilities during noninstructional time. Three subdivisions of the section are (1) allowed used by religious groups, (2) prohibitions against religious use, and (3) factors entering into decisions permitting or prohibiting use.

Decisions Allowing Use by Religious Groups

In the 1872 Townsend v. Hagen[2] case voters of a township chose to permit school facilities to be used for religious meetings. The case was brought under the assumption that the electors had no right to allow the school to be used for religious purposes.

The justices concluded that religious use corresponded to private school use.

> If this be correct, then the keeping of a select school in a public school-house would be prohibited, although it is conducted in all respects as a public school; and thus one taxpayer in the district could prevent, by injunction any select schools being kept in the school-house of the district, though every other person in the district desired them, and during a time of the year when there were no public schools kept in the district. There exists no reason for excluding Sabbath schools from the school-houses that does not exist also to select schools. If it be said that in Sabbath Schools the Scriptures are read and commented upon, we answer, the same may be done in select schools. So also may sectarian dogmas be taught in such schools as are in religious meetings. Those who attend either religious worship, Sabbath or select schools, do so voluntarily. Every one is at liberty to stay away who chooses to do so.[3]

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[2]Townsend v. Hagen, 35 Iowa 1984 (Iowa) (1872).

It was held in State ex rel. Gilbert v. Dilley[4] that occasional use of the public schoolhouse for Sunday school and religious meetings on Sundays, occurring about four times a year over a period of five years, with the permission of the school board, did not constitute the schoolhouse a place of worship within the meaning of the Nebraska constitutional provision that no person should be compelled to attend, erect, or support any place of worship against his consent. The use was not unconstitutional and would not be prohibited by the courts, especially where the complaining taxpayers failed to show that they were subject to additional taxation because of the occasional use.

For this argument the plantiff used Section 4, Article 1, of the Nebraska Constitution which reads: "All persons have a natural and indefeasible right to worship Almighty God.... No person shall be compelled to attend, erect or support any place of worship against his consent. . .[5]

The constitutionality of an Illinois statute authorizing the school directors of a district to grant the temporary use of schoolhouses when not occupied by schools for religious meetings was sustained in Nichols v. School Directors.[6]

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[4]State ex rel. Gilbert v. Dilley, 145 NW 999 (Nebraska) (1914).

[5]Nebraska, Revised Statutes, Vol. 2, Art. 1, Sec. 4, pp. 49-50.

[6]Nichols v. School Directors, 93 Illinois 61, 34 Am. Rep. 160 (Illinois) (1879).

The plaintiff had brought suit against the school directors, charging that the use amounted to use of tax funds to support churches. The court ruling found no constitutional infringement compelling the taxpayer to aid in providing a house of worship and that the taxpayer may only be required to contribute to repair of the building caused by normal wear and tear of such use and such wear and tear would be inappreciable. The court further ruled that 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 of authority of the state; one significant provision in the constitution itself authorized the legislature to exempt property used for religious purposes from taxation. This exemption might by its operation indirectly cause a greater burden of taxation to be imposed upon the taxpayers and thereby result indirectly in his support of places of worship.[7]

A similar view was taken by an Iowa Court in Davis v. Boget[8] when the court ruled:

> The use of a public school building for Sabbath schools, religious meeting, debating clubs, temperance meetings, and the like, all

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[7]Ibid.

[8]Davis v. Boget, 50 Iowa 11 (Iowa) (1878).

> of 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, this being especially so where the electors had included in their resolution permitting such use a requirement that any person asking for the use of a schoolhouse should be held strictly responsible for all damages done to the schoolhouse by such use.[9]

It was stressed in this case that use for religious meetings or other purposes was only temporary, occasional, and liable at any time to be denied by the district electors. Such use would not convert the schoolhouse into a building for worship.[10]

In Baer v. Kolmorgen,[11] a plaintiff contended that the construction of a nativity scene or creche on the school lawn subjected his child to sectarian religious influences at the public school his child attended. The school board had permitted a volunteer committee of residents of the village to construct and maintain on the lawn of a junior-senior high school, for a few days during the Christmas season while the school was closed for the Christmas vacation, a nativity scene or creche. All of the expenses

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[9]Ibid.

[10]Ibid.

[11]Baer v. Kolmorgen, 181 NYS 2d 230 (New York) (1958).

for installing, maintaining, and lighting the scene were paid by the committee erecting the scene. No school personnel were involved in the erection of the scene.[12]

The court held that the erection and maintenance of the scene for a limited time on the school lawn, with the permission of the school board, even though the scene constituted a religious sectarian symbol, did not violate the provisions of the First Amendment of the United States Constitution or the provisions of the New York State Constitution. The court considered that since the nativity scene was erected and maintained without use of public school funds that the father had not been subject to a tax to support the establishment of religion and since the school was not in session no influences had been forced on his child.[13]

A suit, Lewis v. Board of Education of City of New York,[14] was brought when a school had permitted facilities to be used by Catholic Newman Clubs, Young Men's Christian Associations, Young Women's Christian Associations, Hi-Y Clubs, and Jewish groups. Plaintiffs alleged that school facilities were being devoted to religious use. Reply of

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[12]Ibid.

[13]Ibid.

[14]Lewis v. Board of Education of City of New York, 285 N.Y.S. 164 (New York) (1935).

the school board was that the use was only for "ethical, educational, and cultural discourses and lectures for the moral uplift of pupils in the public schools" and at no time were the buildings being used "for inculcating the tenets of any religious denomination or for any meeting or purpose, directly or indirectly, in which any denominational tenet or doctrine is taught."[15]

New York State statutes allowed local boards to use discretionary powers to control and hold in custody school facilities and to permit use for:

> . . .holding social, civic and recreational meetings and entertainments, and other uses pertaining to the welfare of the community; but such meetings, entertainments and uses shall be non-exclusive and shall be open to the general public.[16]

The complainant was found in error by the New York Supreme Court in thinking that the racial and religious affiliations of the users conflicted with use of the facilities. The court stated that all religious and racial groups are equal before the laws and no difference can be made between believers and nonbelievers.[17]

Florida Revised Statutes, Section 235.02, allows school boards

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[15]Ibid.

[16]New York Consolidated Laws, Book 16, Article 9, Section 414, pages 244-245.

[17]Lewis v. Board of Education of City of New York, 285 N.Y.S. 164 (New York) (1936).

. . . to permit the use of educational facilities and grounds for any legal assembly. .. and to adopt rules necessary to protect educational facilities and grounds when used for such purposes.[18]

When a school board permitted religious organizations to use school facilities for Sunday worship, a group of taxpayers brought suit against the school board to have the permission rescinded. Several church groups had been permitted to use school buildings for a temporary place of worship while new church buildings were being erected.[19]

The Florida Supreme Court in the case, Southside Estates Baptist Church v. Board of Trustees, held that the statute allowed religious use of school facilities during nonschool hours. Rationale was that:

> While admittedly, there are some differences of view regarding the matter of religious meetings in school houses during non-school periods, we think that logic, as well as our traditional attitudes toward the importance of religious worship, justifies our alignment with those courts which permit such use. The cases where this type of use of school property is permitted usually involve the application of statutes similar to that of Florida. The cases which deny such use customarily involve situations where there has been no such statutory authority. . . In the instant case the Legislature has endowed the trustees of

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[18]Florida, Revised Statutes, Chap. 1, Sec. 235.02, p. 1022.

[19]Southside Estates Baptist Church v. Board of Trustees, School Tax District Number 1, 115 Southern 2d 697 (1959).

> the school district with reasonable discretion to permit the use of school property during non-school hours for any legal assembly. We think that the religious observances described in the complaint are well within the category of legal assembly. We, therefore, hold that a board of trustees of a Florida school district has power to exercise reasonable discretion to permit use of school buildings during non-school hours for ... religious meetings, subject to judicial review should discretion be abused to the point that it could be construed as a contribution of public funds in aid of a particular religious group or as the promotion or establishment of a particular religion.[20]

Equally important in the Florida case was the fact that the decision sustained the statute as not violating First Amendment establishment clause rights, albeit the decision points to review of individual cases to guard against abuse of First Amendment rights. The opinion also gives credibility to a trend of allowing only temporary use of facilities.[21]

In Resnick v. East Brunswick Township Board of Education,[22] an action was brought charging that use of public school facilities by religious groups during

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[20]Ibid.

[21]Ibid.

[22]Resnick v. East Brunswick Township Board of Education, 389 Atlantic 2d 944 (New Jersey) (1978).

noninstructional hours violated a state statute governing the operation of public school facilities and the United States and New Jersey Constitutions. The New Jersey Supreme Court held that religious groups which fully reimburse school boards for related out-of-pocket expenses may use school facilities for religious services as well as educational classes. Justice Pashman, in delivering the majority opinion of the court, stated that the New Jersey statute which regulates use of school properties when not in use for school purposes includes use for religious services or education. Since the New Jersey constitution specifically prohibits the use of tax revenues for maintenance and support of a religious group, all out-of-pocket expenses must be fully reimbursed by the religious group.[23]

The majority opinion also stated that rental of school property does not violate the establishment clause of the state constitution since it only prohibits the preference of one religious sect over others.[24]

The court applied the tripartite test announced by the United States Supreme Court in Lemon v. Kurtzman[25]

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[23]Ibid.

[24]Ibid.

[25]Lemon v. Kurtzman, 403 U.S. 602, 612, 613, (1971).

to determine if the establishment clause of the Federal Constitution was violated. The establishment clause

> First, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion; . . . finally, the statute must not foster an excessive government entanglement with religion.[26]

The court found that there was a secular purpose in the leasing of the school facilities, that of enhancing the public use of the property for the common benefit of all residents; that the primary effect neither enhanced or inhibited religion since the entire community as a whole is benefited and all religious groups received evenhanded treatment; and that no excessive entanglement with religion resulted. As in similar cases, the court maintained that prolonged use of school facilities by a congregation without evidence of immediate intent to construct or purchase its own building would constitute an excessive entanglement with religion and would be impermissable.[27]

A recent case, Country Hills Christian Church v. Unified School District Number 512,[28] provided that school

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[26]Ibid.

[27]Resnick v. East Brunswick Township Board of Education, 389 Atlantic 2d 944 (New Jersey) (1978).

[28]Country Hills Christian Church v. Unified School District Number 512 560 F. Supp. 1207 (Kansas) (1983).

districts could not, consistent with the First Amendment, close their doors to groups wishing to rent school district facilities for purposes of religious worship during noninstructional hours. A lawsuit was brought to force the school district to allow use for religious purposes on the same basis as nonreligious groups.

The decision was based on three areas: (1) The school board had created a public forum by allowing buildings to be used by a wide variety of community organizations; (2) Religious worship and discussion are "forms of speech and association" protected by the First Amendment;[29] and (3) Neutrality is required by school boards in dealing with religious groups, but does not require the school board to be an adversary of religious groups.[30] Inability of school boards to use the establishment clause as reason to deny use was the most significant point in the decision which reads:

> The court concludes that by allowing their facilities to be used during non-school hours by non-school groups, defendants have created a public forum. Having created a public forum, defendants cannot

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[29]Widmar v. Vincent, 102 Supreme Court 269, (1981).

[30]Country Hills Christian Church v. Unified School District Number 512, 560 F. Supp. 1207 (Kansas) (1983).

> exclude plaintiffs from the forum because of the religious content of plaintiffs' intended speech unless such exclusion is justified under applicable constitutional law. . . The Establishment Clause does not justify excluding plaintiff's religious services from school district buildings, and there is no evidence either that children will be harmed or that defendants risk placing an imprimatur of approval on religious sects which rent school district facilities.[31]

Decisions Prohibiting Religious Use

In most cases where requests for use of public school facilities during noninstructional hours for religious meetings have been refused, judiciary decisions have upheld rights of school boards to refuse use within accepted guidelines. Often the decision is based on lack of a case by the complainant.

Early litigation often focused on the use of tax money. Such was the case in an 1875 Kansas proceeding:

> The public school house cannot be used for any private purposes. The argument is a short one. Taxation is invoked to raise funds to erect the building; but taxation is illegitimate to provide for any private purpose. Taxation will not lie to raise funds to build a place for a religious society, a political society or a social club. What cannot be done directly cannot be done indirectly. As you may not levy taxes to build a church no more may you levy taxes to build a school house and then lease it for a

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[31]Ibid.

> church . . . The use of a public schoolhouse for a single religious or political gathering, is legally, as unauthorized as its constant use therefore.[32]

The judge recognized that buildings throughout the state were being used for similar purposes. He also related that no disagreement with this use had been brought to the attention of the courts.[33]

In an interesting case decided before the adoption of the Fourteenth Amendment to the United States Constitution, Scofield v. Eighth School District,[34] judges found it unlawful for the directors of a school district to permit school buildings to be used repeatedly to hold religious meetings. Even though the voters of the district had approved of such use, the majority opinion indicated that use of the public school house for such meetings was an improper use, constituting an unlawful diversion of school property and funds to a nonschool purpose. Emphasis was placed on the fact that there was not merely occasional use for religious purposes.[35]

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[32]Spencer v. Joint School District Number 6, 15 Kansas 259, 262-263 (Kansas) (1875).

[33]Ibid.

[34]Scofield v. Eighth School District, 27 Connecitcut 499 (Connecticut) (1858).

[35]Ibid.

In 1897, H.H. Bender brought suit against K. Streabich, President of the School Board, relative to allowing religious and other community groups use of public schoolhouses.[36] The justices found:

> The use of school buildings by the community at large for public meetings for the discussion of subjects of general interest may be said to be in the line of their use for educational purposes, but it is not the use intended by law. The public school system is for the instruction of pupils who may attend the schools, and not for the instruction or entertainment of other persons. The school directors are trustees of the school property for that use, and they may not, against objection, authorize or permit its use for other purposes. If the school building may be used for meetings for the convenience, pleasure, or instruction of the general public, all other school property may with equal propriety be so used, and it would be but a step further to apply a part of the school funds to the same use.[37]

In Dorton v. Hearn,[38] the directors of a school district had adopted a resolution authorizing the school buildings to be used for the purpose of teaching Sunday school classes. The ruling stated that the Sunday school classes should not be held because the school directors had no authority to grant permission to hold the classes

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[36]Bender v. Streabich, 37 Atlantic 853 (Pennsylvania) (1897).

[37]Ibid.

[38]Dorton v. Hearn, 67 Missouri 301 (Missouri) (1878).

in school buildings. Conflict among the different religious groups had to be avoided.[39]

An Arkansas statute prescribing that school directors shall have the care and custody of the schoolhouse and grounds, and the other property belonging to the district, "and shall carefully preserve the same, preventing waste and damage," furnished authority to school directors to refuse continuation of use of school facilities for religious meetings. While the building was being used for religious meetings at an earlier time, the desks, books, and other school equipment were damaged.[40] The decision in Boyd v. Mitchell upheld that once land was granted to the control of the state, no control could be exerted by a religious organization.[41]

Judge Wiley, in the Indiana Baggerly v. Lee[42] decision, spoke to preventing use of school facilities for religious purposes even in the presence of an Indiana statute allowing use. The statute provided that if a majority of legal voters of any district desire the use of the schoolhouse of such district for other purposes

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[39]Ibid.

[40]Boyd v. Mitchell, 62 S.W. 61 (Arkansas) (1901).

[41]Ibid.

[42]Baggerly v. Lee, 73 N.E. 921 (Indiana) (1905).

when unoccupied for common school purposes, directors are to allow use giving equal rights and privileges to all religious denominations and political parties.[43]

The court said that it knew, as a matter of common knowledge, that a school is occupied from the beginning of the term in the fall until the end of the term in the spring. A comparison was made to "being occupied" in the same manner as a "dwelling house" even though all members of the family are temporarily absent overnight or during the day.[44]

In Greisinger v. Grand Rapids Board of Education, discretion of local school boards to refuse use by religious groups was upheld.[45] The Grand Rapids Board of Education refused to permit a group of Jehovah's Witnesses use of facilities for Sunday meetings. The Ohio statute allowed "school boards to grant permission to 'responsible' groups to use school facilities for a variety of reasons including 'religious exercises'."[46] No violation of the Jehovah's

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[43]Ibid.

[44]Ibid.

[45]Greisinger v. Grand Rapids Board of Education, 88 Ohio App. 364, 100 N.E. 2d (Ohio) (1949).

[46]Ibid.

Witnesses' constitutional rights of freedom of speech, assembly, and worship was found. In so holding, the Ohio court relied on the well settled principle that a "reasonable" exercise of school board discretion must be upheld by the courts unless it can be shown that a clear violation of statutory or constitutional rights has occurred.[47]

In Hunt v. Board of Education of Kanawha County,[48] an action was brought to enjoin the board of education from prohibiting students at a public high school from voluntarily meeting on school premises for purposes of engaging in group prayers. Judge John A. Field, Jr. spoke for the court in saying the case presented only two questions:

> first, whether the Board of Education had the authority to prohibit the use of school facilities for any religious purpose, and second, whether such prohibition is constitutionally permissable. It is my conclusion that both of these questions must be answered in the affirmative.[49]

Judge Field quoted from the earlier Greisinger v. Grand Rapids Board of Education decision which spoke to

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[47]Ibid.

[48]Hunt v. Board of Education of Kanawha County, 321 Federal Supplement 1263 (West Virginia) (1971).

[49]Ibid.

denial of use by religious groups on constitutional grounds. This decision stated:

> Appellants broadly contend that by reason of the refusal of their request by the board of education, they were denied their legal rights of freedom of speech, freedom of assembly and freedom of worship, contrary to the Constitution of the United States and Constitution of Ohio.[50]

The important point in the action was recognition that use of school property was denied to all religious groups regardless of sect. Implication was made that invidious discrimination would be found if one religious group were allowed use and another denied use.[51]

Factors in Decisions Allowing or Prohibiting Use

Although important differences are present in the reviewed cases dealing with religious use during noninstructional time, several factors may be delineated:

1. Whether use is permitted on a regular or temporary basis
2. Whether use interferes with the regular school program
3. Whether use involves damage to school property
4. Whether use is authorized by either state statute or vote of electorate

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[50]Greisinger v. Grand Rapids Board of Education, 100 N.E. 2d 294 (Ohio) (1949).

[51]Hunt v. Board of Education of Kanawha County, 321 Federal Supplement 1263 (West Virginia) (1971).

5. Whether the plaintiff is a taxpayer is the district

6. Terms of constitutional provisions for separation of church and state

7. Whether one religious groups is given preference over another group

Decisions Dealing with Use by Political or Subversive Groups

Diversity of statutes addressing political use has created fertile ground for litigation questioning school board discretion to allow or prohibit political use. Expanded use of facilities has also added to the legal confusion by providing variety to types of political uses or used by groups that may be considered subversive. Board discretion in the area often provides decisions which may be questioned in terms of possible discriminatory intent.

The purpose of this section is to review principles and issues in court decisions to help identify trends in use of school facilities by political or subversive groups during noninstructional time. Three subdivisions of the section are (1) cases prohibiting use by political groups, (2) cases involving revoked use by political groups, and (3) cases involving nonsubversive pledges.

Cases Prohibiting Use by Political Groups

Political groups have questioned the right of school boards to deny access to school facilities for meetings and

elections. As in other areas, state statutes and state and federal constitutional issues are raised.

In a 1932 suit, no authority to force a local board of trustees to permit a primary election in school buildings was found. The Johnson County Democratic Executive Committee brought suit against the board of trustees based on a Texas statute stating:

> In all cases where it is practicable so to do, all elections shall be held in some schoolhouse, fire station, or other public building within the limits of the election precinct in which such election is being held.[52]

The school trustees contended that use should not be granted because the regular school program was in session and interference would result. Trustees had "exclusive control and management"[53] of school property. Decision of the court was partially based on the fact that no statute existed in Texas requiring use of property for primary and election activities.[54]

In Stanton v. Board of Education, a member of a board of education sought to force adoption of a policy prohibit-

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[52]Trustees of Independent School District of Cleburns v. Johnson County Democratic Executive Committee, 52 S.W. 2d 71, 122 Texas 48, reversing 52 S.W. 2d (Texas) (1932).

[53]Ibid.

[54]Ibid.

ing certain groups from using school facilities. George Timone, member of the board, had proposed a policy denying certain groups use of school facilities after hours. The proffered resolution would have denied use of school buildings to the following:

> (1) the Communist Party, (2) the organization presently known as American Youth for Democracy, (3) any other group or organization which the Superintendent of Schools shall have reason to believe is a Communist, Nazi or Fascist group or organization, or an organization that fosters racial or religious intolerance, or is a front for any such group or organization.[55]

The suit requested that the board be forced to change the decision. In denying the relief sought by Mr. Timone and affirming the action of the school board, the justices stated:

> If persons gathering in assemblage have committed crimes elsewhere, or are engaged in a conspiracy against the public peace or order, they may be prosecuted for such crimes or conspiracy, but that under the provisions of the Federal Constitution and the Constitution of the State of New York guaranteeing the rights of free speech and peaceable assembly, they may not be punished for mere participation in a peaceable assembly for lawful public discussion.[56]

The courts went on to say that boards of education are vested with wide discretion as to the proper use of school

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[55]Stanton v. Board of Education, 76 N.Y.S. 2d 559 (New York) (1948).

[56]Ibid.

buildings, and that the exercise of such discretion will not be interfered with by the courts. An exception is when a decision violates a specific statute or is essentially arbitrary.[57]

The National Socialist White People's Party brought suit to compel a school board to permit the party to use a high school auditorium for a meeting to be held during nonschool hours. Circuit Court Judge Winter spoke for the court:

> . . . school board's repeated exercise of its discretionary authority to rent high school auditorium for a nominal fee during nonschool hours to public and private groups for public and private meetings on a first come first served basis to the extent that the auditorium was not needed for school purposes and that nonschool uses would not endanger the property constituted an effective dedication of the auditorium for exercise of First Amendment rights of freedom of speech, association and assembly and that the school board's denial of use of the auditorium because of the political party's discriminatory membership policies constituted an invalid prior restraint as much as if it had denied the political party the use of the forum on the basis of a controversial belief which the party would express at that place.[58]

A school board does not have arbitrary power to prohibit use by political parties because they are considered sub-

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[57]Ibid.

[58]National Socialist White People's Party v. Ringers, 473 Federal Reporter 2d 1010 (Virginia) (1973).

versive by the school board. Goodman v. Board of Education allowed school boards the right to refuse use of facilies to the Socialist Party on the grounds that it was a subversive organization.[59] The court also ruled that the burden of proof to determine the group's subversiveness rested with the school board. If a subversive nature could not be proved, use must be granted to the Socialist Party.[60] To prove a subversive nature, the board, established proof that the petitioning organization advocated the overthrow of the government by force, violence, or other unlawful means.[61]

The Yonkers Committee for Peace brought suit against a local school board to force the board to allow use of a city high school auditorium to conduct a forum for the discussion of problems relating to war and peace. The court denied the request because the group had not followed proper appeal channels.[62]

The decision reads:

> While discretion was by statute vested in boards of education as to the proper use

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[59]Goodman v. Board of Education of San Francisco United School District, 120 P. 2d 665 (California) (1941).

[60]Ibid.

[61]Ibid.

[62]Ellis v. Dixon, 120 N.Y.S. 2d 854 (New York) (1953).

> which might be made of school buildings outside of school hours, activities not embraced in the general school program should not be encouraged when of such controversial nature as to engender ill feeling and dissension in the community.[63]

Right to preserve school programs and buildings from disturbances was the issue in Payroll Guarantee Association v. Board of Education of San Francisco United School District. Gerald Smith was denied access to school facilities to discuss a proposed constitutional amendment because of picketing and noisy boisterous activities at previous speeches.[64] The school board refusal was upheld by the following reasoning in the decision:

> Speakers who express their opinions freely must run the risk of attracting opposition; they cannot expect their opponents to be silenced while they continue to speak freely. If a speaker in a school building or the opposition that he arouses attract so much attention as to disturb school activities, it would not be for the police to curb those who incidentally caused the disturbance so long as their activities were lawful...
>
> The board's primary concern is with the maintenance of the program. It cannot dissipate its energies by seeking to guide and control or even to evaluate the strategy of opposing factions at every passing meeting that may be held in a school building. . . The primary task of the schools is education. The

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[63]Ibid.

[64]Payroll Guarantee Association v. Board of Education of San Francisco United School District, 163 Pacific 2d 433 (California) (1945).

> statute established that the educational activities of schools shall take precedence over other permissive but secondary uses of school buildings. In passing on an application for an extraneous use of a school auditorium the board must consider probably effect on the regular school program and must deny one that would lead to interference with that program.[65]

Cases Involving Revoked Use to Political Groups

Once a board of education has granted use of school facilities, difficulty with revoking the permission to use often becomes evident. Such was the case in New York when the school board withdrew permission to use a school auditorium from a musical organization for a concert.[66] The district claimed that the concert performer was a "highly controversial figure" who had been critical of United States policy in Vietnam and that there existed the possibility of disturbances during the concert. Justice Fuld stated the general principle concerning the matter:

> The State is not under a duty to make school buildings available for public gatherings but, if it elects to do so, it is required by constitutional provision to grant the use of such facilities in a reasonable and nondiscriminatory manner equally applicable to all and administered with equality to all.[67]

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[65]Ibid.

[66]East Meadow Community Concerts Association Board of Education 272 N.Y.S. 2d 341 (New York) (1966).

[67]Ibid.

The board had allowed several uses of the auditorium for various purposes including concerts by the same group at other times. Judge Fuld applied the general principle stated above:

> . . . board is not barred from preventing use for an unlawful purpose, but in the case before us the justification asserted for canceling the permit is the unpopularity of (the performer's) views rather than the unlawfulness of the plaintiff's concert. The expression of controversial and unpopular views is precisely what is protected by both the Federal and State Constitutions.[68]

A similar case occurred in the 1947 Cannon v. Towner litigation. Joseph Cannon, president of the Carver Cultural Society, brought action against a school board for canceling use of a junior high school auditorium by a controversial singer.[69] Discretion was again an issue. The decision made reference to the difference between canceling a permit under the circumstances and initial discretion of the school board to deny use.

New York statutes allow school boards to adopt reasonable regulations for use of school facilities including options for entertainment.[70] No local regulation allowed

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[68]Ibid.

[69]Cannon v. Towner, 70 2d N.Y.S. 303 (New York) (1947).

[70]Ibid.

revoking permit to use facilities. The decision expressed:

> The defendant's only reason for its action is the political philosophy or ideology of the performer. That philosophy or ideology however objectionable to the vast majority of American citizens, had nothing to do with the purpose of which the permit was originally granted, to wit, a musical concert.
>
> The board ... had neither the express nor the implied power to cancel the permit.[71]

An attempt was made in Dohrenwend v. Board of Education to force a board of education to revoke use privileges to an organization known as the "Westchester Committee for the Freedom Riders."[72] Political beliefs of the organization were an issue. The court allowed use of facilities for a fundraising concert to benefit the legal defense of the so-called "Freedom Riders." In the decision, the justice stated:

> . . . that the proposed benefit was within the terms of the statute empowering a board of education to permit the use of school building for meetings, entertainments and occasions where admission fees are charged, when the proceeds thereof are to be expended for an educational or charitable purpose . . . Judicial notice will be taken of the fact that the Freedom Riders were a group of persons partici-

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[71]Ibid.

[72]Dohrenwend v. Board of Education, 227 N.Y.S. 2d 505 (New York) (1962).

> pating in organized protests against racial discrimination, who were on occasion subject to arrest and criminal prosecution, and since money will be used to provide a legal defense fund, such use is charitable in nature.[73]

Cases Involving Nonsubversive Pledges

As shown in Chapter III, four states (California, Maryland, Nevada, and New York) have specific statutes relating to use by subversive groups. Three cases in California have set precedents for legislatures to follow in development of statutes.

A California statute, developed prior to Danskin v. San Diego Unified School District,[74] provided that no school district grant the use of school property to groups seeking to overthrow the government by force or violence. Applicants could be forced to sign an affidavit proving the applicants were not part of a subversive element as provided in the act.[75]

The Danskin litigation was brought to test the constitutionality of the statute. The court in reaching its decision followed contemporary Supreme Court doctrine in

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[73]Ibid.

[74]Danskin v. San Diego Unified School District, 171 Pacific 2d 885 (California) (1946).

[75]Ibid.

applying a "clear and present danger" test to freedom of speech and of peaceable assembly, rights protected by the First Amendment to the Constitution of the United States.[76]

Justice Dooling, speaking for the court in American Civil Liberties Union v. Los Angeles Board of Education, used very eloquent language in delivering the opinion of the court:

> Where one searches deeper for the reason that motivates the prohibition of such meetings, there is no escaping the conclusion that the Legislature denies access to a forum in a school building to 'subversive elements,' not because it believes that their public meetings would create a clear and present danger to the community, but because it believes that the privilege of free assembly in a school building should be denied to those whose convictions and affiliations it does not tolerate. What it does not tolerate it seeks to censor. . . Since the state cannot compel 'subversive elements' directly to renounce their convictions and affiliations, it cannot make such a renunciation a condition of receiving the privilege of free assembly in a school building. . .
>
> It is unconstitutional for the state to prohibit certain persons or groups classified as 'subversive elements' from exercising their rights of free speech and assembly at places where others are allowed to speak and assemble, it is a fortiori unconstitutional to require proof from any person or groups that they are not 'subversive elements'.[77]

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[76]Ibid.

[77]American Civil Liberties Union v. Board of Education of City of Los Angeles, 359 Pacific ed 45 (California) (1961).

The court further noted that prior to passage of the California Civic Center Act, the state was not required to open its school buildings for public use. Having opened its doors under the act, however, the state could not arbitrarily or discriminatorily prohibit certain persons from using buildings.[78]

A revised California statute requiring an oath was at issue in a very similar case filed by the American Civil Liberties Union against the Los Angeles Board of Education.[79] The statute challenged by ACLU of Southern California v. Board of Education of City of Los Angeles suffered essentially the same fate as the statute in the Danskin case.[80] The statute was found to be

> violative of the rights of peaceable assembly and free speech guaranteed by the Constitution of the United States and the state constitution. . . that the legislature could not set up a system of prior restraint based upon anticipation that at a meeting held under the sponsorship of an organization committed to the overthrow of the government by force, violence, or other unlawful means there would be committed acts intended to further the overthrow of the government.[81]

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[78]Ibid.

[79]ACLU of Southern California v. Board of Education of City of Los Angeles, 379 Pacific 2d 16 (California) (1963).

[80]Ibid.

[81]Ibid.

Following this decision, the board of education of San Diego Unified School District developed regulations similar to the California Education Code found unconstitutional in the first two cases presented in this section.

Citing the two previous cases involving the American Civil Liberties Union of Southern California, the ruling was:

> It is not necessary to repeat what was said in those prior opinions inasmuch as no sound reason has been advanced to induce us to reconsider our conclusions there set forth. . . For the reasons stated in those cases the regulations here involved must be held to be unconstitutional, and a peremptory writ of mandate should issue.[82]

Decisions Dealing with Use for Commercial Purposes

Use of school property for commercial purposes has been challenged on statutory and constitutional grounds. As shown in the following cases, courts will not permit use of public school property where the primary purpose is financial gain. However, use has been allowed when commercial gain is incidental to an otherwise legitimate use of facilities and to interference with regular school programs is present.

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[82] American Civil Liberties Union of Southern California v. Board of Education of San Diego Unified School District, 28 Cal Rptr. 712, 379 P 2d 16 (California) (1963).

In this section selected cases to determine issues and principles delimiting allowed or prohibited uses are reviewed.

Cases Allowing Commercial Use

A number of early cases questioned the right of school boards to allow operation of cafeterias and school stores. Such was the case in Ralph v. Orleans Parish School Board in 1925.[83] The legality was questioned of a school board's permitting private individuals to sell lunches to students and teachers on school property at a small profit. The opinion stated:

> Use of school property was merely incidental to the main operation of the school system, and that it served a meritorious purpose in providing students and teachers with wholesome food which could be consumed without the necessity of departing from school grounds.[84]

Use of public school tax money for operation of a cafeteria was questioned in Goodman v. School District of Denver.[85] Allowing use was rationalized in the decision:

> The evident intent of the school officials was not to permit the operation

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[83]Ralph v. Orleans Parish School Board, 104 Southern 490 (Louisiana) (1925).

[84]Ibid.

[85]Goodman v. School District of Denver, 32 F. 2d 586 (Colorado) (1929).

> of a commercial enterprise for profit on school property, but to make it possible for wholesome food to be furnished to students at reasonable prices, which contributed to their physical development and general environmental welfare.
>
> The fact that employees, and parents visiting the school, also availed themselves of opportunity to eat at the cafeteria did not serve to convert the enterprise into a business enterprise.[86]

Eating by outsiders in the cafeteria was also addressed. Abuse of the cafeteria by outsiders eating there was carefully guarded against.[87]

A proprietor of a candy store challenged the legality of operation of school stores in Bozeman v. Morrow. The suit sought to enjoin a Texas school board from allowing a cafeteria to be maintained which sold confections and school supplies such as pens, pencils, erasers, etc.[88] In the denied relief, the trustees were found to be

> acting within the discretion conferred upon them by law in permitting a cafeteria to be operated on school premises. ... School supplies were carried for emergency sales to students during school hours.[89]

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[86]Ibid.

[87]Bozeman v. Morrow, 34 S.W. ed 654 (Texas) (1931).

[88]Ibid.

[89]Ibid.

In 1936, a statute which authorized first class school districts to operate lunch rooms was challenged to determine whether students should be prohibited from operating a cafeteria and candy store.[90] The ruling in this Hempel v. School District of Snohomis County case held:

> School directors have not exceeded their powers in allowing operation of the cafeteria in that there is no direct statutory authority explicitly empowering the directors to permit the use of school building for any purpose except for regular conduct of the school, but the grant of general power to the directors to control the property and manage the business and affairs of the school carried with it the implied power to allow the use of school buildings for any student activities that the directors might deem helpful in the education of those for whom the school was established.[91]

A number of other decisions have upheld the discretionary powers of school boards to allow both school personnel and students to operate school stores.[92] Most of these decisions speak to operation as a service function without pecuniary profit. Tyre v. Krug emphasized that no personal profit was allowed.[93]

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[90]Hempel v. School District of Snohomis County, P. 2d 729 (Washington) (1936).

[91]Ibid.

[92]Restene v. Philadelphia School District, 26 Pa. D & C 655 (Pennsylvania) (1936): Cook v. Chamberlain, 225 N.W. 141 (Wisconsin) (1929).

[93]Tyre v. Krug, 149 N.W. 718 (Wisconsin) (1914).

Sale of school class rings and musical instruments has provided additional issues for litigation. Givens Jewelers of Bossier, a retail jewelry firm, brought suit against a school board for allowing on-campus sale of class rings, charging that permission constituted a constitutionally prohibited loan or grant of property to a private enterprise.[94] Principals of the parish schools had traditionally allowed manufacturers' representatives to come on campus to discuss class ring designs. Representatives of the manufacturer with the design chosen by students were then allowed to return to campus to sell the selected design.[95]

Article 4, §12 of the Louisiana Constitution of 1921, was used by the complainant jeweler:

> The funds, credit, property, or things of value of the State, or of any political corporation thereof, shall not be loaned, pledged or granted to or for any person or persons, associations or corporations, public or private. . . .[96]

The Court of Appeals of Louisiana found no violation of this provision. The decision stated:

> There is no evidence in the instant case that the defendant school

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[94]Givens Jewelers of Bossier, Inc. v. Rich, 313 Southern 2d 913 (Louisiana) (1975).

[95]Ibid.

[96]Ibid.

> board, or any of its principals, has, or intends to, relinquish any power, authority or control over any portion of the property belonging to the school board. Instead, the use of the premises by the class ring salesmen has been and will be allowed at the discretion of, and clearly subject to, the principal's authority and control on each occasion. Furthermore, the use of the school property by the salesmen, who visited the schools no more than a half dozen times a year appears to have been a casual and incidental use of the building in each case, not inconsistent with or prejudicial to, the main purpose for which the building was erected and within the reasonable discretion of school administrators.[97]

In Demers v. Collins, a seller of musical instruments complained he was an aggrieved person because of the decision of a school committee.[98] The question dealt with allowing access to school premises by sellers of musical instruments. The decision allowing board discretion to determine persons given access stated "the plaintiff failed to show the committee has litigated any personal right to him.[99]

Private concert and theatrical groups complained that the Maryland National Guard was using school property leased to them in violation of state statute in Gottieb

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[97]Ibid.

[98]Demers v. Collins, 201 A. 2d 477 (Rhode Island) (1964).

[99]Ibid.

Knabe and Company v. Macklin.[100] A Maryland state statute gave school authorities power to dispose of or rent "for fixed and limited terms any of its property not needed for public purposes."[101]

Officers of the guard had been renting the building for evening concerts and performances. The plaintiffs contended that renting for entertainments for one or more evenings was not "renting for a fixed and limited term." The court disagreed. The plaintiffs also argued that subletting the building for entertainment purposes amounted to taking the plaintiff's property without due process of law.[102] Justice Pearce, speaking for the Court of Appeals, ruled:

> This is not the case of a municipal corporation perverting the functions of government by deliberately and indefinitely engaging in business for profit, and entering into competition with its taxpayers. It is but temporary, casual, and incidental use of unused public property done in the practice of a public economy to avoid loss of revenue upon such unused public property, and to lighten thereby the general burden of taxation.[103]

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[100]Gottlieb Knabe and Company v. Macklin, 71 Atlantic 949 (Maryland) (1909).

[101]Ibid.

[102]Ibid.

[103]Ibid.

In Smilie v. Taft Stadium Board of Control, it was held that a statute specifically authorizing school boards to construct and operate stadia, sports arenas, and other recreational facilities and to lease them to persons, firms, and corporations, permitted the board to rent to private individuals for conducting midget automobile races.[104]

Residents of the area had attempted to get an injunction to stop the use because of the noise and disturbances involved. The court in the ruling agreed that the board had acted within its authority.[105]

Allowing a school athletic field to be used by a private baseball club was at issue in Royce Independent School District v. Reinhardt.[106] The agreement with the school district permitted a part of the school grounds to be used during vacation as a baseball field, in consideration of the ball club's erection and maintenance of a fence around the grounds.[107]

An injunction, sought to prevent the trustees from allowing the use of the grounds, contended that rough

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[104]Smilie v. Taft Stadium Board of Control, 205 P. 2d 301 (Oklahoma) (1949).

[105]Ibid.

[106]Royce Independent School District v. Reinhardt, 159 S.W. 1010 (Texas) (1913).

[107]Ibid.

crowds would attend the games and that there would be much yelling and noise and that school facilities would be damaged.[108] Appeals Court Judge Rainey stated:

> An ordinary game of baseball is not a nuisance per se, and the conducting of baseball games will not be enjoined because of the shouts and noises incident to the game, although an injunction may be granted when the game is conducted in an indecent and disorderly manner.[109]

Cases Prohibiting Commercial Use

The Sugar v. Monroe case, heard before the Supreme Court of Louisiana in 1902, gave evidence that courts do not allow commercial use when the primary purpose is deemed to be commercial gain.[110] The case involved a school auditorium being used for a theater in Louisiana. The janitor of the school in question was paid 35 dollars per month to be the lessee of the auditorium in which a commercial theater would operate. Management of the theater was actually a school official who contracted for various professional entertainment groups and paid operating expenses.[111]

Justice Monroe, speaking for the Supreme Court of Louisiana, reported:

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[108]Ibid.

[109]Ibid.

[110]Sugar v. Monroe, 32 Southern 961 (Louisiana) (1902).

[111]Ibid.

> Where a vote has been taken upon a proposition to impose a tax to build a schoolhouse, and has been favorably acted on, and a building has been constructed with the proceeds of bonds predicated upon such tax, it would be a breach of faith to allow such building to be converted into a theater, or to be used for the purpose of giving theatrical performances, as a business, whether in combination with its use for school purposes or otherwise. It is, however, within the discretion of the municipal authorities having control of the property to make such casual and incidental use of it as may not be inconsistent with or prejudicial to the main purpose for which it was acquired and changed conditions in the future may justify its use for some other purpose.[112]

Length of lease agreements are often an issue in complaints concerning commercial use. A lease of school land executed by a school board to a private individual for a term of ten years for the operation of a cafeteria was prohibited in Presley v. Vernon Parish School Board.[113] The court emphasized in canceling the use that the proposed enterprise was not a permissible casual use of school property, but rather a business undertaking to continue for a period of years. The court stressed the fact that under the terms of the lease the school authorities would not have full control and supervision of facilities.[114]

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[112]Ibid.

[113]Presley v. Vernon Parish School Board, 139 So. 692 (Louisiana) (1932).

[114]Ibid.

Provision for access for school purposes was an issue in State ex re. Baciak v. Board of Education.[115] A lease in this case had been made for five years to a county child welfare board for a receiving home for neglected children. The lease provided for remodeling the building on condition that the school board renew the lease for an additional five years. The lease did not provide a method for return of the property to the district if needed for school purposes. The ruling of the court pointed out:

> . . .A school board is without authority to lease a portion of a school building for use as a receiving home for dependent children or otherwise, and not withstanding the same may not now or in the forseeable future be needed for school purposes.[116]

In the previously mentioned Royce case, use by a baseball club was allowed when the game was conducted in a decent and orderly manner.[117] In Carter v. Lake City Baseball Club, a board of trustees was restrained from entering into an agreement to lease athletic grounds

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[115]State ex rel. Baciak v. Board of Education of Cleveland City School District, 88 N.E. 2d 808 (Ohio) (1949).

[116]Ibid.

[117]Royce Independent School District v. Reinhardt, 159 S.W. 1010 (Texas) (1913).

for playing baseball games of a professional or semi-professional nature.[118]

The plaintiff maintained that such use constituted a private nuisance and that the trustees were without power to lease the grounds under the circumstances of the case. The complainant charged that the field was being used three to five nights per week and drawing an average of fifteen hundred people. The complaint further stated that "people stand on top of trucks and cars to get a better view of the games and while so doing, make excessive noise, indulge in profanity, drink beer and whiskey, and throw the empty whiskey bottles and beer cans into yards of residents." Lack of bathroom facilities and the practice of using the rear of the bleachers were presented as evidence of practices presenting intolerable and unbearable situations.[119]

The court in voiding the lease stated:

> In expressing our conclusions in the case at bar, we do not wish to be understood as going to the extreme of holding that school trustees may not make such casual and incidental use of the athletic field in question, not detrimental to the main purpose for which it was created, as they may deem advisable.[120]

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[118]Carter v. Lake City Baseball Club, 62 S.E. 2d 470 (South Carolina) (1950).

[119]Ibid.

[120]Ibid

Use for Other Than Religious, Political, Or Commercial Purposes

Forty-four states and the District of Columbia have statutes providing guidelines for private use of public school facilities. A wide range of statutory guidelines also provides a wide range of school board discretion that has produced ample litigation for study in all areas. Court decisions have often presented a diversity of opinions.

The purpose of this section is to investigate selected cases to determine issues and principles relative to areas other than religious, political, or commercial use. Cases presented in this section are divided into four categories: (1) use for civic and PTA purposes; (2) use for social, recreational, and fraternal purposes; (3) use for after-school child-care programs; and (4) use by teacher associations.

Use for Civic or PTA Purposes

Many states have provided statutory authority for use of school facilities by civic groups. Often goals of the school and goals of civic groups are closely attuned. Similar goals provide opportunity for close cooperation and collaboration among groups. However, this kinship does not exist in every situation, as shown by the following cases.

Even the Parent-Teacher Association is not immune to differences with school officials. Such was the case in Hennessey v. Independent School District Number 4 when facilities were denied the Parent-Teacher Association to hold meetings.[121]

The local school board had received a number of requests from the Parent-Teacher Association for permission to hold their meetings on school property. Requests were routinely turned down by the school board although other groups were routinely allowed to use facilities for meetings. A regulation prohibiting use of school buildings by any organization that was unsupportive of the school board or any part of the school system or that dealt in personalities or engaged in frequent criticism of the school system and of school personnel in particular had been developed shortly after the first PTA request.[122]

When the case reached the Supreme Court of Oklahoma, Justice Doolin presented the decision:

> A school board may withhold school facilities altogether from use by nonscholastic groups or may make reasonable classifications in determining availability. The state may control the use made of its pre-

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[121]Hennessey v. Independent School Number 4, 552 P. 2d 1141 (Oklahoma) (1976).

[122]Ibid.

> ises but not without regard to the Constitution. The equal protection clause precludes a school from censoring expressions because it does not like its content or message, and it requires a state authority to deal with similarly situated organization in an even handed manner. The privilege of using a school should be available on a reasonable basis.[123]

The findings in the East Meadow[124] case were applied. Justice Doolin again spoke for the court:

> A state is under no duty to make school buildings available for public gatherings and a school board is not prevented from barring its use for unlawful purposes. But where a school district allows a number of organizations to use its facilities for non-academic purposes, a board must not unconstitutionally discriminate against any comparable applicant in deciding who will and who will not be permitted its use.[125]

Parent-teacher groups have even questioned which of two school buidlings should be used.[126] In an Ohio case, a parent-teacher association brought suit to compel a board of education to allow the association to hold its meetings in the auditorium of a new school, rather than

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[123]Ibid.

[124]East Meadow Community Concerts Association v. Board of Education of Union Free School District Number 3, op. cit.

[125]Hennessey, op. cit.

[126]State ex rel. Richland Parent-Teachers Association v. Board of Education, 33 Ohio L Abs 387 (Ohio) (1941).

in an adjacent older school building as had been permitted by the school board. The court ruled:

> The board acted within the discretion vested in it in determining that the use of the new school building by the association would interfere with the regular school program, and that the old school building would suffice for the purpose of affording a meeting place for the association.[127]

A case involving a Kentucky Ruritan Club could also be placed under the commercial group heading. A plaintiff in Hall v. Shelby County Board of Education[128] challenged the validity of a lease of land and gymnasium from the Shelby County Board of Education to the Waddy Ruritan Club. The lease was for an indefinite period with the board having the right to end the lease.

The complainant owned a bluegrass music hall where he staged professional performances. The Ruritan Club had presented a number of bluegrass shows in the school gymnasium.[129]

Both the trial court and the court of appeals affirmed the school board authority under state statutes to permit

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[127]Ibid.

[128]Hall v. Shelby County Board of Education, 472 S.W. 2d 489 (Kentucky) (1971).

[129]Ibid.

the club to use otherwise unoccupied and unused premises. Kentucky Statute Section 162.050 allows:

> The board of education of any school district to permit the use of the schoolhouse, while school is not in session, for any lawful assembly of educational, religious, agricultural, political, civic or social bodies under rules and regulations which the board may deem proper.[130]

The appeals court noted that under the broad powers given to school boards by statute, a lease to such an organization was permissible. The court further found that the complainant had no constitutional right to protection from competition.[131]

Use for Social, Recreational and Fraternal Purposes

Social activities such as dancing have brought about a number of court actions. Many of the actions follow the pattern found in Merryman v. School District Number 16.[132]

John W. Merryman, a resident taxpayer, appealed the right of a school district to allow use of school buildings for dances and other social activities.

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[130]Baldwin's Kentucky Revised Statutes Annotated, 1963. Section 162.050.

[131]Hall v. Shelby County Board of Education, op. cit.

[132]Merryman v. School District Number 16, 5 P. 2d 267 (Wyoming) (1931).

Justice Riner, speaking for the Supreme Court of Wyoming, upheld the decision:

> The question thus presented is an open one in this state; this court having never been called upon to pass on it, although it is a fact of common knowledge that during and at all times since territorial days in Wyoming, school buildings by general consent, have been used aside from school session hours, for a variety of purposes other than the holding of public schools--Church assemblies of various denominations, dances, political meetings, lectures and entertainments of various kinds having been repeatedly held in them.[133]

In Lewis v. Bateman,[134] decided in 1903, it was held that the trustees of a school district had no right to permit a schoolhouse to be used for public and private dances inasmuch as this would be a misappropriation of trust property. The record showed that the seats in the school building had to be removed to permit the dancing and that ink from the inkwells would be spilled when the seats were moved.

In McClure v. Board of Education[135] the board of education of the city of Visalia, California was authorized

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[133]Ibid.

[134]Lewis v. Bateman, 73 Pacific 509 (Utah) (1903).

[135]McClure v. Board of Education, 176 P. 711 (California) (1918).

to permit a social dance in the high school building. The decision was based on the statute of California that provided:

> There is hereby established a civic center at each and every public schoolhouse within the State of California where the citizens of the respective public school districts within the said State of California may engage in supervised recreational activities, and where they may meet and discuss, from time to time, as they may desire, any and all subjects and questions which in their judgement may appertain to the educational, political, economic, artistic and moral interests of the respective communities. . .[136]

The court contended that dancing was a form of recreation and the statute permitted it by giving school boards wide discretion in the use of school facilities.[137]

Dancing was also found to be a legal use in Beard v. Board of Education,[138] Young v. Board of Trustees of Broadwater County High School,[139] and Brooks v. Elder.[140]

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[136]Ibid.

[137]Ibid.

[138]Beard v. Board of Education, 16 P. 2d 900 (Utah) (1931).

[139]Young v. Board of Trustees of Broadwater County High School, 4 P. 2d 725 (Montana) (1931).

[140]Brooks v. Elder, 189 N.W. 284 (Nebraska) (1922).

In Cost v. Shinault,[141] school directors were allowed to lease the second story of a school building to a fraternal organization. A statute specifically authorized school districts to allow private schools to be operated in schoolhouses when not being used for public purposes. The suit was brought on the assumption that this was the only purpose allowed other than the regular school program. Justice Smith provided the ruling from the Supreme Court of Arkansas in saying:

> It is a matter of common knowledge that many quasi public uses are made of the rural school buildings of the state. We do not believe it was the purpose of the Legislature, in granting express authority for private schools to be taught in the public schools, to exclude other uses where such do not interfere with school nor injure the buildings.[142]

In Laglow v. Hill,[143] a plaintiff contended that the school board had no power to permit fraternal groups to use school facilities. The school directors countered with statutory permission that reads:

> Grant the temporary use of schoolhouses when not occupied by school, for religious meetings, Sunday schools, for evening schools

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[141]Cost v. Shinault, 166 S.W. 704 (Arkansas) (1914).

[142]Ibid.

[143]Laglow v. Hill, 87 N.E. 369 (Arkansas) (1914).

> and literary societies, and for such other meetings as the directors may deem proper.[144]

The directors were found to have discretionary control in these matters and to have acted properly within their powers.[145]

Use for After School Child Care

Five states have specific statutes allowing school facilities to be used as child care facilities when not in use by the regular school program. Hawaii has such a statute:

> The Department of Education may enter into agreements and contracts with individuals, organizations, or agencies for the use of public school buildings facilities, and grounds for the operation of after school child care programs. The board of education shall issue such rules as are necessary to carry out the purposes of this section.[146]

A North Carolina case, Kiddie Korner Day Schools, Inc. v. Charlotte-Mecklenburg Board of Education,[147] questioned

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[144]Illinois Annotated Statutes, Chapter 122, Section 10-22.10.

[145]Laglow v. Hill, op. cit.

[146]Hawaii Revised Statues, Section 298-23.5.

[147]Kiddie Corner Day Schools, Inc. v. Charlotte-Mecklenburg Board of Education, 285 S.E. 2d 110 (North Carolina) (1981).

the legality of the public school system to conduct after-school care at the elementary schools. Justice Becton, speaking for the North Carolina Court of Appeals, stated:

> Constitutional uniform public school system requirement was not violated by formulating a program to alleviate problems of "latchkey" children. Also, the program satisfied the constitutional requirement that all expenditures of tax dollars be for public purpose. . .[148]

Use by Teacher Associations

Rights of teachers to use school facilities for distribution of literature and for association business have been questioned in the courts. In a New York case a plaintiff, representing the local teachers' association, brought action for declaratory and injunctive relief against a school system policy that stated that material distributed to teachers in school mailboxes should be only for official school system business.[149]

The problem arose when the Bayshore Classroom Teachers' Association distributed a publication, The Voice, through faculty mailboxes. The secretary for

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[148]Ibid.

[149]Michael Friedman as President of Bayshore Classroom Teachers Association v. Union Free School District Number 1, 314 Federal Supplement 223 (New York) (1970).

the teachers' union received a letter stating that distribution of the material was in violation of the school board policies.[150]

The district court held that the policy prohibiting distribution of materials by teachers inhibited First Amendment rights of the teachers. The policy was found to be illegal.[151]

In Delaware, a teachers' organization charged that the school board's denial of use of certain school facilities to its members transgressed their rights under the First and Fourteenth Amendments.[152] As a part of the negotiated agreement with another teachers' organization in the district, the board had granted that organization exclusive rights to use facilities to represent teachers. The action of the board was found legal by the federal district court in the ruling:

> The policy served to promote a compelling state interest, the desire to keep school buildings from becoming labor battlegrounds.[153]

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[150]Ibid.

[151]Ibid.

[152]Federation of Delaware Teachers v. De La Warr Board of Education, 335 Federal Supplement 386 (Delaware) (1971).

[153]Ibid.

A similar case, Local 858 of American Federation of Teachers v. School District Number 1,[154] was litigated in Colorado. The local union, which lost the representative election, claimed the school district's refusal to let the union use certain school facilities violated the constitutional rights of the union and its members.

The specific actions that the union claimed were illegal included

> (1) denying the AFT use of school buildings for meetings, free of charge; (2) denying the AFT use of school bulletin boards, except during election campaigns; (3) denying AFT use of teachers' mailboxes, except during election campaigns. . .[155]

The court ruled that certain exclusive contract rights could be granted to an elected collective bargaining agent in the public sector as well as the private sector. As in the Delaware case, the court balanced a "compelling State interest" in labor tranquility within the public schools against a negligible impairment to the plaintiffs.[156]

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[154]Local 858 of American Federation of Teachers v. School District Number 1, 314 Federal Supplement 1069 (Colorado) (1970).

[155]Ibid.

[156]Ibid.

The opposite had been held true in Dade County Classroom Teachers Association v. Ryan.[157] That decision allowed the use of school facilities by unions, but warned that no exclusive right to use of the facilities could be granted. The court held:

> We see no objection to the school board allowing the intervenor the use of interschool mail facilities or bulletin board space, or furnishing it teacher lists and giving the right to hold meetings on school property to Intervenor and its members, so long as the same privileges are afforded all teachers or their collective bargaining organizations not aligned with the Intervenor; always provided any of such privileges or considerations are subject to cancellation by the school board at any time in its sound and sole discretion.[158]

No state statutes allowed exclusive bargaining rights. In the presence of such a statute, the courts would have granted exclusive rights to use school facilities.[159]

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[157]Dade County Classroom Teachers Association, Inc. v. Ryan, 225 Southern 2d 903 (Florida) (1969).

[158]Ibid.

[159]Ibid.

CHAPTER V

REVIEW OF SELECTED CASES

Cases throughout the nineteenth and twentieth century have shown much diversity of statutory interpretation. Having construed meanings of state statutes and constitutions, the courts have granted varying degrees of discretion to local school boards.

Courts have made most decisions in light of state statutes and state constitutions. In decisions concerning freedom of speech, due process, equal protection, and freedom of religion, courts have turned to principal explanations of the United States Constitution.

The purpose of this chapter is to provide a general review, analysis, and discussion of twenty selected cases which have set precedents for later court rulings concerning private use of public school facilities. Cases in the areas of religious, commercial, political, and other community uses as well as cases of constitutional concerns are presented. These cases, presented in chronological order, illustrate the variety of legal decisions and are not all-inclusive in nature. A description of the facts of each case, the decisions in each case, and finally, a discussion of the decisions are set forth.

Spencer v. Joint School District

15 Kansas 259 (1875)

Facts

This case involved an action brought to restrain the district from leasing its school building for other than school purposes. Essentially, the plaintiff objected to the use of the building for religious purposes.[1]

The primary question was the authority of the school board to allow outside use of school facilities paid for with tax funds. Contention of the plaintiff was that Kansas statutes did not allow private use of any facilities paid for with tax funds because such use would involve improper use of tax monies.[2]

Decision

The district court ruled in favor of the school directors to allow private use. The plaintiff appealed to the trial court which sustained the findings of the district court. On appeal to the Supreme Court of Kansas, the decision of the trial court was overthrown and remanded to the district court for further action in accordance with the views of the Supreme Court.[3]

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[1]Spencer v. Joint School District 15 Kansas 259 (1875).

[2]Ibid.

[3]Ibid., p. 260.

The district and trial court had considered the fact that school facilities were used all over the state by general consent or without active opposition. These courts recognized that little damage was done by use, that taxpayer money had built the facilities, and that private use was a common practice particularly in the new settlements of the state.[4]

The Supreme Court of Kansas spoke of all these areas in their decision, but said that only one issue prevailed that taxation cannot be used to support any private use of school facilities. The court ruled that allowing use of facilities by a religious group would indirectly amount to supporting the religious group.[5]

Discussion

Typical of early cases disallowing use of school facilities, this case brought to light several factors which appear in later litigation such as temporary and casual use, general feeling by the public that school facilities should be used, and degree of damage incurred to school property.

The Kansas Supreme Court argued that use of school facilities by a religious group would amount to support

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[4]Ibid., p. 261.

[5]Ibid., p. 262.

of that religious group. Such action equated use of a tax-financed school building by a religious group to building a church building with tax funds.[6]

Nichols v. School Directors

93 Illinois 61 (1879)

Facts

The state of Illinois enacted a statute allowing school directors to grant temporary use of schoolhouses, when not occupied by schools, for religious meetings and Sunday schools, for evening schools and for literary societies, and for other such meetings as the directors considered proper.[7] The complainant, as a citizen, taxpayer, and freeholder of the school district, sought an injunction to restrain the directors from allowing the schoolhouse of the district to be used as a religious meeting house. The complainant and other taxpayers had formerly protested this issue, but use had been allowed by the school directors, nonetheless.[8]

Decision

A temporary injunction was allowed with the bill

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[6]Ibid., p. 261

[7]Nichols v. School Directors, 93 Illinois p. 61 (1879).

[8]Ibid.

filed by the complainant at the district court level. The circuit court sustained the right of the school directors to grant private use of facilities and dissolved the temporary injunction which had been granted. The complainant appealed to the Supreme Court of Illinois. The Supreme Court affirmed the decision of the circuit court and found no grounds for an injunction.[9]

The complainant had assailed the statute as being unconstitutional, on the basis of Article 2, Section 3 which said no individual was required to support any religion or support preference of any religious denomination or group. Article 8, Section 3 of the Illinois Constitution, which forbade school districts from making appropriations from the school fund for aid to any church or for any sectarian purpose, was also cited.[10]

Discussion

This case brought forth a theme used in later cases that incidental benefit by religious groups is not placed under the ban of support to religious groups in constitutional provisions. The court raised the question that exemption of church property from taxation might also create increased citizens' taxation.[11]

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[9]Ibid.

[10]Ibid.

[11]Ibid., p. 64.

The ruling of the court also spoke of noninterference with the regular school program and affirmed discretion of local school directors to follow statutory authority.[12]

Bender v. Streabich

37 Atlantic 853 (1897)

Facts

In 1897, H.H. Bender brought suit against Martin K. Streabich, president of Manor Township board of school directors, for allowing religious and other community groups to use school facilities.[13] The only question presented was whether school directors may permit or authorize the use of school buildings for other than school purposes.[14]

The case was first heard in the Court of Common Pleas of Lancaster County. An appeal was made to the Supreme Court of Pennsylvania on July 15, 1897.[15]

Decision

The Court of Common Pleas of Lancaster County affirmed the complaint of H.H. Bender and granted an in-

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[12]Ibid.

[13]Bender v. Streabich, 37 Atlantic 853 (Pennsylvania) (1897).

[14]Ibid.

[15]Ibid.

junction to the plaintiff restraining the school directors from allowing use. The holding of lyceums in the public school houses was found not to be within the meaning and intent of common-school law, not an aid to education, and not for the general improvement of the neighborhood.[16]

The Supreme Court of Pennsylvania, with Justice Fell speaking for the majority, held that school directors may not permit the use of school buildings for sectarian religious meetings, nor for the holding of public lyceums, nor for any purposes other than school purposes. Such uses were found to be in line with educational purposes, but not in line with the use intended by the laws of Pennsylvania.[17]

Discussion

The court referred to an earlier Pennsylvania case, Hysong v. School District,[18] for the answer to the question of religious use. The findings of the Supreme Court clarified that any use directly related to the instructional program would not be prohibited. Discretion of

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[16]Ibid.

[17]Ibid., p. 854.

[18]Hysong v. School District 30 Atlantic 482 (Pennsylvania) (1861).

local boards to allow unchallenged use of facilities was also implied in the ruling.[19]

Use of tax funds was an issue in the case as it was in Spencer v. Joint School District. Both the Kansas Court and the Pennsylvania Court felt that use would lead to part of the school funds being used to support private activities not intended by the laws of the respective states.

Sugar v. City of Monroe

32 Southern 961 (1902)

Facts

Citizens of Monroe, Louisiana, approved a school bond of $155,000 dollars for the purpose of school construction; a portion of this amount was used to construct a high school which included an auditorium with a seating capacity of over 1,000.[20]

The school auditorium was used as a public theater under the auspices of a pretended lease to the school janitor. Tom Stewart, the janitor, was paid 45 dollars per month as janitor of the high school and lessee of the auditorium. Management of the auditorium for theatrical

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[19]Bender v. Streabich, p. 854.

[20]Sugar v. Monroe 32 Southern 961 (Louisiana) (1902).

purposes was in the hands of a man who was a chairman of the city finance committee, mayor pro tem of the city, and member and chairman of the entertainment committee of the local school board.[21]

The plaintiffs, citizens, taxpayers, and owners of an opera house in the city of Monroe brought suit to restrain the use of the school building as a theater. The case was first heard in district court of Ouachita Parish and later appealed to the Supreme Court of Louisiana.[22]

Decision

Ruling of District Court Judge Luther Hall of the district court of Ouachita Parish was in favor of the defendants. The case was appealed to the Supreme Court of Louisiana which heard the case on June 16, 1902.[23]

In reversing the decision of the district court the Supreme Court considered three points:

> (1) That the city of Monroe is engaged in the business of conducting a theater.
> (2) That in doing so it pays no license to itself, whilst it exacts a license from the plaintiff and from all other persons engaged in the same business.
> (3) That it is using as a theater a public

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[21]Ibid. p. 962.

[22]Ibid.

[23]Ibid.

> building worth nearly $70,000, especially dedicated by those at whose expense, in part, it was erected, to school purposes.[24]

Under the first two points, the court found no grounds that the plaintiffs had established a pecuniary interest sufficient under law to give the court jurisdiction. Under the third point evidence was found that the court should determine whether an illegal use was being made of school property. An analogy was made in the decision that using the auditorium as a theater would correspond to using another part as a jail, saloon, or hospital.[25]

Discussion

The decision of the Supreme Court assisted in establishing the principle that school facilities cannot be used when the primary purpose is commercial gain. The practice of allowing use that is temporary and casual was not questioned, but use for commercial gain was. The court also did not question the discretion of the school board to allow use under changed circumstances.

Baggerly v. Lee

73 Northeastern 921 (1905)

Facts

The state of Indiana enacted in 1901 legislation which granted the right to school trustees to allow use of

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[24]Ibid., p. 963.

[25]Ibid., p. 964.

a public school building for purposes other than school when not being used for school purposes.[26] Legislation also granted control and supervision of school property to township trustees.[27]

John H. Lee, a trustee of Tobin school township, brought suit against James Baggerly and others who served as managers of the Church of Latter Day Saints. The defendants had petitioned the plaintiff to permit them to use for church purposes a public school building during the part of the year in which there is no school. In granting the request, school trustees had expressly forbidden defendants or any one else from using school buildings for religious purposes during any time when the school term is in session.[28]

The defendants had been entering and using school buildings during the school term on evenings and Sundays and other times when the school was not convened in defiance of trustee directions. Trustee Lee brought suit in Circuit Court of Perry County to restrain such use.

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[26]Baggerly v. Lee 73 Northeastern 921 (Indiana) (1905).

[27]Ibid., p. 922.

[28]Ibid.

Decision

Judge E.M. Swan of the Circuit Court of Perry County ruled in favor of the complaint filed by Trustee John H. Lee. The defendants appealed to the Supreme Court of Indiana. The case was transferred to the Appellate Court of Indiana and was heard on March 30, 1905.

The appellants recognized that they had no inherent right to use the schoolhouse for religious purposes, but based their right to use school facilities on an Indiana statute. The statute provided that if a majority of legal voters of any district desire the use of the schoolhouse of such district for other purposes when unoccupied for common school purposes, directors are to allow use giving equal rights and privileges to all religious denominations and political parties.[29]

Judge Wiley, who spoke for the Appellate Court, affirmed the decision of the circuit court by stating:

> A schoolhouse is occupied for 'school purposes' from the time a school term opens until it closes, including school days, Saturdays, and nights, in the same sense that a dwelling house is 'occupied' by a family as a domicile even though all members of the family are temporarily absent overnight or during the day, or even for a longer period. . .[30]

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[29]Ibid., p. 923.

[30]Ibid.

Discussion

Discretion of local school trustees to determine conditions of use by outside groups was again affirmed in the decision. A somewhat unique interpretation of the phrase, "when unoccupied for common school purposes"[31] was provided. The court allowed that books, pencils, and other materials would be left unprotected and thus the interests of the school would be jeopardized by use during the regular term.[32]

Royce Independent School District v. Reinhardt

159 Southwestern 1010 (1913)

Facts

Texas statutes allowed independent shcool districts, with powers vested in a board of trustees to manage and control school property, to permit property which is not needed for school purposes to be used for private purposes which do not conflict with its use as school property.[33]

Royce Independent School District permitted a part of the school grounds to be used as a baseball field during vacation. Use was granted in consideration of the ball club's erecting and maintaining a fence around the grounds.[34]

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[31]Ibid.

[32]Ibid.

[33]Royce Independent School District v. Reinhardt, 159 S.W. 1010 (Texas) (1913).

[34]Ibid.

An injunction against use by the baseball club had been granted by Judge Kenneth Foree of the District Court of Rockwell County. The school trustees appealed the injunction to the Court of Civil Appeals of Texas.[35]

The injunction was granted by the district court on the merits that rough crowds would attend the games, that there would be much yelling and noise, that school facilities would be damaged, and that the undertaking as a whole would constitute a nuisance and an unauthorized use of school facilities.[36]

Decision

Judge Rainey, speaking for the Appeals Court held that school trustees have control over school property and at their discretion may permit use of the facilities when not in use for school purposes and that such use might be on either a gratis or a pay basis. The court pointed out that the baseball arrangement resulted in a considerable financial advantage to the district and there was no conflict with school purposes.[37]

In regard to the nuisance complaint, the court held that noise and incidents accompanying games in the past

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[35]Ibid.

[36]Ibid., p. 1011.

[37]Ibid., p. 1012.

were "such only as were usual" at games of this type and that there was no vulgar and indecent conduct at these games.[38] Judge Rainey added:

> That the game of baseball is not a nuisance per se is well settled. It is an innocent or legitimate amusement, and, like a legitimate business, to warrant an injunction stopping or destroying it, it must appear that the indulgence in it is necessarily a nuisance. An injunction against the games will not be granted simply because it is feared that it may become a nuisance.[39]

Discussion

Proving that use by the baseball club was a nuisance was a key issue in the complaint. Fear that use would become a nuisance was not found to be a reason for granting an injunction. The decision left the possibility for other injunctions if the conduct of the games could be proven to be a nuisance.[40]

As in each of the other cases presented, the courts examined the statutory authority of the school authorities to control and regulate outside use of school facilities. Interference with regular school program and damage to school property were also examined.

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[38]Ibid.

[39]Ibid.

[40]Ibid.

Cost v. Shinault

166 Southwestern 740 (1914)

Facts

School directors of Lawrence County, Arkansas, ratified a lease between the district and the Independent Order of Odd Fellows which allowed the lease of the unused upper story of a schoolhouse for 50 dollars per year.[41] Arkansas statutes specifically authorized school districts to allow a private school to be operated in the schoolhouse when not being used for public school purposes. A.B. Cost, the complainant, argued that the legislature's intent was to restrict the use of school facilities to just that purpose and school directors had no authority to permit any other use.[42]

Decision

George Humphries, speaking for the Lawrence Chancery Court, had affirmed the right of the school directors to lease the upper story of the schoolhouse to the fraternal group. An appeal was made to the Supreme Court of Arkansas on April 27, 1914.[43]

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[41]Cost v. Shinault, 166 Southwestern 740 (Arkansas) (1914).

[42]Ibid.

[43]Ibid.

The Supreme Court of Arkansas upheld the action of the school directors, stating that in managing school property, it was the duty of the school directors to make the most advantageous arrangement possible for the good of the district. Rental to the fraternal group was found to be an important financial advantage to the district, and no interference with the regular school program was established by the complaint.[44]

In answering the complaint that the legislature intended outside use only for operation of a private school, the Supreme Court included the following statement:

> It is a matter of common knowledge that many quasi-public uses are made of the rural school buildings of the state. We do not believe it was the purpose of the Legislature, in granting express authority for private schools to be taught in the public school buildings, to exclude other uses where such uses do not interfere with school nor injure the buildings.[45]

Discussion

The court again made a determination of the statutory authority of the school directors to determine acceptable uses of school facilities by private groups. A novel aspect of the case involved allowing financial advantage to the school district as a determinant in allowing the use.

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[44]Ibid., p. 741.

[45]Ibid.

Merryman v. School District Number 16

5 Pacific 2d 267 (1931)

Facts

In 1869, the Wyoming Legislature provided power to school districts and school boards to perform duties as outlined by a vote of the people at an annual meeting. In this case, the electors of the township had authorized the school board to permit the building to be used for various purposes, including public entertainment.[46]

John W. Merryman, the plaintiff, sought an injunction against the defendants, restraining them from permitting the use of school property for dances, social entertainments by groups charging admission fees, or for any purpose other than strictly school or educational purposes. The school district had leased a newly erected school building to the Knights of Pythias Lodge for the purpose of holding a dance. The fraternal group had been required to pay a fee in the amount of ten dollars that more than paid for expenses for lights, fuel, etc. incurred by the district.

Decision

The District Court of Crook County had found in favor of school board's right to grant use to the Knights of

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[46]Merryman v. School District Number 16, 5 Pacific 267, (Wyoming) (1931).

Pythias Lodge for the purpose of holding a dance. Merryman appealed to the Supreme Court of Wyoming, which provided the decision on November 24, 1931.[47]

In a lengthy decision by the Supreme Court, which quoted many former cases on the same topic, Justice Riner observed that such controversies were new to Wyoming. He expressed:

> The question thus presented is an open one in this state; this court having never been called upon to pass on it, although it is a fact of common knowledge that during and at all times since territorial days in Wyoming, school buildings by general consent, have been used aside from school session hours, for a variety of purposes other than the holding of public schools--church assemblies of various denominations, dances, political meetings, lectures and entertainments of various kinds having been repeatedly held in them.[48]

The Supreme Court ruled that the use planned was temporary, occasional, and liable at any time to be denied by the district electors. School trustees were also found to be within their statutory authority to grant use to the group.[49] Justice Riner said:

> So long as the proper maintenance and conduct of the school is not inter-

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[47]Ibid.

[48]Ibid., p. 269.

[49]Ibid., p. 270.

> fered with, or in any wise hampered, and so long as school district property is neither injured, defaced, nor destroyed, as we view it, our law vests a generous amount of discretion in the school district electors.[50]

The Supreme Court also found the Knights of Pythias to be an orderly and law-abiding group.[51]

Discussion

A new angle to determine discretion of school boards was found in this case. The decision was based on approval of the school board's decision by a vote of the electorate of the school district at an annual meeting. Since this was the first question of the type addressed by the Wyoming Supreme Court, a detailed review of numerous cases, including cases previously cited in this chapter, was presented as part of the decision.

Again as in other cited cases, board discretion was the key issue as were the well-established principles of no damage to school property, temporary and casual use, and noninterference with the regular school program.

Trustees of Independent School District of Cleburne v. Johnson County Democratic Executive Committee

52 Southwestern 71 (1932)

Facts

Texas Revised Statutes of 1925 provided for holding

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[50]Ibid., p. 276.

[51]Ibid.

elections in schoolhouses, firehouses, or other public buildings within the limits of an election precinct.[52] Texas statutes also granted "the exclusive control and management of school property" to local boards of trustees.

G. Cone Smith and others, members of the Johnson County Democratic Executive Committee brought suit against C.L. Edgar and others, trustees of the Independent School District of Cleburne County, to force the trustees to allow certain school houses to be used for holding Democratic primaries and general elections. The complaint was first brought in the district court of Johnson County and later appealed to the Court of Civil Appeals. and the Supreme Court of Texas.[53]

Decision

The District Court of Johnson County decided in favor of the Johnson County Democratic Executive Committee. The Waco Court of Civil Appeals affirmed the judgment of the district court on appeal. The appeals court found it practicable to hold the election in the schoolhouses.[54]

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[52]Trustees of Independent School District of Cleburne v. Johnson County Democratic Executive Committee, 52 Southwestern 2d 71 (Texas) (1932).

[53]Ibid., p. 71.

[54]Ibid.

The case was appealed to the Supreme Court of Texas where Justice Greenwood spoke for the court in rendering the decision:

> The discretion to determine whether it is practicable to hold elections in schoolhouses, in cities assuming exclusive control and management, through a board of trustees, of the public free schools within the limits of the cities, is to be exercised by the trustees.[55]

Discussion

An interesting aspect of the case was the presence of two conflicting statutes. The word "practicable" was the key in the ruling of the Supreme Court. Discretion of local school trustees to determine conditions of use was again upheld.

Goodman v. Board of EDucation of San Francisco Unified School District

120 Pacific 665 (1941)

Facts

This case arose in California, where the State Education Code authorized school boards to grant use of school buildings for public, literary, scientific, recreational, or educational meetings or for the discussion of matters of general or public interest. Lillian Goodman brought a proceeding against the Board

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[55]Ibid., p. 73.

of Education of the San Francisco Unified School District to compel the school board to permit the use as a civic center of an auditorium or schoolroom in a public schoolhouse for the purpose of meeting and discussing the Socialist Party's position on the question of peace.[56]

Decision

Justice Ward, expressing the view of the District Court of Appeal of California, followed a similar pattern in determining the status of the complaint. Management, direction, and control of a civic-center schoolhouse was found to be vested in local school boards. No interference with the regular school program was determined.[57]

Discretionary power of local school boards was approved as long as power was not used in an arbitrary manner. The complainant had said that use had been granted to sundry associations for discussion of political, economic, and moral matters and issues. Justice Ward stated:

> Whatever discretion was reposed in respondent board, it was not intended that one public group should receive favors denied another of like character because the latter holds views contrary to those of the first group.[58]

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[56]Goodman v. Board of Education of San Francisco Unified School District, 120 Pacific 2d 665, (California) (1941).

[57]Ibid., pp. 666, 667.

[58]Ibid., p. 668.

The right to refuse use to the Socialist Party was allowed if the group was proven to be a subversive group. Justice Ward also expressed that the responsibility to determine whether the group was subversive rested with the school board. Right to use facilities was required if the local board could not prove that the petitioning organization advocated the overthrow of the government by force, violence, or other unlawful means.[59]

Discussion

California's mandated use statute restricted local school boards' discretion to determine whether certain uses are allowable. An interesting aspect of the case was introduction of the issue of arbitrary treatment by school boards. Express statutory provisions for use were also found to weigh more heavily than implied constitutional authority.

Payroll Guarantee Association v. Board of Education of San Frncisco Unified School District

163 Pacific 2d 433 (1945)

Facts

In 1945, the state of California enacted revised legislation which made school buildings available for

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[59]Ibid.

community activities on the condition that activity must not disturb the educational program.[60] Revised statutes also gave local school boards the right to make reasonable regulations for use of school property by outside groups.[61] Statutes also included a directive that school buildings were not to be used by any group which advocated the violent overthrow of the United States.[62]

The San Francisco school board refused to permit the use of an auditorium for a mass meeting where Gerald Smith would speak on a proposed constitutional amendment. At other meetings where Mr. Smith had spoken, picketing and noisy, boisterous activities had resulted. A threat of picketing at the proposed meeting had also been received.[63]

The school board refused the request based on the fact that evening classes were held in the building and that these classes might be disturbed. A writ of mandamus was sought by the petitioners to compel the school board to

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[60]Payroll Guarantee Association v. Board of Education of San Francisco United School District, 163 Pacific 433, (California).

[61]Ibid., p. 433-434.

[62]Ibid.

[63]Ibid., p. 434-436.

grant use of the auditorium. The petitioners contended that any disturbance which might arise would not be by their group and that they should not be penalized for the disorderly conduct of others.[64]

Decision

The petition was heard before the Supreme Court of California on November 8, 1945. Justice Traynor spoke for the majority in the decision which upheld the action of the school board. Reasoning was as follows:

> Speakers who express their opinions freely must run the risk of attracting opposition; they cannot expect their opponents to be silenced while they continue to speak freely. If a speaker in a school building or the opposition that he arouses attract so much attention as to disturb school activities, it would not be for the police to curb those who incidentally caused the disturbance so long as their activities were lawful, but for the board to prevent the occurrence of such disturbance. Neither a speaker or his opponent are thereby stilled; they may express themselves fully and freely in school buildings as elsewhere whenever their activities do not bring in their wake a disturbance of the regular school program.[65]

Justice Traynor went on to say that it was not the school board's responsibility to evaluate the strategies

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[64]Ibid., pp. 433-434.

[65]Ibid., p. 435.

of different factions, but rather to carry out the primary task of maintaining the educational program. If the regular school program were interfered with, then the school must deny requests that create interference.[66]

Discussion

The decision of the Supreme Court was not unanimous. Justice Carter dissented by saying he believed the issue was whether a governing body of a school district may arbitrarily refuse use of a school building under its supervision. He believed that a pivotal issue in the case was that the board did not provide evidence that the major educational function would be hindered.[67]

No question of the element of subversiveness of the group was present in this case as was present in the Goodman case.

In a later case, the group chose to make application for use of the same auditorium after the ruling, but changed the time of the meeting to a Sunday afternoon so there would be no interference with the regular school program. The school board required liability insurance in large amounts before use would be granted and waived

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[66]Ibid.

[67]Ibid., p. 436-438.

the insurance requirement for other groups. Request for use was rejected because the group could not pay the insurance.

The applicants brought suit against the board to gain permission to use the facilities without the required insurance. The court ruled in favor of use without the insurance.[68]

Southside Estates Baptist Church v. Board of Trustees

115 Southern 2d 697 (1959)

Facts

In this Florida case, an appeal was made to stop the temporary use of school buildings for religious purposes.[69] The Board of Trustees of Duvall County had permitted several churches to use various school buildings during Sunday non-school hours while church buildings' construction was being completed. The record does not show whether the churches paid a rental.[70]

The appellants said that by permitting religious groups to use school facilities on Sunday, the school trustees were

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[68]Ellis v. Board of Education of San Francisco Unified School District, 164 Pacific 2d (California) (1945).

[69]Southside Estates Baptist Church v. Board of Trustees of School Tax District Number 1, 115 Southern 2d 697 (Florida) (1959).

[70]Ibid., p. 698.

indirectly taking money from the public treasury to aid religious groups, an act which is a violation of the Florida Declaration of Rights. The appellees argued that the appellants had shown no direct expenditures of public funds.[71] A Florida statute was also used in the argument by the appellees. The enactment reads:

> . . .subject to law, the trustees of any district may provide for or permit the use of school buildings and grounds within the district, out of school hours during the school term or during vacation, for any legal assembly, or as community play centers, or may permit the same to be used as voting places in any primary, regular, or special election. The county board shall adopt rules and regulations necessary to protect school plants when used for such purposes, and shall provide for the use of school property other than that under the supervision of the trustees.[72]

Decision

The decree of the lower court was affirmed in the Florida Supreme Court. Justice Thornal, speaking for the Supreme Court, held that the action of the board of trustees in permitting the churches' temporary use did not violate the Declaration of Rights of the Florida Constitution. No federal constitutional violations were found by the court and an often quoted statement was given:

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[71]Ibid., p. 699.

[72]Ibid., p. 697-698.

> We find nothing in the conduct of the appellee trustees to suggest the involvement of public funds or property in the establishment of a religious or in preferring one religious faith over another. We agree with those courts which have observed that in the ultimate the American people are basically religious. Their spiritual or theological views might differ, but by and large, they are committed to the ideal that there should be a place for any and all religions in the scheme of our community and social life.[73]

Discussion

Discretion of the school trustees to determine the nature of "legal assemblies" was approved through the litigation. Interestingly, the court recognized that a number of diverse rulings had been given by other courts, but saw fit to align their thinking with those that allow use by religious groups. A growing trend to use the First and Fourteenth Amendments to the United States Constitution as a basis for legal challenges was also found.

East Meadow Community Concerts Association v. Board of Education of Union Free School District Number 3, County of Nassau

219 North Eastern 172 (1966)

Facts

East Meadow Community Concerts Association, a non-profit educational and cultural association, had presented

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[73]Ibid., p. 700.

an annual series of musical concerts for the past ten years in a high school auditorium. Permission to use the auditorium had been granted for use during 1966, including a concert scheduled for March 12, 1966, which featured Pete Seeger. In December, 1965, the school board withdrew permission to use the auditorium for the Pete Seeger concert on the basis that Seeger was a "highly controversial figure" who had been critical of United States policy in Vietnam. Possibility of disturbances during the concert was also given as a reason.[47]

The association brought action against the school board alleging violation of constitutional rights in cancelling use of the school building for the concert.[75]

Decision

The case, appealed to the Court of Appeals after an adverse judgment by the Supreme Court of New York, was tried on constitutional grounds. Justice Fuld, providing the opinion of the Appeals Court, expressed the general principle governing the matter:

> The state is not under a duty to make school buildings available for public gatherings, but if it elects to do so, it

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[74]East Meadow Community Concerts Association v. Board of Education of Union Free School District Number 3, County of Nassau, 219 North Eastern 2d 172 (New York) (1966).

[75]Ibid., p. 173-174.

> is required by constitutional provision to grant the use of such facilities 'in a reasonable and nondiscriminatory manner equally applicable to all and administered with equality to all'.[76]

The court took into consideration that the school board had allowed several uses of the auditorium including concerts by the same group at other times. In applying the general principle stated above, Justice Fuld expressed:

> . . . board is not barred from preventing use for an unlawful purpose, but in the case before use the justification asserted for canceling the permit is the unpopularity of (the performer's) views rather than the unlawfulness of the plaintiff's concert. The expression of controversial and unpopular views, is precisely what is protected by both the Federal and State Constitutions.[77]

Discussion

The East Meadow decision continued a trend to use the First and Fourteenth Amendments to the United States Constitution as a basis for legal appeals when use is denied or revoked by local school boards. No questions were raised in the decision concerning interference with the regular school program or damage to school property.

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[76]Ibid., p. 174.

[77]Ibid.

An interesting aspect of the case was that the time of the proposed concert had passed before the case was heard by the appeals court, yet the court heard the case on constitutional grounds.

Hunt v. Board of Education of County of Kanawha

321 Federal Supplement 1263 (1971)

Facts

The statutes of West Virginia do not specifically address use of school facilities by religious groups. Prior statutes had allowed religious use, but present statutes deleted mention of use by religious groups.

Action in the case was begun by a group of high school students who were prohibited from meeting before school hours to hold voluntary prayer meetings.[78] Action was brought in the Federal District Court on Constitutional grounds of freedom of speech, freedom of assembly, and free exercise of religious beliefs. A manual of administration of the Kanawha County Schools had a section which directed that all requests for use of school buildings for religious purposes were to be denied. School policy also required that no students would be in a school building without the supervision of a teacher.[79]

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[78]Hunt v. Board of Education of County of Kanawha, 321 F. Supp. 1263 (West Virginia) (1971).

[79]Ibid., p. 1264.

The plaintiffs had begun to meet on the premises of Herbert Hoover High School before school hours for the purpose of offering group prayers. Meetings had been initiated without the knowledge of the school staff. Once notified of the meetings, the school principal denied access to school facilities to the group.[80]

Decision

John A. Field, Jr., Chief Judge of the Federal District Court, determined that only two questions should be answered in the decision: first, whether the Board of Education had the authority to prohibit the use of school facilities for any religious purpose, and second, whether such prohibition is constitutionally permissable. Justice Field concluded that the answer to both questions must be in the affirmative.[81] In finding no constitutional deprivation, Judge Field stated:

> The position of official neutrality evidenced by the regulating of the Board of Education here in question does not bespeak government hostility toward the religious beliefs of any individuals, including the plaintiff herein, but is merely consistent with the well-established constitutional principle of separation of Church and State.[82]

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[80]Ibid.

[81]Ibid., p. 1265.

[82]Ibid., p. 1267.

Discussion

The findings of the court followed a pattern established in earlier church-state decisions such as McCollum v. Board of Education.[83] Validity of the complaint was judged on both the state statutory merits and constitutional merits.

The court noted that all religious use of school property was prohibited by school board regulation. Such prohibition was found to be in compliance with the West Virginia statute governing use by outside groups.

National Socialist White People's Party v. Ringers

473 F. 2d 1010 (1973)

Facts

Virginia Code Annotated of 1969 allowed local school boards to rent high school auditoriums during nonschool hours for any legal assembly as will not impair the efficiency of the schools. The National Socialist White People's Party appealed a district court ruling to the United States Fourth Circuit Court of Appeals. The District Court had denied the party's complaint to compel the Arlington County School Board to permit the party to use a high school audi-

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[83]McCollum v. Board of Education, 68 Supreme Court 461 (Illinois) (1958).

torium for a meeting to be held during nonschool hours.[84]

The Arlington County School Board had initially granted the party's application to use a high school auditorium for a public meeting. Permission was revoked when the party published a handbill announcing a rally inviting only white, non-Jewish persons to attend. The party claimed that the board's denial of a meeting place infringed the rights secured by the First and Fourteenth Amendments to the Federal Constitution.[85]

Decision

In reversing and remanding the decision of the district court, the majority of circuit court judges held that the school board's repeated exercise of its discretionary authority to rent school auditoriums for a nominal fee during on-school hours to public and private groups for meetings on a first-come, first-served basis, to the extent that the auditorium was not needed for school purposes, constituted an effective dedication of the auditorium for exercise of First Amendment rights.

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[84]National Socialist White People's Party v. Ringers, 473 F. 2d 1010 (1973).

[85]Ibid., p. 1019.

It was also found that the school board's denial of use of the public forum of a high school auditorium because of the political party's discriminatory membership policies constituted an invalid prior restraint, as if use had been denied on the basis of a controversial belief the party would be likely to express at the place.[86]

The court further held that exercise of First Amendment rights in a public forum dedicated to that purpose cannot be outweighed by state action doctrine. State espousal of racial views woudl not result from use of school facilities dedicated as a public forum, according to Judge Winter.[87]

Circuit Court Judge Butzner concurred in part and dissented in part with the majority of the circuit court. He concluded that the Fourteenth Amendment to the United States Federal Constitution does not authorize a federal court to compel a state to rent its property to an organization that bars black people from its membership. Judge Butzner also felt that contrary to the party's assertion, its First Amendment rights are not so overriding that its racially discriminatory membership practices are irrelevant.[88]

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[86]Ibid., p. 1010-1011.

[87]Ibid.

[88]Ibid., p. 1010-1023.

Discussion

The central issue in this case is the conflict of the rights of the state versus constitutional guarantees of the United States Constitution. The District Court decision had been based on possible violence and damage to the facilities and unconstitutionally involving the state in the party's racially discriminatory policies.

Even though the Supreme Court had ruled on discriminatory political parties in earlier decisions, the majority of the appeals court chose to give priority to the First Amendment rights of freedom of speech, association, and assembly.

Hennessey v. Independent School District Number 4

552 Pacific 2d 1141 (1976)

Facts

In this case, a parent-teacher association sought a writ of mandamus to require the Lincoln County School Board to allow use of school facilities for meeting of the parent-teacher organization. The District Court of Lincoln County had upheld the right of the school board to withhold use of school facilities from the parent-teacher group. The parent-teacher association appealed to the Supreme Court of Oklahoma claiming the action by the school board was arbitrary, discriminatory, and a denial of rights guaranteed bythe Constitutions of the United

States and of Oklahoma in that the board had allowed certain other groups access to school facilities for their meetings.[89]

The school board had allowed such groups as Lions Club, Young Homemakers' Organizations, and 4-H Clubs to use buildings as authorized under Oklahoma law. The parent-teacher group had applied several times to the superintendent and had been denied access while no evidence was present that other groups had been denied. With statutes giving boards discretion to determine uses, no constitutional challenge has been allowed if local boards ban all outside use. Once school boards exercise this discretion by allowing certain groups use of property for purposes determined by the local board, then they must not adopt a discriminatory policy as to who will be allowed access to facilities.

Knights of the Ku Klux Klan, Realm of Louisiana v. East Baton Rouge Parish School Board

578 Federal 2d 1122 (1978)

Facts

A local unit of the Ku Klux Klan brought suit against a school board questioning the constitutionality of an officially adopted policy under which groups advocating

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[89]Hennessey v. Independent School District Number 4, 552 P. 2d 1141 (Oklahoma) (1976).

racial discrimination were excluded from use of school facilities.[90] The United States District Court for the Middle District of Louisiana had denied temporary injunctive relief against the school board to apply this new policy to the Ku Klux Klan. Judge E. Gordon West, of the District Court, had spoken for the majority in saying that the policy did not violate equal protection. At some time after the first parent-teacher association request, the school board adopted rules which stated that the school board would not tolerate or continue affiliation with any organization which was unsupportive of the school board or any part of the school system.[91]

Decisions

Only one issue not dealing with constitutional issues was determined, that being that no evidence was presented that the parent-teacher association request would not be in the best interests of the community.[92]

The Supreme Court found the actions of the school board to be in violation of the First and Fourteenth Amendments to the Constitution of the United States as an

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[90]Knights of the Ku Klux Klan, Realm of Louisiana v. East Baton Rouge Parish School Board, 578 F. 2d 1122 (Louisiana) (1978).

[91]Ibid., p.1144.

[92]Ibid., p. 1144-1145.

abridgement of freedom of speech, and a denial of equal protection; they were also in violation of the Oklahoma Constitution.[93]

Discussion

In the decision, a need for harmonious balance between broad constitutional guarantees and discretionary authority to allow outside use under regulations and conditions prescribed by a local board was addressed. In all cases studied thus far or improperly deny rights of speech, assembly, or association. The Klan appealed to the Fifth Circuit Court of Appeals.[94]

East Baton Rouge Parish School Board had maintained a standing policy of allowing outside organizations to use school facilities for meetings and gatherings during nonschool hours. Permission was granted on a first-come first-serve basis on condition of a modest rental fee and the payment of any overtime custodial or janitorial expenses incurred. In granting this permission for such use, no distinction between applicants was made on the basis of their political or ideological views.[95]

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[93]Ibid.

[94]Ibid.

[95]Ibid., p. 1123.

On November 17, 1975, the Klan was granted permission to use a school gymnasium on November 22, 1975, for what it termed a patriotic meeting. However, the planned meeting did not take place. Dr. John Bell, Chief of the Branch Office for Civil Rights of the United States Department of Health, Education, and Welfare in Dallas, telephoned the school board on November 19 to say that the proposed use by the Ku Klux Klan would violate certain regulations to the Emergency School Aid Act and unless permission was revoked, federal funds might be cut off.[96] Bell's call put the school board in a dilemma. Eventually, it chose to revoke the granted use to the Klan. Even though Dr. Bell had retreated with his threat, the school board developed a new policy which discriminated among applicants on the basis of the content of the ideas they advocate, their membershp, and meeting-attendance policies, which, accordingly, excluded the Ku Klux Klan from using school facilities. The Klan immediately amended its appeal to include an attack on the new policy.[97]

Decision

Circuit Court Judge Gee, speaking for the Appeals Court, expressed only one basic issue in the case. This

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[96]Ibid.

[97]Ibid., p. 1124.

issue was the right of an agency of the state, consistent with the Constitution, to condition the off-time use of public school facilities on the political or ideological views of the applicant, on its membership policies, or who may be permitted to attend its proposed function.[98]

The court first applied the "public forum" doctrine enunciated by the Supreme Court in Grayned v. City of Rockford,[99] and found that the local board had historically permitted a variety of groups to use school facilities. In remanding the case to the District Court, no evidence to support a claim of possible violence and damage to school property was found. The court suggested that this might be presented during the re-hearing at the district level.[100]

Discussion

The ruling in National White People's Party v. Ringers was quoted a number of times in this case. An analogy was drawn concerning the state's responsibility for the views expressed during use that compared views expressed at a shopping mall to those expressed in a "public forum" gymnasium.[101]

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[98]Ibid.

[99]Grayned v. City of Rockford, 98 Supreme Court 229A (1972).

[100]Op. cit. p. 1125.

[101]Ibid., p. 1128.

The whole decision was centered around the advisability of a board of education's assuming the right to allow certain types of uses where ideas and policies were found to be suitable while prohibiting those it does not approve--all this being in the name of equal protection and civil rights.[102]

Resnick v. East Brunswick Township Board of Education

389 Atlantic 2d 944 (1978)

Facts

New Jersey statutes allow local school boards to adopt rules allowing use of school property during non-instructional hours for giving and receiving of instruction in any branch of education and holding of social, civic, and recreational meetings and entertainments and other purposes.[103]

Since 1962, the East Brunswick Township Board of Education has allowed a number of local groups to use its school facilities during nonschool hours. Groups using facilities have included various religious groups as well as other nonprofit social, civic, recreational, and charitable groups.[104]

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[102]Ibid.

[103]Resnick v. East Brunswick Township Board of Education, 389 A. 2d 944 (New Jersey) (1978).

[104]Ibid., p. 946.

Three religious groups--East Brunswick Baptist Church, Nativity Evangelical Lutheran Church, and the Reform Temple of East Brunswick--had rented school facilities including classrooms, all-purpose rooms, and gymnasiums. Each of the groups used facilities during nonschool hours for religious instruction and services. Each of the groups had building plans which would provide their own facilities for these uses. A rental fee was assessed which approximated the cost of janitorial services. Religious groups were required to make annual reapplications for use.[105]

Upon learning of the use of East Brunswick schools for religious purposes, Abraham Resnick complained to the board of education. When the school board took no action, Resnick filed a complaint in the Chancery Court. His complaint alleged that use of schools by religious groups violated the state statute governing outside use of school facilities and the United States and New Jersey Constitutions.[106]

Decision

The trial court held that the state statute governing use of school facilities neither contemplated nor permitted

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[105]Ibid.

[106]Ibid., p. 948.

the use of public schools by religious groups for worship services, but that Sunday schools and Hebrew instruction were within permitted uses of the state statute. Use by the groups was also found to involve an outlay of taxpayer funds for utilities and thus violated the provisions of the state constitution. The court went on to state that a rental based on actual cost would alleviate this problem.[107]

The trial court also affirmed the complaint that use of schools for religious worship and instruction violated the First and Fourteenth Amendments to the United States Constitution. Excessive entanglement was found based on administrative responsibilities of the employees of the board, political entanglement in subjecting defendant board to pressures from those promoting use and those opposing use, and excessive entanglement in the storage of religious materials in school buildings where they were accessible to children during school hours.[108]

Limits to the decision were indicated by the court's statement that its ruling did not deal with rental to religious groups at a rate that approximated what would be charged on the open market for comparable private facilities,

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[107]Ibid.

[108]Ibid., p. 948-949.

nor did it cover temporary use of public school facilities during emergencies such as after fire or flood.[109]

The defendants appealed to Superior Court, which heard the arguments and affirmed the decision for essentially the same reason. The defendants again appealed to the Supreme Court of New Jersey.

The Supreme Court of New Jersey presented its decision in three areas: nonconstitutional grounds, state constitutional grounds, and federal constitutional grounds. By a 5-2 margin, the Supreme Court reversed the decision of the lower court.[110]

On nonconstitutional grounds the court concluded that no statutory bar to religious services or instruction being carried out in public schools during periods when facilities were not being used for school purposes was present. On state constitutional grounds the court ruled that school was made available on the same terms and conditions to religious groups as to other nonprofit groups. The court found no interference with the regular school program. Full reimbursement of rental costs was required to clear any state constitutional barrier.[111]

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[109]Ibid.

[110]Ibid., p. 949-953.

[111]Ibid.

Federal constitutional issues related to whether permitting religious groups to rent public school facilities at a rate reflective of the cost incurred by the school board ran afoul of the "establishment clause" of the First Amendment to the United States Constitution. The court rejected the idea that the board was impermissibly subsidizing religion.[112] No preference to a particular religious group was found based on the number of different religious groups using facilities.[113]

Decision

The tripartite test was applied in the decision of the Supreme Court. Federal constitutional issues were weighed in light of the landmark decisions of the United States Supreme Court in the area of church-state relations. The Southside Estates decision, discussed earlier in this chapter, was given heavy emphasis in the decision.

The dissenting justices saw the ruling as another fissure in the wall of separation between church and state. Justice Clifford, in dissenting the opinion, saw a need to guard against excessive governmental involvement in religious affairs, no matter how pure the motive may be.[114]

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[112]Ibid.

[113]Ibid.

[114]Ibid., p. 960-968.

Kiddie Korner Day Schools, Inc. v. Charlotte-Mecklenburg Board of Education

N.C. App., 285 S.E. 2d 110 (1981)

Facts

The plaintiffs in this case were day care operators in Charlotte, North Carolina. The defendants are the duly elected corporate body under the laws of the state.[115]

The controversy arose over the school board's involvement in the initiation and operation of the Dilworth Extended Day Enrichment program, which was designed to alleviate the problem of "latch-key" children. Instead of leaving school grounds at the end of the day, students enrolled in the program remained at school where, under the supervision of program staff, they did homework or studied, and engaged in other activities. Students taking part in the program, which operates from 2:00-5:30 p.m., were not required to stay until 5:30, and parents chose days and times of attendance. The program was self-sufficient and no cost was incurred by the school board with the exception of incidental cost of heat and lights.[116]

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[115]Kiddie Korner Day Schools, Inc. v. Charlotte-Mecklenburg Board of Education, 285 S.E. 2d 110 (North Carolina) (1981).

[116]Ibid.

The complaint by Kiddie Korner Day Schools, Inc. was in the following seven areas:

(1) that the program violated the Constitutional mandate requiring a general and uniform system of free public schools;

(2) that school funds were used to establish and maintain the program;

(3) that the expenditures were not for public purposes and have not been approved by the voters;

(4) that the School Board was in unauthorized competition with the plaintiffs;

(5) that the program violated the personal and property rights of the plaintiff;

(6) that there was no statutory authorization for the program;

(7) that the legislature could not delegate to the school board the power or authority to maintain the program.[117]

Decision

Judge Becton, speaking for the court, ruled that the program should not be judged as a day-care center, but rather an educational program sponsored by a school-organized committee.[118]

On the first point of contention, Judge Becton ruled that a mandate to have a uniform system would be impossible

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[117]Ibid.

[118]Ibid., p. 113-115.

because every school has differences. On the second point, the ruling provided that the program was self-sufficient. The school board was also found to be free under statutes of North Carolina to allow the use of facilities. No violation of the First and Fourteenth Amendments was found.[119]

Discussion

An important issue in the case was the property rights of the day care operators. Although the program did present competition to the day-care operators, no vested constitutional right to day-care service by private groups was found.

Country Hills Christian Church v. unified School District Number 512, Johnson County

560 Federal Supplement 1207 (1983)

Facts

Country Hills Christian Church had requested use of public school facilities to hold religious meetings on numerous occasions. Kansas statutes allow school districts to open any or all school buildings for community purposes, and to adopt rules and regulations governing such use of buildings. This school district had policies

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[119]Ibid.

which had allowed a number of different groups, including several churches, to use its facilities.[120]

Country Hills Christian Church had initially been granted use of school facilities. When the superintendent learned that religious services were planned, permission was withdrawn. Withdrawal was based on advice from legal counsel that allowing use would be a violation of the "establishment clause" of the First Amendment to the United States Constitution. Country Hills members requested the school board to amend the policy to allow use by religious groups. The school board refused and Country Hills then brought suit against the board in United States District Court.[121]

Three questions were determined in the District Court:

(1) Has the school board created a public forum?

(2) Can the defendants constitutionally deny a group access to a public forum because the group plans to use the forum for religious purposes?

(3) Does the Establishment Clause of the First Amendment prohibit defendants from allowing religious uses of school

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[120]Country Hills Christian Church v. Unified School District Number 512, Johnson County, 512 F. Supp. 1207 (Kansas) (1983).

[121]Ibid, p. 1212-1214.

> on the same terms and conditions as they apply to other groups.[122]

Decision

Judge Saffels presented the findings of the court. On the first point, the court stated that defendants had made facilities available to a variety of groups that board policies created a public forum.[123]

On the second point, Justice Saffels quoted the Widmar v. Vincent decision which stated that religious worship and discussion are forms of speech and association protected by the First Amendment.[124] The view taken by the court on this point was that Country Hills Christian Church had been denied access to a public forum based solely on their exercise of free speech.[125]

On the third point concerning use of the establishment clause, the court held that the school board was required to be neutral in relations with groups of religious believers, but neither adverse nor favorable towards any group. The court also examined the effects of the

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[122]Ibid.

[123]Ibid.

[124]Widmar v. Vincent, 454 U.S. 263 (1981).

[125]Country Hills v. Unified School District, op. cit., p. 1215-1218.

tripartite test and found no violations of the test in the case presented.[126]

Discussion

The decision reiterated rulings in other cases dealing with public forms which stated that once a school is opened as a public forum equal access must be provided to all groups. The school board, on the advice of legal counsel, had chosen to use the tripartite test developed in the Lemon decision as a basis for denial of use to the religious group. No violation of the tripartite test was found in allowing the use by the church in this case.

The decision could have interesting applications to other situations arising during requests for use of school facilities. This ruling may make legal use of school facilities for student prayer groups after school hours.

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[126]Ibid.

CHAPTER VI

SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

Citizens frequently request use of public school facilities for private purposes. Responses to requests given by school boards and administrators have opened numerous areas of litigation. Validity of litigation has been judged in light of varying statutory and constitutional provisions of the states. Federal constitutional issues have also been raised in many situations.

Legal principles presented in this study relating to private use of public school facilities are not exclusive to the area. First and Fourteenth Amendment concerns as well as school board discretion reach into a variety of other areas addressed by school boards and administrators. Uniqueness arises when broad principles are applied to the narrow area of private use of public school facilities.

Summary

State legislatures in forty-four states have enacted statutes providing guidelines for regulation of public school facilities by private groups. Laws range from very specific to very broad methods of expression.

Three broad classifications appear from review of state statutes which provide guidelines for private use of public school facilities. These classifications show

the range of allowable use and the authority of school boards to regulate use by private groups.

Statutes Mandating Broad Use

The intent of mandating statutes is that use will be granted subject to regulations by local school boards. Five states (California, Hawaii, Maryland, Ohio, and Utah) fall in this classification.

Use for Specific or General Purposes as Allowed by Local School Boards

Thirty-five states and the District of Columbia have statutes describing uses for specific or general purposes as allowed by local school boards. Typically, statutes included terms such as "may allow" or "may permit" instead of "shall allow".

Statutes in this classification often provide lists of suggested activities which may or may not be allowed by school boards. Other possible activities are not forbidden. Methods of development of rules and regulations are also frequently provided.

Statutes Not Specifically Addressing Conditions of Private Use

Ten states are without statutes or have statutes not specifically addressing private use of public school facilities. States in this classification generally have

statutes that describe methods of accountability of school boards for control of school property.

Statutory Responsibility for Cost of Private Use

Seventeen states have chosen not to mention cost of use specifically, thus leaving school boards wide discretion to determine cost responsibility. Twenty-seven states make users responsible for all costs incurred by private use. Fourteen states provide funding from state sources for certain categories of use. Seven states provide funding through community school programs or civic center programs.

Types of Allowed Users

Sixteen states have laws specifically addressing use by religious groups; these states allow use of public school facilities for religious meetings under regulations determined by school boards or boards of trustees.

Twenty-six states cite use of school facilities for political meetings or as polling places. Statutes vary in descriptions of political or election use. Several states allow political use only following a vote of the people or only if the political group represents a certain percentage of the electorate.

Four states have enacted statutes concerning use by subversive groups. Most of these states have mandated-use statutes.

Recreational use and educational use are the most frequently mentioned activities cited by statute. Thirty states specifically mention use for educational purposes and twenty-seven states mention use for recreational purposes.

Four states have statutory provisions for operation of after-school child-care programs. California, Hawaii, Maryland, and Tennessee are included.

States with statutes concerning private use of facilities vest authority for control and regulation of school property in local governmental agencies. Noninterference with regular school programs is also frequently mentioned.

In the introductory chapter some basic questions were proposed. Discussion developed around those six questions will provide insight concerning private use of public elementary and secondary school litigation.

1. <u>What are the major legal issues regarding private use of public elementary and secondary school facilities</u>?

Legal issues relating to the topic are based on these areas: (1) nonconstitutional grounds, (2) state constitutional grounds, and (3) federal constitutional grounds. Because of the diversity in each of these areas, a definitive list of all legal issues is difficult to delineate.

However, certain issues tend to hold true in most jurisdictions.

The primary issue deals with whether school boards used proper discretion in granting or rejecting certain uses and the conditions of the decisions. Conditions of use have often involved the following general issues:

1. Determination of interference with the regular school program
2. Determination of possible damage to school property
3. Determination whether the use will be casual, temporary, and incidental
4. Determination of constitutional and statutory authority of school boards to allow or prohibit use
5. Determination whether use has been allowed in a discriminatory or arbitrary manner

Several issues have arisen under certain categories of use. Often issues raised fall within the framework of federal constitutional concerns.

Religious use requests often have raised issues concerning neutrality of school boards as required by the establishment clause of the First Amendment to the United States Constitution. Other First and Fourteenth Amendment issues raised in litigation have centered around exclusion from a public forum, equal access, and the "free exercise clause."

Commercial use requests have created issues dealing with property rights of individuals, determining whether

use promotes personal gain, and rights of school boards to operate school cafeterias and school stores. Length of use for commercial purposes has also been questioned.

Requests from political groups have developed issues of First Amendment rights of freedom of speech, association, and assembly. Other issues have centered on possible disruptions of the regular school program, discriminatory practices when controversial or unpopular views are anticipated during use, required nonsubversive oaths, and violations of the equal protection clause.

Entirely new issues have been created by requests from teacher associations and unions for use of school facilities. The major issue involves granting exclusive rights for access to facilities to particular groups. Compelling state interests have also been an issue.

The legal issues are simply measures of school board application of statutory and constitutional allowances.

2. <u>What major legal principles emerge from landmark judicial decisions that are applicable to the statutory provisions of the states</u>?

Questions relating to private use of public school facilities are answered as each relates to the statutes of the state where the litigation occurs, the constitutional provisions of that state, and federal constitutional freedoms relating to the proposed use. Federal and state constitu-

tional freedoms must not be violated by state statutes or school board regulations. Any school board regulation must not be in contravention to state statutes.

Certain general principles have been established by judicial action at various levels:

1) School boards or other local authorities are vested with control of school property

2) School authorities may prohibit use that interferes with the regular school program

3) Use may be prohibited if there is substantial proof of damage to school property

4) Approved uses must be temporary, casual, and incidental

5) Use must be granted to groups in a non-discriminatory and nonarbitrary manner

6) When allowed by statute, school authorities may deny all requests for use

Litigation involving religious use of public school facilities has created certain principles unique to religious use. Generally, religious use has been allowed if it is not barred by statute or if use is included in school board policies. General principles apply to the area of religious use. Courts have found that once facilities are opened to one religious groups, they must be opened to all equally. Principles established for religious use include the following:

1) Direct or indirect use of public school funds to aid any religious denomination is illegal (In most instances temporary, casual, and incidental use of facilities has been found not to provide aid.)

2) Religious use cases will be judged in light of the "establishment clause" of the First Amendment to the Constitution of the United States

3) Religious groups must pay full reimbursement of cost incurred by use

4) Conflict of "establishment clause" and "free exercise clause" are resolved by the facts of a particular case

Use by political and subversive groups has also spawned lawsuits creating principles unique to this group:

1) All political groups must be treated in a non-discrimnatory manner (It has just because the school board disagreed with the philosophy of a particular group, such disagreement could not be used to ban use.)

2) Once school boards open facilities to use by political groups, constitutional rights of freedom of speech, assembly, and access to a public forum must not be abridged

3) A nonsubversive oath cannot be required as a condition of use

4) The burden of proving a group is subversive or may damage school facilities belongs to the school board.

Use of school facilities for commercial purposes has brought about court action to determine legally acceptable principles for such use. Principles include the following:

1) School facilities cannot be used when the primary purpose is personal gain

2) Facilities may be rented for uses which duplicate business enterprises when these uses are occasional and temporary

3) School boards have a legal right to operate school stores and cafeterias

4) Facilities may not be leased for permanent businesses on school grounds

Social use was a much judicated area in the early part of the century. Court rulings have established that dances and other social activities are legal when not in contravention to the general principles for nonschool use.

Legal principles, which apply to every case concerning a particular type of use, are impossible to extract from the body of case law. Sharp differences between court rulings still occur. Differences in rulings are often the result of diversity of state statutes. Others result because of philosophy and customs of a particular geographical area.

3. Based on recent court cases, what issues related to private use of public school facilities are being litigated or are likely to be?

The major issue litigated in facility use cases is the manner in which school boards have applied the statutory and constitutional authority of their respective states. Freedoms guaranteed by the First and Fourteenth Amendments to the Constitution of the United States have also been used as challenges to school board action and constitutionality of state statutes.

A tendency toward liberalization of the types of permissable private use of school facilities has occurred in recent court decisions. The Resnick case is typical of the division of issues presented in most litigation. Issues fall into three broad categories: (1) state statutory

issues, (2) state constitutional issues, and (3) federal constitutional issues.

The Resnick case, Country Hills case, and National Socialist White People's Party cases present reasonably clear models for judicial process for addressing issues relating to private use of public school facilities. General principles of noninterference with regular school programs, casual and temporary use, and granting of use in a nondiscriminatory and nonarbitrary manner seem to be well established.

Federal constitutional issues have been present in the majority of cases processed during the last 25 years. The constitutional issues of freedom of speech and equal protection seem to be the most litigated constitutional issues.

Religious use continues to be a prime issue for judicial action. New issues relating to "creative" approaches to school-community cooperation have come to the forefront. The Kiddie Korner Day Care case addressed the new and fertile area of after-school care programs.

Recent teacher association cases have brought issues of exclusive rights of access to school facilities by representative unions before the courts. Freedom of association has also been an issue in these teacher union cases.

4. What trends can be determined from analysis of the statutory provisions of the states?

The legislatures of the states have developed a more permissive attitude toward private use of public school facilities. According to information presented in Chapter II, seventeen states had provided "wider-use" legislation by 1914. By 1964, this total had risen to thirty states with statutes specifically allowing private use of school facilities. By 1984, forty-four states had enacted statutes providing guidelines for regulation of public school facilities use by private groups. Twenty-seven states chose to develop statutes allowing expanded use during the seventy-year period between 1914 and 1984.

Five states have specified statutes allowing school facilities to be used for after-school care programs. Five states have laws mandating use by private groups under board regulations.

State statutes show much diversity in their language and uses allowed. This diversity has helped fuel the diverse judicial interpretations of allowed private use of public school facilities.

5. Based on established legal precedent, what are the legally acceptable criteria for private use of public elementary and secondary school facilities?

Legally acceptable criteria for determining whether school boards have acted correctly in permitting or denying

private use of public school facilities are based on state statutes, state constitutions, and the Constitution of the United States. Statutory and constitutional precedents determine whether school boards have acted in arbitrary, capricious, or illegal ways. Early cases tended to rely on fiscal limitations. Later cases have relied more on precedents established by commonly held opinions of the meaning of the First and Fourteenth Amendments to the Constitution of the United States.

Conclusions

The power of local school boards to regulate use of public school facilities by private groups has been questioned on many occasions in state and federal courts. Many states have chosen to encourage expanded use of school facilities by private groups through enactment of more permissive state legislation. Permissive legislation has resulted from favorable public opinion that public school facilities should be widely used by private groups.

Early court decisions were inclined toward limited use of school facilities by nonschool groups. As public opinion and state statutes became more permissive, court rulings also took a more open approach to expanded uses.

As public use of school facilities increased, legal complaints concerning authority of school boards to control and regulate outside use increased. Court proceedings have questioned the rights of religious, political, com-

mercial, and other groups to use facilities and under what conditions and regulations such use might be permitted.

Although the statutes of the forty-four states with permissive statutes and court rulings vary widely, certain common principles have emerged as follows:

1) Decisions of courts are made in light of statutory and constitutional issues relating to specific uses.

2) Courts will not interfere with decisions of local school boards unless violations of statutory or constitutional issues are found.

3) School authorities may prohibit use that interferes with the regular school program.

4) Temporary, casual, and incidental use of school property is allowed under board discretion.

5) School boards must not allow use in an arbitrary, capricious, discriminatory, or illegal manner.

6) School boards may deny all requests for use when allowed by statute.

7) Permissability of use by religious groups is evaluated in light of the First Amendment to the Constitution of the United States.

8) Once school boards open facilities to use by political groups, constitutional rights of freedom of speech, assembly, and access to a public forum must not be abridged.

9) School boards and state legislatures cannot require nonsubversive oaths as a condition for use.

10) Burden of proving a group is subversive or may damage school property belongs to the school board.

11) School facilities cannot be used for commercial purposes when the primary purpose is personal financial gain.

12) School boards have a legal right to operate school stores and school cafeterias.

13) School facilities cannot be leased for permanent businesses on school grounds.

14) School boards must operate within their own rules and regulations, statutory entitlement, state constitutions, and the Constitution of the United States.

Legality of private use of school property continues to be in a state of flux because of the diversity of state statutes. Generally, decisions relating to private use of school facilities are made first in light of state statutes and state constitutions. Broader issues relating to the federal Constitution are determined in view of prevailing rulings of the Federal Courts.

Recommendations for Further Study

This study has dealt strictly with private use of public school facilities. A number of interesting areas not addressed in the study were located during the review of literature and review of statutes and court cases. Areas of possible further study include (1) tort liability during nonschool use; (2) use of school buses for private purposes; (3) legality of private schools using public school facilities; (4) legality of released time programs for sectarian purposes; (5) legality of one school district allowing unused property to be used by other school districts; (6) legality of long-term leases of public school property for civic, social, or

commercial purposes; and (7) legality of facility improvements based on long-term leases.

The recent development of community school programs also increases possibilities of conflict with other governmental agencies in providing services to various citizens. Rights of teacher unions to access to school property also presents fertile ground for future litigation, and hence, future study.

Further study should also be undertaken to determine the status of new statutes and new court cases as the decade of 1980's comes to a close.

BIBLIOGRAPHY

A. PRIMARY SOURCES

1. Constitutional and Statutory Laws

Alabama. Code, Vol. 7, Sec. 9-15-36 (1975).

Alabama. Code, Vol. 23, Sec. 16-10-11 (1975).

Alabama. Code, Vol. 23, Sec. 17-5-12 (1975).

Alaska. Constitution, Vol. 1, Art. 7, Sec. 1.

Alaska. Statutes, Vol 4, Sec. 14.02.100 (1982).

Alaska. Statutes, Vol. 4, Sec. 14.36.010-14.36.070 (1982).

Arizona. Constitution, Vol. 1, Art. 21, Sec. 2.

Arizona. Revised Statutes Annotated, Vol. 6-B, Sec. 15-342 (Supp. 1983).

Arizona. Revised Statues Annotated, Vol. 6-B, Sec. 15-363-364 (Supp. 1983).

Arizona. Revised Statues Annotated, Vol. 6-B, Sec. 15-1105 (Supp. 1983).

Arizona. Revised Statues Annotated, Vol. 6-A, Sec. 15-1141-1143 (Supp. 1983).

Arkansas. Statues Annotated, Vol. 2-B, Sec. 19-3605 (1980).

Arkansas. Statutes Annotated, Vol. 7, Sec. 80-509 (1980).

Arkansas. Statues Annotated, Vol. 7, Sec. 80-517-518 (1980).

California. Education Code, Vol. 26, Sec. 39470-39476 (West 1978 and West Supp. 1984).

California. Education Code, Vol. 26, Sec. 39601 (West 1978).

California. Education Code, Vol. 26, Sec. 40040-40046 (West Supp. 1984).

California. Elections Code, Vol. 28-C, Sec.1504 (West Supp. 1984).

Colorado. Revised Statutes, Vol. 19, Sec. 22-32-118 (Supp. 1982).

Connecticut. General Statutes Annotated, Vol. 5-A, Sec. 10-239 (Supp. 1984).

Delaware. Code Annotated, Vol. 8, Title 15, Sec. 4512 (1981).

District of Columbia. Code Annotated, Vol. 4, Sec. 8-223 (1981).

District of Columbia. Code Annotated, Vol. 7, Sec. 31-201 (1981).

Florida. Statues, Vol 11, Sec. 235.02, (Supp. 1981).

Georgia. Code Annotated, Vol. 17, Sec. 20-20520 (Supp. 1983).

Hawaii. Revised Statutes, Vol. 4, Sec. 296-2 (1976).

Hawaii. Revised Statutes, Vol. 4, Sec. 296-49 (1976).

Hawaii. Revised Statutes, Vol. 4, Sec. 298-22-298-24 (1976 and Supp. 1983).

Illinois. Annotated Statutes, Chap. 122, Sec. 10-22.10 (Smith-Hurd Supp. 1983-1984).

Indiana. Code Annotated, Title 20, Sec. 5-6-7 (Burns 1975).

Indiana. Code Annotated, Title 20, Sec. 5-37-1 (Burns Supp. 1983).

Indiana. Code Annotated, Title 20, Sec. 5-37-2 (Burns 1975).

Indiana. Code Annotated, Title 20, Sec. 5-38-1 (Burns 1975).

Indiana. Code Annotated, Title 20, Sec. 5-39-1 (Burns Supp. 1983).

Iowa. Code Annotated, Vol. 4, Sec. 49.24 (West Supp. 1983-84).

Iowa. Code Annotated, Vol. 23, SEc. 297.9 (West Supp. 1983-1984).

Kansas. Statutes Annotated, Vol. 5-A, Sec. 72-1623 (1980).

Kentucky. Revised Statutes Annotated, Vol. 7, Sec. 162.050 (Bobbs-Merrill 1980).

Louisiana. Revised Statutes Annotated, Vol. 13, Sec. 17.81 (West 1982).

Louisiana. Revised Statutes Annotated, Vol. 13, Sec. 17.151 (West 1982).

Maine. Revised Statutes Annotated, Vol. 11, Title 20-A, Sec. 1001 (1983).

Maine. Revised Statutes Annotated, Vol. 11, Title 20-A, Sec. 8604 (1983).

Maryland. Education Code Annotated, Sec. 7-108 (1978 and Supp. 1983).

Maryland. Eduation Code Annotated, Sec. 7-109 (1978).

Maryland. Education Code Annotated, Sec. 7-110 (1978).

Massachusetts. Annotated Laws, Chap. 71, Sec. 71 (Michie/Law Co-op. 1978).

Michigan. Statutes Annotated, Vol. 11-A, Sec. 15.41268 (Callaghan 1979).

Minnesota. Statutes Annotated, Vol. 10, Sec. 123.36 (West 1960).

Mississippi. Code Annotated, Title 37, Sec. 7-301 (k) (Supp. 1983).

Missouri. Annotated Statutes, Vol. 11-A, Sec. 177.031 (Vernon Supp. 1984).

Montana. Code Annotated, Title 13, Sec. 3-105 (1983).

Montana. Code Annotated, Title 20, Sec. 6-607 (1983).

Montana. Code Annotated, Title 20, Sec. 7-203 (1983).

Nebraska. Revised Statutes, Vol. 5, Sec. 79-4142 (1981).

Nevada. Revised Statutes

New Hampshire. Revised Statutes Annotated, Vol. 2-B, Sec. 199:22 (1977).

New Jersey. Statutes Annotated, Vol. 18-A, Sec. 20-34 (West 1968).

New Jersey. Statutes Annotated, Vol. 18-A, Sec. 50-1 (West 1968).

New Jersey. Statutes Annotated, Vol. 18-A, Sec. 51-6 (West Supp. 1983-1984).

New Mexico. Statutes Annotated, Vol. 5, Sec. 21-14-4 (1978).

New York. Education Law, Vol. 16, Sec. 414 (McKinney 1969).

North Carolina. General Statutes, Vol. 3-A, Part 2, Sec. 115C-203-209 (1983).

North Carolina. General Statutes, Vol. 3-A, Part 2, Sec. 115C-524 (1983).

North Carolina. General Statutes, Vol. 3-A, Part 2, Sec. 115C-527 (1983).

North Dakota. Central Code, Vol. 3-B, SEc. 15-35-14 (1981).

Ohio. Revised Code Annotated, Title 33, Sec. 3313.75-3313.78 (Page 1980).

Oklahoma. Statutes Annotated, Title 70, Sec. 5-130 (West 1972).

Oregon. Revised Statutes, Vol. 3, Sec. 332.172 (1983).

Pennsylvania. Statutes Annotated, Title 24, Sec. 7-775 Purdon Supp. 1983-1984).

Pennsylvania. Statutes Annotated, Title 25, Sec. 951-16 (d) (Purdon 1962).

Rhode Island. General Laws, Vol. 3-A, Sec. 16-2-15 (1981).

South Carolina. Code Annotated, Vol. 20, Sec. 59-19-30 (5) (Law. Co-op. 1977).

South Dakota. Codified Laws Annotated, Vol. 5, Sec. 13-24-20 (Supp. 1983).

Tennessee. Code Annotated, Vol. 9, Sec. 49-2-203 (1983).

Texas. Education Code Annotated, Vol 2, Sec. 20.21 and 20.23 (Vernon 1972).

Texas. Election Code Annotated, Vol. 9, Sec. 2.03 (Vernon 1967).

United States Constitution, Amendment 1 (1791).

United States Constitution, Amendment 10 (1791).

United States Constitution, Amendment 14.

Utah. Code Annotated, Vol. 5-B, Sec. 53-21-1 (1981).

Utah. Code Annotated, Vol. 5-B, Sec. 53-21-3-53-21-5 (1981 and Supp. 1983).

Vermont. Statutes Annotated, Title 16, Sec. 3741 (1982).

Virginia. Code, Vol. 5, Sec. 22.1-131-22.1-132 (1980).

Washington. Revised Code Annotated, Title 28A, Sec. 58.105 (1982).

West Virginia. Code, Vol. 7, Sec. 18-5-19 (1984).

Wisconsin. Statutes Annotated, Vol. 5, Sec. 40.30 (West 1966).

Wyoming. Statutes, Vol. 5, Sec. 21-3-111 (1977).

2. Court Cases

American Civil Liberties Union of Southern California v. Board of Education of City of Los Angeles, 359 P. 2d 45 (California, 1961).

American Civil Liberties Union of Southern California v. Board of Education of City of Los Angeles, 379 P. 2d 16 (California, 1963).

American Civil Liberties Union of Southern California v. of Education of San Diego Unified School District, 28 Cal. Rep. 712 (California, 1963).

Baer v. Kolmorgen, 181 N.Y.S. 2d 230 (New York, 1958).

Baggerly v. Lee, 73 N.E. 921 (Indiana, 1905).

Beard v. Board of Education, 16 P. 2d 900 (Utah, 1931).

Bender v. Streabich, 37 A. 853 (Pennsylvania, 1897).

Bozeman v. Morrow, 34 S.W. 2d 654 (Texas, 1931).

Boyd v. Mitchell, 62 S.W. 61 (Arkansas, 1901).

Brooks v. Elder, 189 N.W. 284 (Nebraska, 1922).

Cannon v. Towner, 70 2d N.Y.S. 303 (New York, 1947).

Carter v. Lake City Baseball Club, 62 S.E. 2d 470 (South Carolina, 1950).

Chaplin v. Hill, 24 Vermont 528 (Vermont, 1852).

Cook v. Chamberlain, 225 N.W. L41 (Wisconsin, 1929).

Cost v. Shinault, 166 S.W. 704 (Arkansas, 1914).

Country Hills Christian Chruch v. Unified School Distric Number 512, Johnson County, 560 F. Supp. 1207 (Kansas), 1983).

Dade County Classroom Teachers Association, Inc. v. Ryan, 225 S. 2d 903 (Florida, 1969).

Danskin v. San Diego Unified School District, 171 P. 2d 885 (California, 1946).

Davis v. Boget, 50Iowa 11 (Iowa, 1878).

Demers v. Collins, 201 A. 2d 477 (Rhode Island, 1964).

Dohrenwend v. Board of Education, 227 N.Y.S. 2d 505, (New York, 1962).

Dorton v. Hearn, 67 Missouri 301, (Missouri, 1878).

East Meadow Community Concerts Association v. Board of Education of Union Free School District Number 3, 219 N.E. 2d 172, (New York, 1966).

Ellis v. Board of Education of San Francisco Unified School District, 164 P. 2d 65, (California, 1945).

Ellis v. Dixon, 120 N.Y.S. 2d 854, (New York, 1953).

Federation of Delaware Teachers, v. De La Warr Board of Education, 335 F. Supp. 386, (Delaware, 1971).

George v. School District Number 47, 6 Met. 497, (Massachusetts, 1843).

Givens Jewelers of Bossier, Inc. v. Rich, 313 S. 2d 913, (Louisiana, 1975).

Goodman v. Board of Education of San Francisco Unified School District, 120 P. 2d 665, (California, 1941).

Goodman v. School District of Denver, 32 F. 2d 586, (Colorado, 1929).

Gotlieb Knabe and Company v. Macklin, 71 A. 949, (Maryland, 1909).

Grayned v. City of Rockford, 98 Supreme Court 2294, (1972).

Greisinger v. Grand Rapids Board of Education, 100 N.E. 2d 294, (Ohio, 1949).

Hall v. Shelby County Board of Education, 472 S.W. 2d 489, (Kentucky, 1971).

Hempel v. School District of Snohomish County, 59 P. 2d 729, (Washington, 1936).

Hennessey v. Independent School District Number 4, 552 P. 2d 1141, (Oklahoma, 1976).

Hunt v. Board of Education of Kanawha County, 321 F. Supp. 1263, (West Virginia, 1971).

Hysong v. School District, 30 A. 482, (Pennsylvania, 1861).

Kiddie Korner Day Schools, Inc. v. Charlotte-Mecklenburg Board of Education, 285 S.E. 2d 110, (North Carolina, 1981).

Knights of the Ku Klux Klan, Realm of Louisiana v. East Baton Rouge Parish School Board, 578 F. 2d 1122, (Louisiana, 1978).

Laglow v. Hill, 87 S.W. 369, (Arkansas, 1914).

Lemon v. Kurtzman, 403 U.S. 602, 612m 613, (1971).

Lewis v. Bateman, 73 P. 509, (Utah, 1903).

Lewis v. Board of Education of City of New York, 285 N.Y.S. 164, (New York, 1935).

Local 858 of American Federation of Teachers v. School District Number 1, 314 F. Supp. 1069, (Colorado, 1970).

McClure v. Board of Education, 176 P. 711, (California, 1918).

McCollum v. Board of Education, 68 Supreme Court 461, (Illinois, 1958).

Merryman v. School District Number 16, 5 P. 2d 267, (Wyoming, 1931).

Michael Friedman as President of Bay Shore Classroom Teachers Association v. Union Free School District Number 1, 314 F. Supp. 223, (New York, 1970).

National Socialist White People's Party v. Ringers, 473 Fed Rep. 2d 1010, (Virginia, 1973)..

Nichols v. School Directors, 34 Am. Rep. 160, (Illinois, 1879).

Payroll Guarantee Association v. Board of Education of San Francisco Unified School District, 163 P. 2d 433, (California, 1945).

Presley v. Vernon Parish School Board, 139 So. 692, (Louisiana, 1932).

Ralph v. Orleans Parish School Board, 104 So. 490, (Louisiana, 1925).

Resnick v. East Brunswick Township Board of Education, 389 A. 2d 944, (New Jersey, 1978).

Ristene v. Philadelphia School District, 26 Pa. D. & C. 655, (Pennsylvania, 1936).

Royce Independent School District v. Reinhardt, 159 S.W. 1010, (Texas, 1913).

Russell v. Dobbs, 37 Vermont 497, (Vermont, 1865).

School District Number 8 v. Arnold, 21 Wisconsin 665, (Wisconsin, 1867).

Scofield v. Eighth School District, 27 Connecticut 499, (Connecitcut, 1858).

Shelton v. Centre School District, 25 Connecticut 224, (Connecticut, 1865).

Smilie v. Taft Stadium Board of Control, 205 P. 2d 301, (Oklahoma, 1949).

Southside Estates Baptist Church v. Board of Trustees of School Tax District Number 1, 115 So. 2d 697, (Florida, 1959).

Spencer v. Joint School District Number 6, 22 Am. Rep. 268, (Kansas, 1875).

Stanton v. Board of Education, 76 N.Y.S. 2d 559, (New York, 1948).

State ex. rel. Baciak v. Board of Education of Cleveland City School District, 88 N.E. 2d 808, (Ohio, 1949).

State ex. rel. Gilbert v. Dilley, 145 N.W. 999, (Nebraska, 1914).

State ex. rel. Richlands Parent-Teachers Association v. Board of Education, 33 Ohio L Abs 387, (Ohio, 1941).

Sugar v. Monroe, 32 So. 961, (Louisiana, 1902).

Townsend v. Hagen, 35 Iowa 194, (Iowa, 1872).

Trustees of Independent School District of Cleburnes v. Johnson County Democratic Executive Committee, 52 S.W. 2d 71, (Texas, 1932).

Tyre v. Krug, 149 N.W. 718, (Wisconsin, 1914).

Widmar v. Vincent, 454 U.S. 263, (1981).

Young v. Board of Trustees of Broadwater County High School, 4 P. 2d 725, (Montana, 1931).

B. SECONDARY SOURCES

1. Books

Almack, John C. Modern School Administration: Its Problems and Progress. Boston: Houghton Mifflin Company, 1933.

Bolmeir, Edward. The School in the Legal Structure. Cincinatti: W. H. Anderson Company, 1973.

Building for School and Community. Paris: Organization for Economic Co-operation and Development, 1978.

Castaldi, Basil. The Evolution of Educational Facilities. Boston: Allyn and Bacon, 1977.

Cremin, Lawrence. The Transformation of the School. New York, Random House, 1961.

Cubberley, Ellwood P. An Introduction to the Study of Education. Boston: Houghton Mifflin Company, 1933.

Cubberley, Ellwood P. Public Education in the United States. Boston: Houghton Mifflin Company, 1934.

Cubberley, Ellwood P., and Edward C. Elliot. States and County School Administration. New York: Macmillan Company, 1915.

Dellinger, Ann M. North Carolina School Law: The Principal's Role. Chapel Hill, N.C.: Institute of Government, 1981.

Dewey, John. Schools and Society. Chicago: University of Chicago Press, 1900.

Englehardt, N.L. Planning the Community School. Boston: American Book Company, 1940.

Garber, Lee O., and Newton Edwards. The Law Governing School Property and School Building Construction. Danville, Illinois: The Interstate Printers and Publishers, 1964.

Garber, Lee O., and Newton Edwards. The Public School in Our Governmental Structure. Danville, Illinois: The Interstate Publishers and Printers, Inc. 1970.

Gatti, Richard D., and Daniel J. Gatti. New Encyclopedic Dictionary of School Law. West Nyack, New York: Parker Publishing Company, 1983.

Gee, E. Gordon, and David J. Sperry. Education Law and the Public Schools: A Compendium. Boston: Allyn and Bacon, Inc., 1981.

Guide for Planning Educational Facilities. Columbus, Ohio: Council of Educational Facility Planners, 1969.

Knight, Edward W. Education in the United States. 3rd ed. Boston: Ginn and Company, 1951.

Knight, Edward W. Twenty Centuries of Education. Boston: Ginn and Company, 1940.

Nolte, M. Chester. Guide to School Law. West Nyack, New York: Parker Publishing Company, 1969.

Peterson,LeRoy J., et al. The Law and Public School Operation. New York: Harper and Row, 1969.

Piele, Phillip K., and James R. Forsberg. School Property: The Legality of Its Use and Disposition. Topeka, Kansas: National Organization of Legal Problems in Education, 1974.

Reutter, Edmund. Schools and the Law. Reston, Virginia: National Association of Secondary School Principals, 1981.

Seay, Maurice F. Community Education: A Developing Concept. Midland, Michigan: Pendell Publishing Company, 1974.

United States. Office of Education. Recent Progress in Wider Use of School Plant. [by Clarence A. Perry]. Report of the United States Commission of Education. Washington, D.C., 1915.

4. Journals

Abendroth, Douglas W. "Property: The Constitutional Dimension of Church-State Neutrality." Loyola of Los Angeles Law Review, 15 (1981).

Nolte, M. Chester. "Board has Right and Duty to Predetermine that School Premises Shall not be Used in Contravention of the Law." American School

Nolte, M. Chester. "Courts Becoming More Liberal Permitting Non-School Use of Public School Buildings," American School Board Journal, February, 1966.

Sendor, Benjamin. "The Wall Between Preaching and Teaching in Public Schools." School Law Bulletin, 15 (1983).

Stevens, Edward W. "Social Centers, Politics, and Social Efficiency in the Progressive Era." History of Education Quarterly, Spring, 1972.

"Turn Your Schools into Centers of Community Activity, and Win Broader Citizen Support." The American School Board Journal, May, 1982.

3. Legal Aids

American Digest System. St. Paul, Minnesota, West Publishing Company. Including:

Century Digest. Volume 43, 1903. Digest of all reported cases from 1656 to 1896.

First Decennial Digest. Volume 17, 1910. Digest of all reported cases from 1897 to 1906.

Second Decennial Digest. Volume 20, 1922. Digest of all reported cases from 1906 to 1916.

Third Decennial Digest. Volume 24, 1929. Digest of all reported cases from 1916 to 1926.

Fourth Decennial Digest. Volume 27, 1938. Digest of all reported cases from 1926 to 1936.

Fifth Decennial Digest. Volume 39, 1949. Digest of all reported cases from 1936 to1946.

Sixth Decennial Digest. Volume 26, 1958. Digest of all reported cases from 1946 to 1956.

Seventh Decennial Digest. Volume 27, 1968. Digest of all reported cases from 1956 to 1966.

Eighth Decennial Digest. Volume 28, 1978. Digest of all reported cases from 1966 to 1976.

General Digest. Published annually from 1956 to date, with monthly supplements.

American Jurisprudence. Rochester, New York, The Lawyer's Co-operative Publishing Company.

American Law Reports. By the Publisher's Editorial Staff, Rochester, New York, The Laywer's Co-operative Publishing Company, Published annualy since 1918.

Corpus Juris Secundum. Edited by Francis J. Ludes and Harold J. Gilbert. New York: The American Law Book Company.

National Reporter System. Containing reports in full of decisions of the courts of record of the various states, and of the federal courts. St. Paul: West Publishing Company. 1879 and published to date with weekly advance sheets. Including:

The Atlantic Reporter. Reports in full of every decision of the courts of last resort of Connecticut, Delaware, Maryland, New Hampshire, New Jersey, Pennsylvania, Rhode Island, and Vermont from 1885 to present.

The California Reporter. Reports in full of every decision of the California Supreme Court and lower courts of record in California from 1959 to date.

The Federal Reporter. Reports in full of every decision of the United States District Courts and the United States Circuit Courts and other federal courts from 1880 to date.

The Federal Supplement. Reports in full of the decisions of the District Courts of the United States since 1932, Court of Claims since 1932 to 1960, and United States Customs Court since 1949 to present.

The New York Supplement. Reports in full of all cases of the New York Court of Appeals and lower courts of record in New York from 1888 to date.

The North Eastern Reporter. Reports in full of every decision of the courts of last resort of Illinois, Indiana, Massachusetts, New York, and Ohio from 1885 to present.

The North Western Reporter. Reports in full of every decision of the courts of last resort in Iowa, Michigan, Minnesota, Nebraska, North Dakota, South Dakota, and Wisconsin from 1879 to date.

The Pacific Reporter. Reports in full of every decision of the courts of last resort in Alaska, Arizona, California, Colorado, Hawaii, Idaho, Kansas, Montana, Nevada, New Mexico, Oklahoma, Oregon, Utah, Washington, and Wyoming from 1883 to date.

The South Eastern Reporter. Reports in full of every decision of the courts of last resort in Georgia, North Carolina, South Carolina, Virginia, and West Virginia from 1887 to present.

The Southern Reporter. Reports in full of every decision of the courts of last resort in Alabama, Florida, Louisiana, and Mississippi from 1887 to date.

The South Western Reporter. Reports in full of every decision of the courts of last resort in Arkansas, Kentucky, Missouri, Tennessee, and Texas from 1886 to date.

The Supreme Court Reporter. Reports in full of every decision of the Supreme Court of the United States from 1882 to present.

Shepard's Reporter Citations. By the Publisher's Staff, Colorado Springs: Shepard's Citations, Inc.

State Reports. Published in each state; reports in full of every decision of the courts of record in the state. Reports used include:

Connecticut
Iowa
Missouri
Ohio
Vermont
Wisconsin

United States Report. The official edition of the reports of the Supreme Court of the United States dating from 1790 with advance sheets to date.

APPENDIX A

STATE LAWS AFFECTING PRIVATE USE OF PUBLIC ELEMENTARY AND SECONDARY SCHOOL FACILITIES

ALABAMA

Section 16-10-11. Use of schoolhouse for civic purposes.

The board of school trustees shall have the power to authorize the use of the schoolhouse for such civic, social, recreational and community gatherings as in its opinion do not interfere with the principal use of the said school building or property. It shall be the duty of the persons or persons making application for the use of the schoolhouse for a public meeting place to see that the said schoolhouse after said meeting is in as clean a condition as it was before said meeting, and in case of failure upon the part of said person or persons to whom permission has been granted to hold the meetings to place said school after said meeting in as clean a condition as it was when said schoolhouse was turned over to said person or persons for said meeting, or the failure of the person or persons to respond in damages to any injury to the property, the ordinary wear and tear excepted, the board of school trustees shall refuse all further applications for the use of such schoolhouse by the same party.

Section 9-15-36. Leasing of school lands.

With the approval of the governor, the commissioner of conservation and natural resources is hereby authorized and empowered to rent or lease school lands upon such terms as he deems advisable, and he is also hereby authorized and empowered to rent or lease school lands for the purposes of prospecting for oil or gas upon such lands and to execute contracts for the sale of oil or gas from school lands, upon such terms and for the best interest of the state.

The commissioner of conservation and natural resources, with the approval of the Governor, is also hereby authorized to lease school lands for the purpose of mining or removing there from coal, iron and other minerals, other than oil or gas upon a royalty basis and may include rights-of-way therein or easements over or upon such lands as may be deemed necessary or convenient to the operation or conduct of any mine or mining operation under such lease.

ALASKA

Section 14.03.100. Use of school facilities.

The governing body of a school district may allow the use of school facilities for any legal gatherings or assemblies. The governing body shall adopt bylaws that will insure reasonable and impartial use of the facilities.

Chapter 36. Community Schools.

Section 14.36.010/ Purpose, intent.

(a) The community school is an expression of the philosophy that the school, as the prime educational institution of the community, is most effective when it involves the people of that community in a program designed to fulfill the educational needs. The community school promotes a more efficient use of school facilities through an extension of buildings and equipment beyond the normal school day. The purpose of this chapter is to provide state leadership and financial support to encourage and assist the school districts in the establishment of community schools.
(b) It is the intent of the legislature that:
(1) a program of community school grants be established to provide assistance to local communities in the initial development, implementation, and operation of the community school program.
(2) technical assistance, monitoring, training and coordination of statewide efforts to develop and operate community school programs provided by the department.
(3) the community school program will become fully operationl once a plan of operation has been approved by the Commissioner, and
(4) evaluation of the approved plan of operation for a community school program shall be conducted by the department in cooperation with the school district at least once every four years; a report of the community school programs evaluated in the preceding year shall be presented by the Commissioner to the legislature before the 15th day of each regular sesion of the legislature.

Section 14.36.020. Community schools grant fund created; limitations on use.

There is created a community schools grant fund as the account in the general fund. The fund shall be used to make community school grants to local attendance areas or school districts under this chapter. Legislative appropriations for

community school grants shall be deposited in this fund. Community school grants may e used for planning, training and operations. (§ 1 ch 103 SLA 1975)

Section 14.36.030. Grants from the state.

(a) A district operating a community school program under an approved plan of operation may receive an annual grant from the state of one-half of one percent of its public school foundation support or $10,000, whichever is greater.
(b) For each fiscal year beginning after June 30, 1980, a district operating an approved community school program under (a) of this section may receive a further grant from the state equal to the amount allocated by the district to the support of the community school program from sources other than the grant provided under (a) of this section. The additional grant under this subsection may not exceed the amount received under (a) of this section.
(c) The support of a community school program by a district under (b) of this section may be in cash or in kind. Cash support may be devised from any source the district considers appropriate. In kind support by a district is limited to support for purposes which benefit only the community school program. Cash and in kind support of community school program by a district shall be itemized in the community education section of the district budget.

Section 14.36.040. Community school program, application for grants.

Under regulations adopted by the board of education, a district may submit to the commissioner an application for a community school grant. An application shall include;
(1) a comprehensive plan for the community school program including, but not limited to, before and after school hours activities for both children and adults, continued education programs for children and adults, and cultural enrichment and recreational activities for citizens in the community;
(2) a provision for a community schools advisory council;
(3) provision for community school direction and coordination to include personnel requirements;
(4) an assurance that the community school program will be reasonably available to residents of all communities within the district.

Section 14.36.050. Application review, disposition.

The commissioner shall review and approved, disapprove or return to the district for modification, an application for a community school program grant.

Section 14.36.060. Technical assistance.

On the request of a school district, the department shall provide technical assistance to a school district in developing and submitting an application for a community school program. The department may use its own staff or consultant that may be necessary to accomplish this purpose.

Section 14.36.070. Definitions.

In this chapter:
(1) "board" means the governing body of a school district;
(2) "commissioner" means the commissioner of education;
(3) "community school program" means the composite of those educational, cultural, social and recreational services provided the citizens of a community, except those services normally provided through the regular instructional program;
(4) "department" means the Department of Education;
(5) "district" means a district of the state public school system as defined in AS 14.12.010;

ARIZONA

Chapter 3 § 15-342 -- Powers and Duties of Boards -- Discretionary Powers

The governing board may: Sell or long-term lease to the state, country or city any school property required for a public purpose, provided the sale or lease of the property will not affect the normal operations of a school within the school district.

Section 15-363. School recreation centers; authority to contract with public recreation boards and agencies.

A. The governing board may operate school buildings and grounds for the purpose of providing a public play and recreation center. The governing board may organize and conduct in the center community recreation activities which contribute to the physical, mental and moral welfare of youths residing in the vicinity. A school recreation center may be open at times the governing board deems advisable, including evening hours and vacation days, and shall be conducted in accordance with rules prescribed by the governing board.

B. The governing board may cooperate and enter into contract with other public recreation boards and agencies in carrying out the purposes of this section.

Section 15-364. Agreements and expenditures of public monies for recreational facilities on school properties; use of proceeds of bond issues.

A. The governing board of a school district may enter into agreements with counties, cities, towns or other school district governing boards, providing for the construction, development, cooperative maintenance, operation and use of parks and recreational facilities, including swimming pools, on properties used for school purposes and under the control of such school districts. The governing boards may expend public monies for the construction and development of such parks or recreational facilities in cooperation with cities, towns, and counties.

B. Counties, cities and towns may expend public monies and enter into agreements with cities, towns and school district governing boards for the contruction, development, cooperative maintenance, operation and use of parks, swimming pools and other recreational facilities on properties used for school purposes, if the governing authorities having charge and control of such properties give their consent and cooperation.

Section 15-1105. Civic center school fund; reversion to school plan fund.

A. The governing board may lease or rent school buildings, grounds, buses, equipment and other school property to any person, group or organization for the recreational, educational, political, economic, artistic, moral, scientific, social or other civic purpose in the interest of the community. The governing board shall charge a reasonable use fee for the lease or rental of the school property, which fee may include goods contributed or services rendered by the person, groups or organization to the school district.

B. The governing board may permit the uncompensated use of school buildings, grounds, buses, equipment and other school property by any school related group or by any organization whose membership is open to the public and whose activities promote the educational function of the school district as determined in good faith by the school district's governing board

C. The governing board shall require proof of liability insurance for such use, lease or rental of school property.

D. Except as provided in § 15-1102, monies received for and derived from the use of school property under this section shall be promptly deposited with the county treasurer who shall credit the deposits to the civic center school fund of

the respective school district. Monies placed to the credit of a civic center school fund may be expended for civic center school purposes by warrants drawn upon order of the school district governing board. The civic center school fund of a school district or multiple school district civic center school program is a continuing fund not subject to reversion, except upon termination of a civic center school program. Upon termination of a civic center school program any remaining funds shall revert to the school plant fund of the school district or districts.

ARTICLE 3. COMMUNITY SCHOOL PROGRAM FUND

Section 15-1141. Definitions.

In this article, unless the context otherwise requires:.

1. "Community school" means any school engaged in a community school program.
2. "Community school monies" means monies received as fees, tuitions, grants or donations from any person or agency for a community school program.
3. "Community school program" means the involvement of people in the development of an educationally oriented community. The community school serves the purposes of academic and skill development for all citizens, furnishes supervised recreational and avocational instruction, supplies remedial and supplemental education, furnishes meeting places for community groups and provides facilities for the dissemination of a variety of community related services.

Section 15-1142. Powers of the governing board.

The governing board of any school district may:

1. Establish and operate a community school program in any school in its school district.
2. Budget and expend from the maintenance and operation section of the budget, as defined in § 15-903, to employ a qualified director necessary for each school or combination of schools engaged in community school programs.
3. Expend community school monies for operation of a community school program.
4. Establish tuition and fee charges for community school programs.

Section 15-1143. Community school program fund.

Monies deposited in a community school fund of a school district may be used for community school programs only and are

not subject to reversion, except upon termination of a community school program. Upon termination of a community school program any remaining funds shall revert to the operating budget of the school district.

ARKANSAS

Constitution of Arkansas, Article 14, Section 2

School fund--Use--Purposes.--No money or property belonging to the public school fund, or to this State for the benefit of schools or universities, shall ever be used for any other than for the respective purposes to which it belongs.

Section 19-3605. Use of school facilities for recreation purposes secondary.

The facilities of any school district, operating a recreation program pursuant to the provisions of this act [§§ 19-3601-19-3605] shall be used primarily for the purpose of conducting the regular school curriculum and related activities, and the use of school facilities for recreation purposes authorized by this act shall be secondary.

Section 80-509. Duties and powers of school directors--Budgets--Indebtedness.

The board of school directors of each district in the State shall be charged with the following powers and perform the following duties:

(a) Have the care and custody of the schoolhouse, grounds, and other property belonging to the District, and shall keep same in good repair, in sanitary and sightly condition; and to lease Sixteenth Section lands located in said School District, individually or in conjunction with the other Boards of Directors of other school districts interested in said Sixteenth Section, as the case may be.
(b) Purchase buildings or rent schoolhouses and sites therefor, and sell, rent, or exchange such sites or schoolhouses. Provided, that in the selection of any school site, or the erection of any schoolhouse outside of an incorporated town or city, containing twenty-five hundred [2,500] or more inhabitants [the same] shall be approved by the county board of education, before the contract for securing the site, or contract for building the house is made.

Section 80-517. Permission to use school buildings for community meetings may be granted.

The directors of any school district may permit the use of the public schoolhouse thereof for social, civic and recreation purposes, or any other community purpose including any lawful meetings of its citizens, provided such meetings do not interfere with the regular school work, and they may make a charge therefor if they deem it proper to do so.

Section 80-518. Directors may permit private school to use schoolhouse.

The directors may permit a private school to be taught in the district schoolhouse during such time as the said house is not occupied by a public school, unless they be otherwise directed by a majority of the legal voters of the district.

CALIFORNIA

ARTICLE 9. JOINT USE

Section 39470. Lease or agreement.

Any school district may enter into a lease or agreement with a city, county, or city and county for the joint occupancy, or a private education institution for its sole occupancy, or the real property and buildings of the school district, provided that no such occupancy of school buildings and grounds shall occur during normal school hours when the school is in session.

Section 39470. Agreements for rent or lease; priority.

(a) The governing board of any school district may enter into agreements to make vacant classrooms or other space in operating school buildings available for rent or lease to other school districts, educational agencies, except private educational institutions which maintain kindergarten or grades 1 to 12, inclusive, governmental units, nonprofit organizations, community agencies, professional agencies, commercial and noncommercial firms, corporations, parternships, businesses and individuals, including during normal school hours if the school is in session.
(b) The governing board shall give first priority in leasing or renting vacant classroom space or other space to educational agencies for conducting special education programs and second priority to other educational agencies.

Section 39471. Building.

As used in this article, "building" includes onsite and offsite facilities, utilities, and improvements which, as agreed upon by the parties, are appropriate for the proper operation or function of the building to be jointly occupied and used. It also includes the permanent improvement of school grounds.

Section 39472. Prior determination of noninterference in school functions.

Prior to entering into a lease or agreement pursuant to this article, the school district governing board shall determine that the proposed joint occupancy and use of school district property or buildings will not do any of the following:

(a) Interfere with the educational program or activities of any school or class conducted upon the real property or in any building.
(b) Unduly disrupt the residents in the surrounding neighborhood.
(c) Jeopardize the safety of the children of the school.

Section 39473. Compliance with applicable provisions.

The governing board of a school district entering into a lease pursuant to this article shall comply with the applicable provisions of Article 4 (commencing with Section 39360).

Section 39474. Space limitations; lease agreements exceeding; prior agreements.

(a) Except as provided in subdivision (b) of this section and Section 39475, the amount of classroom space leased pursuant to this article in any school site during normal school hours shall not exceed 45 percent of the total classroom space of that school, and in no event shall the leased classroom space in the school district during normal school hours exceed 30 percent of the district's total classroom space in operating schools.
(b) The governing board of a school district may, upon a two-thirds vote, enter into lease agreements which exceed the 45-percent limit per school upon making a finding that the leases are compatible with the educational purpose of the school. The board, however, shall not exceed, pursuant to this subdivision, the 30-percent limit of classroom space for the entire school district.
(c) The provisions of this section shall not apply to agreements for the lease of classroom space entered into by districts on or before March 4, 1981.

Section 39475. Exceeding space limitations; daycare centers, nursery schools or special education classes.

The governing board of a school district may lease vacant classroom space the total area of which exceeds the 30-percent districtwide limit of classroom space available pursuant to this article, if a lease is for any daycare center, nursery school, or special education class.

Section 39476. Uses other than public or education-related uses; zoning, use permits and construction and safety requirements.

A local agency having general planning jurisdiction may require adherence to appropriate zoning ordinances, use permits, construction or safety codes, by a school district seeking to lease a portion of a school building for uses other than public or education-related uses.

Section 39601. Furnishing, repairing, insuring and renting of school property.

The governing board of any school district shall furnish, repair, insure against fire, and in its discretion rent the school property of its districts. The governing board may also insure the property against other perils. The insurance shall be written in any admitted insurer, or in any nonadmitted insurer to the extent and subject to the conditions prescribed in Section 1763 of the Insurance Code. Insurance on property of a district may be, in the discretion of the governing board, of the deductible type of coverage. By deductible type of coverage is meant a form of insurance under which the insurance becomes operative when the loss and damage exceeds an amount stipulated in the policy or policies.

The governing board, in their notice of bid for any school district construction, may indicate that it may elect to assume the cost of fire insurance by adding the coverage to the district's existing policy and in such event bids made on such construction shall be made in the alternative, with and without the fire insurance coverage included, and the governing board shall make its election as to who shall secure and pay for such insurance at the time of accepting the bid.

Section 40040. Short title.

This article shall be known and may be cited as the Civic Center Act.

Section 40041. Use of civic center by public; terms, conditions and purposes.

(a) There is a civic center at each and every public school facility and grounds within the state where the citizens, parent-teachers' association, camp fire girls, boy scout troops, farmers' organizations, school-community advisory councils, senior citizens' organizations, clubs, and associations formed for recreational, educational, political, economic, artistic, or moral activities of the public school districts may engage in supervised recreational activities, and where they may meet and discuss, from time to time, as they may desire, any subjects and questions which in their judgement appertain to the educational, political, economic, artistic, and moral interests of the citizens of the communities, in which they reside.
(b) The governing board of any school district may grant the use of school facilities or grounds as a civic center upon the terms and conditions the board deems proper, subject to the limitations, requirements, and restrictions set forth in this article, for any of the following purposes:

(1) Public, literary, scientific, recreational, educational, or public agency meetings.
(2) The discussion of matters of general or public interest.
(3) The conduct of religious services for temporary periods by any church or religious organization which has no suitable meeting place for the conduct of the services, provided the governing board charges the church or religious organization using the school facilities or grounds a fee as specified in subdivision (c) of Section 40043.
(4) Child care or day care programs to provide supervision and activities for children of preschool and elementary school age.
(5) The administration of examinations for the selection of personnel or the instruction of precinct board members by public agencies.
(6) Supervised recreational activities.
(7) Mass care and welfare shelters during disasters of other emergencies affecting the public health and welfare by public agencies, including, but not limited to, the American Red Cross; and the provision of any services deemed necessary by the governing board to meet the needs of the community.
(8) Other purposes deemed appropriate by the governing board

Section 40042. Management, direction and control; rules and regulations.

The management, direction, and control of school facilities under this article is vested in the governing board of

the school district which shall promulgate all rules and regulations necessary to provide, at a minimum, for the following:

(1) Aid, assistance, and encouragement to any of the activities authorized in Section 40041.
(2) Preservation of order in school facilities and on school grounds, and protection of school facilities and school grounds, including, if the governing board deems necessary, appointment of a person who shall have charge of the school facilities and grounds for purposes of their preservation and protection.
(3) That the use of school facilities or grounds is not inconsistent with the use of the school facilities or grounds for school purposes or interferes with the regular conduct of schoolwork.

Section 40043. Charge for use.

(a) Except as provided in subdivision (b), the governing board of any school district shall grant without charge the use of any school facilities or grounds under its control, pursuant to the requirements of this article, to the following organizations:

(1) Student clubs and organizations.
(2) Fundraising entertainments or meetings where admission fees charged or contributions solicited are expended for the welfare of the pupils of the district.
(3) Parent-teachers' associations.
(4) School-community advisory councils.
(5) Camp fire girls and boy scout troops.
(6) Senior citizens' organizations.
(7) Other public agencies.
(8) Organizations, clubs, or associations organized for cultural activities and general character building or welfare purposes (such as folk and square dancing).
(9) Groups organized for the purpose specified in paragraph (7) of subdivision (b) of Section 40041.

(b) The governing board may charge those organizations and activities listed in subdivision (a) an amount not to exceed the following:

(1) The cost of opening and closing the facilities, if no school employees would otherwise be available to perform that function as a part of their normal duties.
(2) The cost of a school employee's presence during the organization's use of the facilities, if the governing board determines that the supervision is needed, and if that em-

ployee would not otherwise be present as part of his or her normal duties.

(3) The cost of janitorial services, if the services are necessary, and would not have otherwise been performed as part of the janitor's normal duties.
(4) The cost of utilities directly attributable to the organization's use of the facilities.

(c) The governing board may charge an amount not to exceed its direct costs or not to exceed fair rental value of school facilities and grounds under its control, and pursuant to the requirements of this article, for activities other than those specified in subdivision (a). Each governing board which decides to levy these charges shall first adopt a policy specifying which activities shall be charged an amount not to exceed direct costs and which activities shall be charged an amount not to exceed fair rental value.
(d) The governing board of any school district which authorizes the use of school facilities or grounds for the purpose specified in paragraph (3) of subdivision (b) of Section 40041 shall charge the church or religious denomination an amount at least equal to the district's direct costs.
(e) In the case of entertainments or meetings where admission fees are charged or contributions are solicited and the net receipts are not expended for the welfare of the pupils of the district or for charitable purposes, a charge shall be made for the use of school facilities or grounds which charge shall be for fair rental value.
(f) As used in this section, "direct costs" to the district for the use of school facilities or grounds means those costs of supplies, utilities, janitorial services, services of any other district employees, and salaries paid school district employees necessitated by the organization's use of the school facilities and grounds of the district.
(g) As used in this section, "fair rental value" means the direct costs to the district, plus the amortized costs of the school facilities or grounds used for the duration of the activity authorized.

Section 40044. Used to further program or movement for overthrow of the government by force a misdemeanor.

Any use, by any individual, society, group, or organization for the commission of any act intended to further any program or movement the purpose of which is to accomplish the overthrow of the government of the United States or of the state by force, violence, or other unlawful means shall not be permitted or suffered.

Any individual, society, group, or organization which commits any act intended to further any program or movement the purpose of which is to accomplish the overthrow of the government by force, violence, or other unlawful means while using school property pursuant to the provisions of this chapter is guilty of a misdemeanor.

Section 40045. Determination of intention; statement of information; discretion of board.

No governing board of a school district shall grant the use of any school property to any person or organization for any use in violation of Section 40044.

For the purpose of determining whether or not any individual, society, group, or organization applying for the use of the school property intends to violate Section 40044, the governing board shall require the making and delivery to the governing board, by the applicant of a written statement of information in the following form.

STATEMENT OF INFORMATION

The undersigned states that, to the best of his or her knowledge, the school property for use of which application is hereby made will not be used for the commission of any act intended to further any program or movement the purpose of which is to accomplish the overthrow of the government of the United States by force, violence or other unlawful means;

That _____, the organization on whose behalf he or she is making application for use of school property, does not, to the best of his or her knowledge, advocate the overthrow of the government of the United States or of the State of California by force, violence, or other unlawful means, and that, to the best of his or her knowledge, it is not a communist action organization or Communist front organization required by law to be registered with the Attorney General of the United States. This statement is made under the penalities of perjury.

_____

(Signature)

The school board may require the furnishing of additional information as it deems necessary to make the determination that the use of school property for which application is made would not violate Section 40044.

Any person applying for the use of school property on behalf of any society, group, or organization shall be a member

of the applicant group and, unless he or she is an officer of the group, must present written authorization from the applicant group to make the application.

The governing board of any school district may, in its discretion, consider any statement of information or written authorization made pursuant to the requirements of this section as being continuing in effect for the purposes of this section for the period of one year from the date of the statement of information or written authorization.

Section 40046. Liability for perjury.

Written statements of information as required by Section 40045 need not be under oath, but shall contain a written declaration that they are made under the penalty of perjury, and any person so signing the statements who willfully states therein as true any material matter which he or she knows to be false, is subject to the penalties prescribed for perjury in the Penal Code.

ELECTIONS CODE DIVISION 3, CHAPTER 1

Section 1504. Public buildings and public schools; use as polling places; storage of voting equipment.

(a) The governing body having jurisdiction over school buildings or other public buildings may authorize the use of its buildings for polling places on any election day, and may also authorize the use of its buildings, without cost, for the storage of voting machines and other vote-tabulating devices. However, if a city or county clerk specifically requests the use of a school building for polling places on an election day, the governing body having jurisdiction over the particular school building shall allow its use for the purpose requested.
(b) Once a governing body has approved the use of a school building as a polling place, the governing body shall instruct the school administrator to provide the clerk a site with an adequate amount of space which will allow the precinct board to perform its duties in a manner which will not impede, interfere, or interrupt the normal process of voting.
(c) The school administrator shall also make a reasonable effort to insure that the site is accessible to the handicapped.

COLORADO

Section 22-32-118. Summer schools - continuation, evening, and community education programs. (2)

(a) A board of education may establish and maintain continuation programs, part-time programs, evening programs, vocational programs, programs for aliens, and other opportunity programs and may pay for such programs out of the moneys of the school district or charge a fee or tuition. A board may also establish and maintain open-air schools, playgrounds, and museums and may pay for the same out of moneys of the school district.

(b) In addition to the authority granted to a board of education in paragraph (a) of this subsection (2), a board may establish and maintain community education programs in cooperation with any unit of local government, quasi-governmental agency, institution of higher education, or civic organization and may pay for such programs by a fee or tuition charged or out of moneys of the school district. Attendance in community education programs shall not be considered in computing attendance entitlement under article 50 of this title and article 8 and 60 of title 23, C.R.S. 1973.

(c) For the purposes of this subsection (2), a "community education program" may be defined as a program which, while not interfering with the regular school program, may offer a composite of services to the citizens of its service area, including, but not limited to, year-round use of the facilities and personnel of the school for off-hours educational, cultural,recreational and social enrichment activities for children, youth, and adults; family education and counseling, civic affairs meetings, and discussions; counseling for teenagers; community organization activities; senior citizen activities; cooperation with other social agencies and groups in improving community life; and other similar activities which provide educational, social, cultural, and recreational programs for children, youth, and adults. As used in this paragraph (c):

(I) "Senior citizen" means a person sixty years of age or older and includes the spouse of a senior citizen;

(II) "Senior citizen activity" includes, but is not limited to:

(A) Provision for the serving to senior citizens of the meals regularly served to students at regular mealtimes and at a price not to exceed the adult cost of the meal as determined by the board of education of the school district;

(B) Senior citizen volunteer programs in which senior citizens may assist in any or all aspects of school operation;

(C) Utilization of school facilities for senior citizens' social, educational, cultural, and recreational purposes.
(d) As a part of a community education program established pursuant to paragraphs (b) and (c) of this subsection (2), a board of education of a school district may establish and maintain preschool programs in connection with the schools of its district for the instruction of young children not yet eligible for kindergarten and may prescribe the educational activities and rules and regulations governing such programs. Said preschool programs shall provide opportunities for voluntary parental participation. Said preschool programs shall be a part of the public school system, and, notwithstanding the provisions of Section 22-32-117(2), the cost of establishing and maintaining them may be paid from tuitions or gifts, or from the general school fund, or from state or federal moneys available to school districts for qualifying preschool programs; but such preschool programs shall not be eligible for state equalization program support under article 50 of this title.

CONNECTICUT

Section 10-239. Use of school facilities for other purposes.

(a) Any local or regional board of education may provide for the use of any room, hall, schoolhouse, school grounds or other school facility within its jurisdiction for nonprofit educational or community purposes whether or not school is in session.
(b) Any local or regional board of education may grant the temporary use of rooms, halls, school buildings or grounds or any other school facilities under its management or control for public, educational or other purposes or for the purpose of holding political discussions therein, at such time when the school is not in session and shall grant such use for any purpose of voting under the provisions of title 9 whether or not school is in session, in each case subject to such restrictions as the authority having control of such room or building, grounds or other school facility considers expedient.

DELAWARE

CONSTITUTION OF DELAWARE, ARTICLE 10, SECTION 4

Use of Public School Fund.

Section 4. No part of the principal or income of the Public School Fund, nor or hereafter existing, shall be used for any other purpose than the support of free public schools.

Article 15, Section 4512. Polling places; designation and preparation.

(a) Each department shall designate and procure for each election district in its county a polling place, which shall be the same as its registration place, wherever possible. The suitability, convenience and accessibility of the polling place to the voters of the election district must be given prime consideration in its selection.
(b) The departments of elections shall designate only conveniently located and readily accessible polling places for each election district. Such polling places, whenever possible, shall be located in public buildings which shall include suitable government buildings, schools, firehouses, community buildings, churches, financial institutions, lobbies or other gathering places at least 350 square fee in size.
(c) Whenever the department has designated as polling places facilities owned or leased by agencies or subdivisions of this State, it shall be the duty of the officials of such agencies or subdivisions to make these facilities available and to provide a suitable and acceptable location, heat, lighting, and other services necessary for the conduct of the election, so long as such use is not incompatible with the primary function of the agency or subdivision.

FLORIDA

Section 235.02. Use of buildings and grounds.

The board including the Board of Regents, may permit the use of educational facilities and groups for any legal assembly or for community use centers may permit the same to be used as voting places in any primary, regular or special election. The board shall adopt rules necessary to protect educational facilities and grounds when used for such purposes.

GEORGIA

ARTICLE II
PUBLIC SCHOOL PROPERTY AND FACILITIES

Part 1
Powers of Local Boards

Section 20-2-520. Acquiring and disposing of school sites; building, repairing, renting, and furnishing, schoolhouses.

(a) The county boards of education shall have the power to purchase, lease, or rent school sites; build, repair, or rent schoolhouses; purchase maps, globes, and school furniture; and make all arrangements necessary to the efficient operating of the schools. Such county boards are invested with the title, care, and custody of all schoolhouses or other property, with power to control such property in such manner as they think will best serve the interests of the public schools; and when, in the opinion of the county board, any schoolhouse site has become unnecessary or inconvenient, they may sell it in the name of the county board; and the conveyance for any such sale shall be executed by the president or secretary of the county board, according to the order of the county board. Such county boards shall have the power to receive any gift, grant, donation, or devise made for the use of the public schools within the respective counties; and all conveyances of real estate which may be made to such a county board shall vest the property in such county board and its successors in office. Such county board may provide for the building of schoolhouses by a tax on all property located in the county and outside the territorial limits of any independent school system. The construction of all public school buildings must be approved by the county school superintendent and county board and must be according to the plants furnished by the county school authorities and the State Board of Education.

HAWAII

Section 296-2. Department of education; board of education; superintendent of education.

There shall be a principal executive department to be known as the department of education which shall be headed by an elected executive board to be known as the board of education. The board shall have power in accordance with law to formulate policy and to exercise control over the public school system through its executive officer, the superintendent of education. The superintendent shall be appointed and may be removed by a majority vote of the members of the board and shall serve as secretary of the board.

Section 296-49. After-school and weekend programs.

The state department of education and the appropriate county agencies may establish and regulate programs of after-school and weekend community-school activities for childen, including, but not limited to, day-care programs, arts and crafts, hula, ukulele, and other educational or recreational

projects, wherever feasible, at public school and public park facilities. In addition to any appropriation of public funds, reasonable fees established by the agencies operating the programs may be collected from children enrolled in furtherance of particular programs. The appropriate agencies may obtain from time to time the services of persons in a voluntary or unpaid capacity, exempt from chapters 76 and 77, as may be necessary for carrying out the purposes of this section, and to regulate their duties, powers, and responsibilities when not otherwise provided by law. Any person whose services have been so accepted shall, while engaged in the performance of duty under this section, be deemed state employee or employees of a political subdivision, as the case may be, in determining the liability of the State or the political subdivision for the negligent acts of such persons.

Section 298-ss. Use of school grounds by county recreation departments.

The board of education shall upon request by the department of parks and recreation of the city and county of Honolulu or of the county of Hawaii make school grounds available after school hours, in the respective counties where the request is made, for use by the department of parks and recreation requesting the same whenever such can be done without interference with the normal and usual activities of the school, and its pupils concerned.

Section 298-23. Use of school facilities for recreational and community purposes.

All public school buildings, facilities, and grounds shall be available for general recreational purposes, and for public and community use, whenever these activities do not interfere with the normal and usual activities of the school and its pupils, concerned. Any law or portion of any law to the contrary notwithstanding, the department of education shall issue such rules as are deemed necessary to carry out the purposes of this section and shall be empowered to issue licenses, revocable permits, concessions, or rights of entry to school buildings and grounds for such periods of use as deemed appropriate by the department. All such dispositions, including those in excess of fourteen days, need not be approved by the board of land and natural resources, provided the approval by the board of land and natural resources shall be required when such dispositions are for periods in excess of a year. The department of education may assess and collect fees and charges from the users of school buildings, facilities, grounds, and equipment. The fees and charges shall be deposited into a separate fund and expended by the department under rules as may be adopted by the board of education.

Section 298-23.5. Use of school facilities for after school child care.

The department of education may enter into agreements and contracts with individuals, organizations, or agencies for the use of public school buildings, facilities, and grounds for the operation of after school child care programs. The board of education shall issue such rules as are necessary to carry out the purposes of this section.

Section 298-24. Use of school buildings.

The fullest freedom shall be given to citizens of the State to use for lawful purposes all public school buildings throughout the State during the hours the structures are not in use for strictly educational purposes; provided, that the person vested with the proper authority over the building shall issue a permit to the applicant, when the proposed use is shown to be lawful by the applicant.

IDAHO

ILLINOIS

CHAPTER 122

Section 10-22.10. Control and supervision of school houses and school grounds.

To have the control and supervision of all public schoolhouses in their district, and to grant the temporary use of them, when not occupied by schools, for religious meetings and Sunday schools, for evening schools and literary societies, and for such other meetings as the board deems proper; to grant the use of assembly halls and class rooms when not otherwise needed, including light, heat and attendants, for public lectures, concerts, and other educational and social interests, under such provisions and control as they may see fit to impose; to grant the use of school grounds under such provisions and control as they may see fit to impose and to conduct, or provide for the conducting of recreational, social and civic activities in the school buildings or on the school grounds or both.

INDIANA

Section 20-5-6-7. [28-1761]. Charge for use of facilities.

The governing body of any school corporation may permit any of its facilities to be used by any person in situations and at times which do not interfere with use of the facility for school purposes, as for example use of a swimming pool or other athletic facility, and may incur any necessary expense in the use or operation of the facility. The governing body may set and charge a schedule of fees for admission to or use of any facility, outside the school corporation's regular school program. All such fees shall be receipted to the general fund or to the special school fund of the school corporation.

Section 20-5-37-1. [28-4301]. Use of school property for community purposes--Trustees authorized.

Boards of school trustees in second or third class cities, boards of school trustees of any town and/or school trustees of school townships may, on their own initiative, and shall upon petition as provided for in Section 2 (20-5-37-2) of this chapter establish and maintain for children and adult persons, in the school buildings and on the school grounds under the custody and management of such boards or school trustees of school townships, evening schools, vacation schools, debating clubs, community centers, gymnasiums, public playgrounds, public baths and similar activities and accommodations to be determined by such boards or school trustees or school townships, without charge to the residents of such cities, towns, or townships; and may cooperate, by agreement, with other commissioners or boards or school trusteees of school townships having the custody and management, in such cities or political units, of public parks, libraries, museums and public buildings and grounds of whatever sort; to provide the equipment, supervision, instruction and oversight necessary to carry on such public educational and recreational activities in and upon such other buildings and grounds and to pay all such expenses from the general fund.

Section 20-5-37-2. [28-4302]. Voters or freeholders petition--Election.

Upon the filing of a petition with the clerk of a city or town or the trustees of any township, signed by not less than ten percent (10%) of the number of voters voting at the last general election held in such city, or upon presentation of a petition bearing the signatures of at least one hundred [100] freeholders living in any town or township, the question of

exercising the powers granted for any of the purposes enumerated in section 1 [20-5-37-1] of this act shall then be submitted to the electors of said cities, town, or townships as the case may be for the purpose held therein, and if a majority of the votes cast upon such question shall be in the affirmative then the board of school trustees of said cities or town or the school trustee of any school township shall exercise said powers in accordance with the said petition, pursuant to this act.

Section 20-5-38-1 [28-4226]. Township trustee permitting use of abandoned school building for district community center--Authorized--Petition--Sale prohibited.

Whenever any district public school has been abandoned and the schoolhouse and school grounds in such district are no longer used or needed for public school purposes, the township trustee having charge of such school building and school grounds shall, upon application of not less than fifty-one percent [51%] of the freehold residents of such school district, permit the use of such abandoned schoolhouse and school grounds as a community center for nonpartisan gatherings of citizens of such school district for civic, social and recreational purposes and the township trustee shall not sell or offer for sale any such building or grounds during the time it is so used as a community center for for a period of one [1] year after the discontinuance of the use of any abandoned schoolhouse and school grounds for a community center.

Section 20-5-39-1 [28-4229]. School corporations in third class cities permitting use of abandoned real estate for city park--Authorized.

In any third-class city within the state, in which the school corporations of such cities have purchased, in the name of said school corporations, real estate to be used for school purposes, and the use of which real estate shall have since been abandoned for school purposes, it shall be lawful for the school trustees of said school corporations to authorize the use of such real estate for park purposes, in the manner and as provided by this chapter.

IOWA

Section 49.24. Schoolhouses as polling places.

In precincts outside of cities the election shall, if practicable, be held in a public school building. Any

damage to the building or furniture resulting from the election shall be paid by the county.

Section 297.9. Use for other than school purposes.

The board of directors of any school district may authorize the use of any schoolhouse and its grounds within such district for the purpose of meetings of granges, lodges, agricultural societies, and similar societies, for parent-teacher associations, for community recreational activities, community education programs, election purposes, other meetings of public interest, public forums and similar community purposes; provided that such use shall in no way interfere with school activities; such use to be for such compensation and upon such terms and conditions as may be fixed by said board for the proper protection of the schoolhouse and the property belonging therein, including that of pupils, except that in the case of community education programs, any compensation necessary for programs provided specifically by community education and not those provided through community education by other agencies or organization shall be compensated from the funding provided for community education programs.

KANSAS

Section 72-1623. Powers and duties of board; libraries and certain cities.

The board shall establish and maintain a system of free public schools for all children residing in the city school district and may make all necessary rules and regulations for the government and conduct of such schools, consistent with the laws of the state; Provided, The board of a city having a population of more than one hundred twenty thousand (120,000) and not more than two hundred thousand (200,000) may establish and maintain a public library and branch libraries, expenditures for which shall be paid from the general, building, and retirement funds in like manner to school expenditures: Provided further, That if any city is located within the boundaries of a community high-school or rural high-school district that is maintaining a high school, the board shall not establish or maintain a high school. The board may divide the city school district into subdistricts for purposes of attendance by pupils. The board shall hold the title to, and have the care and keeping of all school buildings belonging to the city school district. The board may, in its discretion, open any or all school buildings for community purposes, and may adopt rules and regulations covering such use of school buildings.

School buildings and other school properties not needed by the city school district may be sold by the board, at private or public sale, upon the affirmative recorded vote of at least two-thirds of all the members of the board, at a regular meeting. Proceeds from the sale of any such school building or other property shall be placed in the general fund, bond and interest fund or in the building fund of the city school district, as determined by the board of education. Conveyances shall be executed by the president of the board and attested by the clerk.

On or about October 1 of each year, in all cities of the first class, the board shall cause to be published in a newspaper printed and published in the city a statement showing the name, position and salary of the superintendent and department heads of said school system.

KENTUCKY

Section 162.050. Use of school property for public purposes.

The board of education of any school district may permit the use of the schoolhouse, while school is not in session, by any lawful public assembly of educational, religious, agricultural, political, civic or social bodies under rules and regulations which the board deems proper.

LOUISIANA

Section 17.81. General powers of board.

Each school board is authorized to make such rules and regulations for its own government, not inconsistent with law or with the regulations of the Louisiana State Board of Education, as it may deem proper.

Section 17.101. Public schools; establishment by parish boards.

Parish school boards may establish such public schools as they may deem necessary to provide adequate school facilities for the children of the parish, and also trade schools, evening schools, schools for adults, schools and classes for exceptional children, and such other schools or classes as may be necessary to meet all special or exceptional requirements. Central or high schools may be established when necessary,

but no high school shall be established without the sanction of the state board of education. Practical, industrial and agricultural courses shall be fostered by the public school officials, and the state board of education may extend special financial aid to schools meeting required standards in such courses, with such funds as may be available for such purposes.

MAINE

Section 1001. Duties of school boards.

School boards shall perform the following duties.

(1) General duties. They shall have the duties prescribed to them in this Title.
(2) Management of schools. They shall manage the schools and provide custody and care including repairs and insurance on school buildings and all school property in the school administrative units.
(3) No prohibition on use for political activity. The use of school buildings may not be denied to a person solely because use is requested for a political activity.

Section 8604. Authority to operate programs not receiving state aid.

A school board may make available facilities for adults evening educational and recreational activities; not reimbursed by the State. These courses and activities may be financed by tuition fees, by funds voted by the school administrative unit, by funds from other sources or by a combination of these.

MARYLAND

Section 7-108. Use of school property for other than school purposes--In general.

(a) County boards to encourage use. Each county board shall encourage the use of public school facilities for community purposes.
(b) Application to county superintendent for use. (1) If written application is made to the county superintendent, the county board shall provide for the use of a public school facility for:

(i) The presentation and discussion of public questions;
(ii) Public speaking;
(iii) Lectures; or
(iv) Other civic, educational, social, or recreational purposes or church affiliated civic purposes.

(2) These meetings shall be open to the public.
(3) The county board may refuse the use of any school facility for these purposes if it appears that the use is likely to:

(i) Provoke or add to a public riot or breach of the peace; or
(ii) Create a clear and present danger to the peace and welfare of the county or State.

(c) Use by partisan political organization - Each county board may permit a partisan political organization that has polled 10 percent or more of the entire vote cast in this State in the last general election to use public school facilities for programs and meetings that relate to a political campaign for nomination or election of a candidate to public office.
(d) Use for religious or other purposes - Each county board may permit the use of public school facilities for religious or other lawful purposes.
(e) Use not to interfere with regular school functions - School facilities may be used under this section or Section 7-109 of this subtitle only at times that will not interfere with regular school sessions or other bona fide school activities.

Section 7-108. Use of school property for other than school purposes--In general.

(f) Montgomery County - In Montgomery County, nonschool use of school facilities for public and community purposes and the manner by which costs associated with such use are apportioned, may be regulated by local law consistent with the use criteria set forth in Section 7-110 and not inconsistent with any other provisions of this article. The local law authorized by this subsection may provide for an interagency coordinating board and for the appointment of its members by Montgomery County. Membership may include the Superintendent of Schools, the president of Montgomery College, the members of the Montgomery County Planning Board, and such other members as may be provided by the local law.

Section 7-109. Same--Priority for day care program.

(a) Use for approved day care programs.--If the program and public school facility comply with the rules and regulations of the Department of Health and Mental Hygiene that govern group day care centers, each county board:

(1) Shall give priority to nonprofit day care programs for use of public school facilities before and after school houses; and
(2) May make space available during school hours.

(b) Rules and regulations for program.--Each county board shall adopt rules and regulations for implementing this program that are consistent with the rules and regulations of the Department of Health and Mental Hygiene that govern group day care centers.
(c) Additional costs.--Any additional costs incurred in the administration or support of these day care services shall be paid by the sponsoring organizations in accordance with an annual agreement with the county board that made the facilities available.

Section 7-110. Same--Charges for use and liability for damages.

(a) Reasonable charge.--A reasonable charge for heating, lighting, and janitorial services for use of public school facilities under Sections 7-108 and 7-109 of this subtitle may be made.
(b) Liability for damages.--(1) The person who applies for the use of school facilities shall be responsible for all damage to the property, other than ordinary wear and tear.

(2) If the person does not pay for damages to the property, the county board may refuse any other application by that person for the use of the property until the damage is repaired without expense to the county board.

(c) Leaving facilities in same condition.--(1) The person who applies for the use of school facilities shall leave the facilities after their use as clean as they were before the use.

(2) If the person does not leave the facilities as clean as they were before the use, the county board may refuse to allow the person to use the facilities again.

MASSACHUSETTS

Section 71. Public Use of School Property, Except in Boston.

For the purpose of promoting the usefulness of public school property the school committee of any town may conduct such educational and recreational activities in or upon school property under its control, and, subject to such regulations as it may establish, and, consistently and without interference with the use of the premises for school purposes, shall allow the use thereof by individuals and associations for such educational, recreational, social, civic philanthropic and like purposes as it deems for the interest of the community. The affiliation of any such association with a religious organization shall not disqualify such association from being allowed such a use for such a purpose. The use of such property as a place of assemblage for citizens to hear candidates for public office shall be considered a civic purpose within the meaning of this section. A school committee shall award concessions for food at any field under its control only to the highest responsible bidder. This section shall not only apply to Boston.

MICHIGAN

Section 15.41268. Community or recreation centers; use of school property as: Section 1268. (1) The board of a school district upon the written application of a responsible organization located in the school district, or of a group of at least 7 citizens of the school district may grant the use of school grounds, schools, or building facilities as community or recreation centers for the entertainment and education of the people, including the adults and children of school age, and for the discussion of topics tending tothe development of personal character and of civic welfare. The occupation shall not infringe seriously upon the original and necessary uses of the properties.
Regulations. (2) The board shall prescribe regulations for occupancy and use to secure fair, reasonable, and impartial use of the properties.
Damages, responsibility; use or rental fee. (3) The organization or group of citizens applying for the use of properties shall be responsible for damage done over and above ordinary wear, and may be required to pay a use or rental fee determined by the board.

1-10. [Reserved for use in future supplementation.]
11. Use for religious purposes. The action of voters of a school district at a meeting properly called and held in re-

fusing to permit the use of a schoolhouse for religious meetings was regular and authorized by former law. Eckhardt v. Darby, 118 Mich 199.

Under former section, board of education was authorized, in its discretion, to make public buildings available during off-school hours for purpose of holding religious instruction classes, so long as authority of the school was in no manner utilized to secure attendance of pupils in such classes, and use was simply a use of the school building. Op Atty Gen, August 21, 1961, No. 3630.

Bible study club or Bible fellowship club meeting on public property was not objectionable if it was a voluntary gathering, meeting after school hours, and if authority of the school was in no way utilized to organize or maintain the club. Op Atty Gen, August 21, 1961, No. 3630.

12. Moot questions. Where case on certiorari presented simply abstract question of right to compel grant of use of school auditorium, dates for which application was made being past, question would not be decided. Barron v. Belongy, 229 Mich 201.

MINNESOTA

Section 123.36. Schoolhouses and sites, access by persons for non-curricular purposes, independent school districts.

Subd. 5. The board may authorize the use of any schoolhouses in the district for divine worship, Sunday schools, public meetings, elections, and such other community purposes as in its judgement, will not interfere with their use for school purposes; but before permitting such use, the board may require a cash or corporate surety bond in a reasonable amount conditioned for the proper use of such schoolhouse, the payment of all rent and the repair of all damage occasioned by such use, and it may charge and collect for the usew of the district from the persons using such schoolhouse and reasonable compensation as it may fix.

It may authorize the use of any schoolhouses or buildings in and of the district for the holding of primaries, elections, registrations, and all action in connection, therewith in such manner as in its judgement, will not interfere with their use for school purposes. It may impose such reasonable regulations and conditions upon such use as may seem necessary and proper.

MISSISSIPPI

Section 37-7-301. Powers and duties of boards of trustees.

The boards of trustees of school districts shall have the following powers, authority, and duties in addition to all others imposed or granted by law, to wit:

(k) To authorize the use of the school buildings and grounds for the holding of public meetings and gatherings of the people under such regulations as may be prescribed by said board:

MISSOURI

Section 177.031. Care of property and purchase of supplies--free use of buildings and grounds for public purpose.

2. The school board having charge of the schoolhouses, buildings and grounds appurtenant thereto may allow the free use of the houses, buildings and grounds for the free discussion of public questions or subjects of general public interest, for the meeting of organizations of citizens, and for any other civic, social and educational purpose that will not interfere with the prime purpose to which the houses, buildings and grounds are devoted. If an application is granted and the use of the houses, buildings, or grounds is permitted for the purposes aforesaid, the school board may provide, free of charge, heat, light and janitor service therein when necessary, and may make any other provisions, free of charge, needed for the convenient and comfortable use of the houses, buildings, and grounds for such purposes, or the school boards may require the expense to be paid by the organizations or persons who are allowed the use of the houses, buildings and grounds. All persons upon whose application or at whose request the use of any schoolhouse, building, or part thereof, or any grounds appurtenant thereto, is permitted as herein provided shall be jointly and severally liable for any injury or damage thereto which directly results from the use, ordinary wear and tear excepted.

Notes of Decisions:

3. Use of buildings

A public school board may not allow the use of public school property by the ministerial alliance to conduct religious training. Op. Atty. Gen. No. 265, Reed, Jr., 10-30-69.

Public school board may allow use of public school property by church, college or municipality for civic, social and educational purposes that do not interfere with prime purposes of

school property, and where there is exchange of consideration between public school district and church education institution, then there is no aid to religion. Op. Atty. Gen. No. 158, Witt, 8-22.67.

As prescribed by this section, school boards have power to permit free use of school buildings and facilities for prekindergarten programs. Op. Atty. Gen. No. 100. Hearnes, 1-18-66.

MONTANA

Section 13-3-105. Designation of polling place.

Any publicly owned building may be used as a polling place. Such building must be furnished at no charge as long as no structural changes are required in order to use the building as a polling place.

Section 39-6-607. Leasing district property and disposition of any rent-outs.

The trustees of any district may rent, lease, or let any buildings, land, or facilities of the district under the terms specified by the trustees. Any money collected for such rental, lease, or letting may, in the discretion of the trustees be used for any proper school purpose and deposited in such fund as the trustees consider appropriate.

Section 20-7-203. Trustees' policies for school library.

The trustees shall adopt those policies necessary for regulating the use and operation of school libraries. These policies may provide for the use of school libraries by the residents of the district, provided that such use does not interfere with the regular school use of the library.

NEBRASKA

Section 79.4142. Schoolhouse; use for public assemblies; rental.

The school board or board of education of every school district may in its discretion permit the use of public school buildings for public assemblages under such rules and regulations as it may adopt. The school board or board of education may exact such rental as may be necessary to meet the expense of such meeting, restore the property, and pay for extra help required.

NEVADA

USE OF SCHOOL PROPERTY FOR PUBLIC PURPOSES

Section 393.071. Authority to grant use of buildings, grounds for meetings or discussions.

The board of trustees of any school district may grant the use of school buildings or grounds for public, literary, scientific, recrational or educational meetings, or for the discussion of matters of general or public interest upon such terms and conditions as the board deems proper, subject to the limitations, requirements and restrictions set forth in NRS 393.071 to 393.0719, inclusive.

Section 393.0711. Interference with use, occupancy for school purposes.

No such use may be inconsistent with or interfere with the use and occupancy for the buildings or grounds for school purposes.

Section 393.0712. Grant constituting monopoly prohibited.

No such use shall be granted in such a manner as to constitute a monopoly for the benefit of any person or organization.

Section 393.0713. Term of privilege: Renewal and revocation.

No privilege of using the buildings or grounds shall be granted for a period exceeding 1 year. The privilege is renewal or revocable in the discretion of the board at any time.

Section 393.0714. Grant to public agencies for personnel examinations.

The board of trustees of any school district may grant the use of school buildings, grounds and equipment without charge to public agencies for the purpose of holding examinations for the selection of personnel.

Section 393.0715. Use of school property for program, movement to accomplish overthrow of government; penalty.

(1) No school property, buildings or grounds may be used to further any program or movement the purpose of which is to accomplish the overthrow of the Government of the United States or ofany state by force, violence or other unlawful means.

(2) No board of trustees of any school district may grant the use of any school property, building or grounds to any person or organization for any use in violation of this section.
(3) Any violation of this section is a misdemeanor.

Section 393.0717. Regulations.

(1) The board of trustees of the school district shall make all necessary regulations for the use of school buildings and grounds for civic meetings and recreational activities, and for the aid, assistance and encouragement of recreational activities.
(2) The use of any school buildings or grounds for any meeting or recreational activity is subject to such reasonable regulations as the board of trustees prescribes.

Section 393.0718. Custodian of property: Appointment; power.

The board of trustees of any school district may appoint a person who shall have charge of the grounds, preserve order-protect the school property, plan, promote and supervise recreational activities, and do all things necessary in the capacity of a representative of the board of trustees. He shall have the of a peace officer to carry out the intents and purposes of NRS 393.071 to 393.0719, inclusive.

Section 393.0719. Payment of expenses by school district; reimbursement by users.

Lighting, heating, janitor service and the services of the person referred to in NRS 393.0718, when, needed, and other necessary expenses, in connection with the use of public school buildings and grounds pursuant to NRS 393.071 to 303.0719, inclusive, shall be provided for out of school district funds of the respective school districts.

NEW HAMPSHIRE

Section 199:22. Other Uses.

A school district or a school board thereof may grant the use of any schoolhouse in the district for a writing or singing school, and for religious and other meetings, whenever such use will not conflict with any regular school exercise. The person so using a schoolhouse shall be liable for any damages to the same and to the property therein.

Section 199:22-a. Use to Feed Elderly.

I. Any school board may operate or allow to be operated for the benefit of persons age 60 or over a meal program on school property including the use of school equipment. Such program may be operated on a profit basis and any surplus funds may be used to defray expenses or otherwise as the school board shall direct. Provided that such program shall be operated at no expense to the district and shall not interfere with the education of the students. The price charged for any meal may be based on the recipient's ability to pay as determined by the school board.

II. The use in such program of food service equipment, food, and other items which are restricted in use to the benefit of the students is not authorized by this section unless such program is granted the permission upon such conditions as the restricting federal or state authority deems necessary. In addition to any such conditions, the school board shall maintain such records as will accurately reflect the percentage of use of school property, school food service equipment, food, and other such restricted items between the geriatric program and the child nutrition program. Further, insofar as practicable, grants in aid for replacement and originl equipment shall be requested on the basis of the percentage of use from both available child nutrition funds and from available geriatric program grants.

NEW JERSEY

USE OF PROPERTY

Section 18A:20-34. Use of schoolhouse and grounds for various purposes.

The board of education of any district may, pursuant to rules adopted by it, permit the use of any schoolhouse and rooms therein, and the grounds and other property of the district, when not in use for school purposes, for any of the following purposes:

(a) The assembly of persons for the purpose of giving and receiving instruction in any branch of education, learning, or the arts, including the science of agriculture, horticulture, and floriculture;
(b) Public library purposes or stations of public libraries;
(c) The holding of such social, civic, and recreational meetings and entertainments and such other purposes as may be approved by the board;

(d) Such meetings, entertainments, and occasions where admission fees are charged as may be approved by the board;
(e) Polling places, holding elections, registration of voters and holding political meetings.

Section 18A:50-1. Maintenance of program.

The board of education of any school district may maintain a program of adult education and utilize buildings, equipment and other school facilities of the district for such purpose. The board shall determine the courses, which are to be offered, subject to the approval of the commissioner, with the consent of the state board.

NEW MEXICO

Section 21-14-4. Availability of school facilities; use of other facilities.

Upon establishment of a branch community college, public school facilities are to be made available to the college if needed, and in such manner as will not interfere with the regular program of instruction. No public school funds shall be expended in the program, and the branch community college shall pay a proper amount for utilities and custodian service. The board may arrange for the use of available facilities other than public school facilities if approved by the board of regents.

NEW YORK

Section 16.414. Use of schoolhouse and grounds out of school hours.

Schoolhouses and the grounds connected therewith and all property belonging to the district shall be in the custody and under the control and supervision of the trustees or board of education of the district. The trustees or board of education may adopt reasonable regulations for the use of such schoolhouses, grounds or other property, when not in use for school purposes, for such other public purposes as are herein provided. Such regulations shall not conflict with the provisions of this chapter and shall conform to the purposes and intent of this section and shall be subject to review on appeal to the commissioner of education as provided by law. The trustees or board of education of each district

may, subject to regulations adopted as above provided, permit the use of the schoolhouse and rooms therein, and the grounds and other property of the district, when not in use for school for any of the following purposes:
(1) For the purpose of instruction in any branch of education, learning of the arts.
(2) For public library purposes, subject to the provisions of this chapter, or as stations of public libraries.
(3) For holding social, civic and recreational meetings and entertainments, and other uses pertaining to the welfare of the community; but such meetings, entertainment and uses shall be non-exclusive and shall be open to the general public.
(4) For meetings, entertainments and occasions where admission fees are charged, when the proceeds thereof are to be expended for an educational or charitable purpose; but such use shall not be permitted if such meetings, entertainments and occasions are under the exclusive control, and the said proceeds are to be applied for the benefit of a society, association or organization of a religious sect or denomination, or of a fraternal, secret or exclusive society or organization other than organizations of veterans of the military, naval and marine service of the United States and organizations of volunteer firemen.
(5) For polling places for holding primaries and elections and for the registration of voters and for holding political meetings. But no political meetings shall be permitted unless authorized by a vote of a district meeting, held as provided by law, or, in cities by the board of education thereof. Except in cities, it shall be the duty of the trustees or board of education to call a special meeting for such purpose upon the petition of at least ten percent of the qualified electors of the district. Authority so granted shall continue until revoked in like manner and by the same body as granted.
(6) For civic forums and community centers. Upon the petition of at least twenty-five citizens residing within the district or city, the trustees or board of education in each school district or city shall organize and conduct community centers for civic purposes, and civic forums in the several school districts and cities, to promote and advance principles of Americanism among the residents of the state. The trustees or board of education in each school district or city, when organizaing such community centers or civic forums, shall provide funds for the maintenance and support of such community centers and civic forums, and shall prescribe regulations for their conduct and supervision, provided that nothing herein contained shall prohibit the trustees of such school district or the baord of education to prescribe and adopt rules and regulations to make such community centers or civic forums self-supporting as far as practicable. Such

community centers and civic forums shall be at all times under the control of the trustees or board of education in each school district or city, and shall be nonexclusive and open to the general public.

NORTH CAROLINA

Section 115C-203. Title of Article.

This article shall be known and may be cited as the "Community Schools Act."

Section 115C-204. Purpose of Article.

The purpose of this Article is to encourage greater community involvement in the public schools and greater community use of public school facilities. To this end it is declared to be the policy of this State:
(1) To provide for increased involvement by citizens in their local schools through community schools advisory councils.
(2) To assure maximum use of public school facilities by the citizens of each community in this State.

It is further declared to be the policy of this State that, to the extent sufficient funds are made available, each local board of education shall comply with the provisions of this Article.

Section 115C-205. Definitions.

As used in this Article.
(1) The term "community schools advisory council" means a committee or citizens organized to advise community school coordinators, administrators, and local boards of education in the involvement of citizens in the educational process and in the use of public school facilities.
(2) The term "community schools coordinator" means an employee of a local board of education whose responsibility it is to promote and direct maximum use of the public schools and public school facilities as centers for community development.
(3) The term "interagency council" means a committee or agency and organizational representatives appointed by the Governor to work with the Superintendent of Public Instruction concerning the involvement of statewide agencies and organizations with the public schools.

(4) The term "public school facility" means any education facility under the jurisdiction of a local board of education, whether termed an elementary school, middle school, junior high school, high school or union school.

Section 115C-206. State Board of Education; duties; responsibilities.

The Superintendent of Public Instruction shall prepare and present to the State Board of Education recommendations for general guidelines for encouraging increased community involvement in the public schools and use of public school facilities. The Superintendent of Public Instruction shall consult with the interagency council in preparing the general guidelines. These recommendations shall include, but shall not be limited to provisions for:
(1) The use of public school facilities by governmental, charitable or civic organizations for activities within the community.
(2) The utilization of the talents and abilities of volunteers within the community for the enhancement of public school programs including tutoring, counseling and cultural programs and projects.
(3) Increased communications between the staff and faculty of the public schools, other community institutions and agencies, and citizens in the community.

Based on the recommendations of the Superintendent of Public Instruction, the State Board of Education shall adopt appropriate policies and guidelines for encouraging increased community involvement in the public schools and use of the public schools facilities.

The State Board of Education shall establish rules and regulations governing the submission and approval of programs prepared by local boards of education for encouraging increased community involvement in the public schools and use of the public school facilities.

The State Board of Education is authorized to allocate funds to the local boards of education for the employment of community schools coordinators and for other appropriate expenses upon approval of a program submitted by a local board of education and subject to the availability of funds. In the event that a local board of education already has sufficient personnel employed performing functions similar to those of a community schools coordinator, the State Board of Education may allocate funds to that local board of education for other purposes consistent with this Article. Funds allocated to a local board of education shall not exceed three fourths of the total budget approved in the community schools program submitted by a local board of education.

Section 115C-207. Authority and responsibility of local boards of education.

Every local board of education elects to apply for funding pursuant to this Article shall:
(1) Develop programs and plans for increased community involvement in the public schools based upon policies and guidelines adopted by State Board of Education.
(2) Develop programs and plans for increased community use of public school facilities based upon policies and guidelines adopted by State Board of Education.
(3) Establish rules governing the implementation of such programs and plans in its public schools and submit these rules along with adopted programs and plans to the State Board of Education for approval by the State Board of Education.

Programs and plans developed by a local board of education shall provide for the establishment of one or more community schools advisory councils for the public schools under the board's jurisdiction and for the employment of one or more community schools coordinators. The local board of education shall establish the terms and conditions of employment for the community schools coordinators.

Every local board of education which elects to apply for funding pursuant this Article shall have the authority to enter into agreements with other local boards of education, agencies and institutions for the joint development of plans and programs and the joint expenditure of funds allocated by the State Board of Education. Local funds from such local board of education applying for funds for the community schools program must equal at least one fourth of the total budget for the community schools program of said local board of education.

Section 115C-208. Community schools advisory councils; duties; responsibilities; membership.

Every participating local board of education shall establish one or more community schools advisory councils which may become involved in matters affecting the educational process in accordance with rules established by the local board of education and approved by the State Board of Education and further shall consider ways of increasing community involvement in the public schools and utilization of public school facilities. Community schools advisory councils may assist local boards of education in the development and preparation of the plans and programs to achieve such goals, may assist in the implementation of such plans and programs and may provide such other assistance as may be requested by the local boards of education.

Community schools advisory councils shall work with local school officials and personnel, parent-teacher organizations, and community groups and agencies in providing maximum opportunities for public schools to serve the communities, and shall encourage the maximum use of volunteers in the public schools.

At least one half of the members of each community schools advisory council shall be the parents of students in the particular public school system: Provided, that less than twenty-five percent (25%) of the pupils attending a particular school reside outside the immediate community of the school, at least one half of the members shall be parents of students in the particular school for which the advisory council is established. Wherever possible the local board of education is encouraged to include at least one high school student. The size of the councils and the terms of membership on the councils shall be determined by the local board of education in accordance with the State guidelines.

Section 115C-209. Community schools coordinators.

Every participating local board of education shall employ one or more community schools coordinators and shall establish the terms and conditions of their employment. Community schools coordinators shall be responsible for:
(1) Providing support to the community schools advisory councils and public school officials.
(2) Fostering cooperation between the local board of education and appropriate community agencies.
(3) Encouraging maximum use of community volunteers in the public schools.
(4) Performing such other duties as may be assigned by the local superintendent and the local board of education, consistent with the purposes of this Article.

Section 115C-524. Repair of school property; use of buildings for other than school purposes.

Notwithstanding the provisions of G.S. 115C-263 and 115C-264, local boards of education shall have authority to adopt rules and regulations by which school buildings, including cafeterias and lunchrooms, may be used for other than school purposes so long as such use is consistent with the proper preservation and care of the public school property. No liability shall attach to any board of education, individually or collectively, for personal injury suffered by reason of the use of such school property.

Section 115C-527. Use of schools and other public buildings for political meetings.

The governing authority having control over schools or other public buildings which have facilities for group meetings, or where polling places are located, is hereby authorized and directed to permit the use of such buildings without charge, except custodial and utility fees, by political parties, as defined in G.S. 163-96, for the express purpose of annual or biennial precinct meetings and county and district conventions: Provided, that the use of such buildings by political parties shall not be permitted at times when school is in session or which would interfere with normal school activities or functions normally carried on in such school buildings, and such use shall be subject to reasonable rules and regulations of the school boards and other governing authorities.

NORTH DAKOTA

Section 15-35-14. Use of school buildings for other than school purposes.

School boards having charge of school buildings and other school facilities may permit the use thereof under proper restrictions for any appropriate purpose when not in use for school purposes. Equal rights and privileges shall be accorded to all religious denominations and to all political parties. Furniture fastened to the buildings shall not be removed or unfastened. Public school and high school auditoriums, gymnasiums, and other school facilities may be let for meetings, entertainments, or conventions of any kind, subject to such restrictions as the governing board of the district shall prescribe. Such use of the buildings and other facilities shall not be permitted to interfere with the operation of the schools or with school activities. A charge may be made for the use of the buildings, facilities, or any portion thereof.

OHIO

Section 3313.75. Use of schoolhouses generally.

The board of education of a city, exempted village, or local school district may authorize the opening of schoolhouses for any lawful purposes. This section does not authorize a board to rent or lease a schoolhouse when such

rental or lease interferes with the public schools in such district, or for any purpose other than is authorized by law.

Section 3313.75. Schoolhouses available for educational and recreational purposes.

Upon application of any responsible organization, or a group of at least seven citizens, all school grounds and schoolhouses, as well as all other buildings under the supervision and control of the state, or buildings maintained by taxation under the laws of this state, shall be available for use as social centers for the entertainment and education of the people, including the adult and youthful population, and for the discussion of all topics tending to the development of personal character and of civic welfare, and for religious exercises. Such occupation should not seriously infringe upon the original and necessary uses of such buildings shall prescribe such rules and regulations for their occupancy and use as will secure a fair, reasonable, and impartial use of the same.

Section 3313.77. Use of schoolhouses and grounds for public meetings.

The board of education of any city, exempted village, or local school district shall, upon request and the payment of a reasonable fee, subject to such regulation as is adopted by such board, permit the use of any schoolhouse and rooms therein and the grounds and other property under its control, when not in actual use for school purposes, for any of the following purposes: (a) Giving in any branch of education, learning, or the arts; (b) Holding educational, religious, civic, social, or recreational meetings and entertainments, and for such other purposes as promote the welfare of the community; provided such meetings and entertainments shall be nonexclusive and open to the general public; (c) Public library purposes, as a station for a public library, or as reading rooms; (d) Polling places, for holding elections and for the registration of voters, or for holding grange or similar meetings.

Section 3313.78. Political meetings in schoolhouses and on grounds; liability for damage.

Upon application of a committee representing any candidate for public office or any regularly organized or recognized political party, the board of education having control of any school grounds mentioned in Section 3313.76 of the Revised Code, shall permit the same to be used as a place

wherein to hold meetings of electors for the discussion of public questions and issues. No such meeting shall be held during regular school hours. No charge shall be made for such use, but the candidate or committee so holding a meeting shall be responsible for any damage done or expense incurred by reason thereof.

OKLAHOMA

Section 70-5-130. Permitting use of school building.

The board of education of any school district may, under such regulations and conditions as it may prescribe, open any school building and permit the use of any property belonging to such district for religious, political, literary, cultural, scientific, mechanical or agricultural purposes, and other purposes of general public interest and may make a reasonable charge to cover the cost of the use of such building and property.

OREGON

Section 332.172. Use of school buildings and grounds for civic and recreational purposes.

(1) Subject to ORS 330.667, the district school board may permit the use of school buildings by residents of the district for civic and recreational purposes, including use for:
(a) Supervised recreational activities;
(b) Meeting places for discussion of all subjects and questions which in the judgement of the residents may relate to the educational, political, economic, artistic and moral interests of the residents, giving equal rights and privileges to all religious denominations and political parties; and
(c) Such other proper purposes as may be determined by the board.
(2) The district school board may appoint a special supervising officer to have charge of the buildings and grounds, preserve order, protect school property and do all things necessary in the capacity of a peace officer to carry out the provisions of this section.
(3) The district school board may establish a schedule of fees and collect fees pursuant to the schedule for use of school buildings and grounds and other facilities, including but not

limited to gymnasium equipment, swimming pools, athletic fields and tennis courts.
(4) Expenses for light, heat, janitor services and services of the special supervising officer provided in connection with use of buildings and grounds under this section which are not covered by the fees charged under subsection (3) of this section shall be paid out of the county or special school funds of the district in the same manner that other similar services are paid.
(5) The district school board shall make rules governing the use of school buildings and grounds under this section.

PENNSYLVANIA

Section 7-775. Use of school buildings for other purposes; arrangements borough or township.

The board of school directors of any district may permit the use of its school grounds and buildings for social, recreation, and other proper purposes, under such rules and regulations as the board may adopt. The board shall make such arrangements with any city, borough, or township authorities for the improvement, care, protection, and maintenance of school buildings and grounds for school, park, play, or other recreation purposes, as it may see proper. Any board of school directors may make such arrangements as it may see proper with any officials or individuals for the temporary use of school property for schools, playgrounds, social, recreation, or other proper educational purposes, primaries and elections, and may permit the use of any school building for holding official meetings of the governing authorities of corporate or politic, governmental or quasi-governmental bodies, created by authority of any act of Assembly. The use thereof shall not interfere with school programs and shall be subject to reasonable rules and regulations adopted by the board of school directors.

The board of school directors of any school district shall have power and authority to lease any part of their respective school building, equipment and premises, or any vacant building, for any educational purpose. Such leases shall be subject to the terms and regulations which may be adopted by the board of school directors, and except in districts of the first class, shall be further subject to the approval of the Department of Public Instruction.

Funds raised by individuals, groups, associations, or corporations, through the permissive use of school grounds or buildings, now or hereafter authorized by laws, shall be the property of the individuals, groups, associations, or corporations, and not the property of the school district,

subject, however, to such arrangements as the board may, at its discretion, lawfully make.

The board of public education or the board of school directors of any school district shall have power and authority to lease any of their respective school buildings or athletic fields to any reputable organization or group of persons for charitable purposes, subject to such charges as the board shall consider proper to reimburse it for any costs resulting from the leasing of such school buildings or athletic fields. At the time of such leasing, any such board may require a bond, in an amount that it may deem proper, with responsible sureties or securities, and a statement of the charitable purposes for which such lease is requested.

Section 951-16. Days and hours of registration; places of registration; use of polling places; payment of rentals; use of school buildings; public notice.

The board of public education or school directors of each school district shall furnish suitable space in any public school building under its jurisdiction or control, and shall cause the room or space to be open and in proper order for use as a place of registration on each day when such room or space may be desired by the registration commission for use as a place of registration in accordance with the provisions of this act: Provided, That such use shall not interfere with instruction for the conduct of which such board of public education or school directors shall be responsible.

RHODE ISLAND

Section 16-2-15. Location of schools--Control of property.--The school committee shall locate all schoolhouses, and shall not abandon, close or change the location of any without good cause; and unless otherwise provided by law, said school committee of each town shall have the care and control of all public school buildings and other public school property of the town, including repairs of said buildings and the purchase of furniture and other school equipment.

SOUTH CAROLINA

Section 59-19-90. General powers and duties of school trustees.

Control school property. Take care of, manage and control the school property of the district.

SOUTH DAKOTA

Section 13-24-20. Use of school facilities or buses for other community purposes--Compensation--Liability for damages.

The school board may rent or grant the use of school facilities, motor vehicles or land belonging to the school district for any purposes which it considers advisable as a community service for such compensation as it determines. The use may not interfere with school activities. Any person or persons or public body using such school facilities, motor vehicles or land is responsible to the school district for any and all damages that may be caused by reason of the use or occupancy. The school district is not liable for any suit for damages which might arise as the result of such use or occupancy.

TENNESSEE

Section 49-2-203. Powers and duties.

It shall be the duty of the local board of education: To permit school buildings and school property to be used for public, community or recreational purposes under such rules, regulations and conditions as may be prescribed from time to time by the board of education.
(A) No member of such board or other school official shall be held liable in damages for any injury to person or property resulting from such use of school buildings or propety.
(B) The local board of education may lease buildings and property or the portions of buildings and property it determines are not being used or are not needed at present by the public school system to the owners and/or operators of private day care centers and kindergartens for the purpose of providing educational and child care services to the community. Such leases may not be entered for a term exceeding five (5) years and must be on such reasonable terms as are worked out between the school board and the owner and/or operator. No such leasing arrangement entered into in accordance with the preceding sentence shall be intended or used to avoid any school integration requirement pursuant to the Fourteenth Amendment of the U.S. Constitution. Otherwise, public school buildings and property may not be used for private profit. The local board of education shall not execute any lease pursuant to this subdivision which would replace or supplant existing kindergarten programs or kindergarten pro-

grams maintained pursuant to the Minimum Kindergarten Program Law as contained in this title. The provisions of this subdivision shall also apply to municipal boards of education.

TEXAS

Section 20.21. Gymnasia, Stadia, and Other Recreational Facilities.

The governing board of each independent school district (including, as to each municipally controlled independent school district, the city council or commission which has jurisdiction thereof) and the governing board of each rural high school district, and the commissioners court of every county, for and on behalf of each common school district under its jurisdiction, shall be authorized and have the power to acquire, purchase, construct, improve, enlarge, equip, operate, and maintain gymnasia, stadia, or other recreational facilities for and on behalf of its district, and such facilities may be located within or without the district.

Section 20.23. Rentals, Rates, and Charges.

The board or commissioners court shall be authorized to fix and collect rentals, rates and charges, from students and others for the occupancy or use of any of said facilities, in such amounts and in such manner as may be determined by such board or commissioners court.

Art 2.03. Held in public buildings.

In all cases where it is practicable to do so, all elections--general, special, or primary--shall be held in some schoolhouse, fire station, or other public building within the limits of the election precinct in which such election is being held. No charge shall be made for the use of such building, except that any additional expense actually incurred by the authorities in charge of the building on account of the holding of the election therein shall be repaid to them by the authority liable for the expense of holding the election under the existing law. The authority liable for the expenses of the election may demand an itemized statement of the additional expense incurred for use of the building before making its remittance for such expense. If no public building is available, the election may be held in some other building, and any charge for its use shall be paid as an expense of the election.

UTAH

CHAPTER 21

CIVIC CENTERS

Section 53-21-1. School buildings and grounds.

There shall be a civic center at all public school buildings and grounds where the citizens of the respective school districts may engage in supervised recreational activities, and where they may meet and discuss any and all subjects and questions which in their judgement may appertain to the educational, political, economic, artistic and moral interests of the citizens of the community; but such use of public school buildings and grounds for such meetings shall in no wise interfere with any school function or prupose.

Section 53-21-3. Boards of education to control - supervising officer.

The management, direction and control of such civic centers shall be vested in the boards of education of the school districts. Said boards shall make all needful rules and regulations for conducting such civic-center meetings and for such recreational activities as are provided for in Section 53-21-1, and may appoint a special supervising officer who shall have charge of the grounds, preserve order, protect the school property and do all things necessary in the capacity of a peace officer to carry out the provisions and the intent and purposes of this chapter.

Section 53-21-4. Use of school property for, may be denied.

Whenever in its judgement a board of education deems it inadvisable to permit the use of such school property for the purpose requested it may refuse the use of such school property for any other than school purposes.

Section 53-21-5. Use of school buildings for other than school purposes.

School buildings shall not be used for commercial purposes, except that all boards of education may permit public school buildings , when not occupied for school purposes and when the use thereof will not interfere in any way with school purposes, to be used for a compatible educational or other purpose that will not interfere with the seating or other

furniture or property. The boards of education shall charge a reasonable fee for the use, the school buildings so that the district shall incur no expense for that use.

VERMONT

Title 16.3741. School buildings.

Each town district shall provide, furnish, maintain and control schoolhouses suitable for schools under the provisions of this title. When so authorized by the town district, the board of school directors shall have power to lease or purchase buildings or sites for schoolhouses, locate and erect schoolhouses, and sell or otherwise dispose of schoolhouses or sites for same, and for such purposes a district may raise a tax on its grand list.

VIRGINIA

Section 22.1-131. Boards may permit use of school property; general conditions.

A school board may permit the use, upon such terms and and conditions as it deems proper, of such school property as will not impair the efficiency of the schools. The school board may authorize the division superintendent to permit use of the school property under such conditions as it deems proper. The division superintendent shall report to the school board at the end of each month his actions under this section. Permitted uses may include use as voting places in any primary, regular or special election and operation of a local or regional library pursuant to an agreement between the school board and a library board created as provided in Section 42.1-35 of this Code.

Section 22.1-132. Boards may impose certain conditions on use of property.

Permits for the use of school property may contain, among other matters, (i) provisions limiting the use of the property while classes are in session and (ii) an undertaking by the leasee to return the property so used in as good condition as when leased, normal wear and tear excepted.

WASHINGTON

Section 28A.58.105. Night schools, summer schools, meetings, use of facilities.

Every board of directors, unless otherwise specifically provided by law, shall:

(1) Authorize school facilities to be used for night schools and establish and maintain the same whenever deemed advisable; (2) Authorize school facilities to be used for summer schools or for meetings, whether public, literary, scientific, religious, political, mechanical, agricultural or whatever, upon approval of the board under such rules or regulations as the board of directors may adopt, which rules or regulations may require a reasonable rental for the use of such facilities.

WEST VIRGINIA

Section A-5-18. Night schools and other school extension activities, use of school property for public meetings, etc.

The board of education of any district or independent district shall have authority to establish and maintain evening night schools, continuation or part time day schools, and vocational schools, wherever practicable to do so, and shall admit thereto adult persons and all other persons, including persons of foreign birth, but excepting children and youth who are required by law to attend day schools; Boards of Education shall have the authority to use school funds for the financial support of such schools and to use the schoolhouses and their equipment for such purposes. Any such classes of schools shall be conducted in accordance with the rules and regulations of the state board of education.

The board of education of any district or independent district shall have authority also to provide for the free, comfortable and convenient use of any school property to promote and facilitate frequent meetings and associations of the people for discussion, study, recreation and other community activities, and may secure, assembly and house material for use in the study of farm, home and community problems, and may provide facilities for the dissemination of information useful on the farm, in the home, or in the community.

WISCONSIN

Section 40.30. District board; powers. . . .

(2) The board may grant the request of any responsible inhabitant of the district to use the schoolhoue for such public meetings as will, in the judgement of the board, aid in disseminating intelligence and promoting good morals. The applicant shall be primarily, and the members of the board secondarily, liable to the district for any injury done to any property and for any expense incurred in consequence of any such use of the schoolhouse.
(3) The board may grant the use of the schoolhouse for lectures, entertainments and school exercises held under the auspices of and for the benefit of the school, and permit an admission fee to be charged.
(4) The board may provide for the free use of such property for general civic, social and recreational activities that do not interfere with the prime use thereof; the use of school buildings shall not be granted for public dancing, over the written protest of a majority of the electors of the district, or if a resolution against public dancing in the schoolhouses shall have been adopted at the annual meetings.
(5) Except in cities of the first class the school board of any school district which holds an annual district meeting, after being authorized to do so by the electors of any such meeting, and the school board or board of education of any other school district, in its discretion, may grant the use of school buildings and school grounds to any responsible organization for public meetings to which an admission price is demanded, and to charge for such grant or use such sums as may be fixed by the school board or the board of education by a majority vote of the board members taken at a regular or special board meeting, all sums so received to be accounted for and paid into the school treasury to constitute part of the general fund and to be used for the benefit of the schools.
(6) Any school board may provide free lectures on educational subjects, in the school buildings, in public library buildings or in other suitable places, and provide for the further education of the adult residents of the district. The board may purchase books, stationery, charts, and other things necessary to conduct said lectures and may designate some person to manage such lectures.

WYOMING

Section 21-3-11. Powers and duties of board generally.

The district board shall make all contracts, purchases, payments and sales, necessary to carry out every vote of the district, for procuring any site for a schoolhouse, renting, repairing or furnishing the same, and disposing thereof, or for keeping a school therein, and performing such other duties as may be delegated to them by the district meeting.

DISTRICT OF COLUMBIA

Section 8-223. Powers of Board of Education, Mayor of District of Columbia, or National Park Service unabridged.

No power or authority conferred by this chapter shall be construed to abridge the powers of the Board of Education, the Mayor of the District of Columbia, or the National Park Service to refuse the use of any ground, building, or facility under their individual or collective control whenever the use of any such ground, building, or facility for recreational purposes would interfere with the use or purpose for which such ground, building, or facility was acquired or created, and nothing herein expressed or implied shall be construed to abrogate any powers vested in the Board of Education by the Organic Act of 1906 insofar as the control of public education and all necessary facilities and personnel is concerned.

Section 31-201. Control of school buildings; disposition of proceeds.

(a) The control of the public schools in the District of Columbia by the Board of Education shall extend to include the negotiation and approval of use, license, and lease agreements, with or without monetary consideration, with respect to the use of public school buildings, and parts thereof and the grounds appurtenant thereto, and land intended for such use, by or for any of the following:

(1) Any agency or agencies of the District of Columbia government, the United States government or any international organization;
(2) Any person or organization providing an educational or recreational program involving students of the public schools, other children, youth, or adults;

(3) Any person or organization providing a supplementary educational program;
(4) Any person or organization conducting civic meetings for the free discussion of public questions;
(5) Any person or organization operating a social center including, but not limited to, the following:

(A) A pre-school center child development center, or day care center;
(B) A health clinic or a counseling service;
(C) A community service program;
(D) A community-based consumer cooperative; or
(E) A studio or workshop for instruction, display, performance or promotion of the arts, or for other art-related purposes;

(6) A playground or center for recreational activity; or
(7) Any other use which the Board of Education may deem to be compatible with the normal use of the particular property and in the best interest of the local community, other than industrial uses, and which does not require major structural renovations at cost to the District of Columbia government to implement a particular agreement.

(b) In the execution of subsection (a) of this section, preference shall be given to agencies of the District of Columbia government.
(c) All rents, fees, and proceeds derived from the leases, licenses, or use agreements entered into pursuant to this act shall be paid to the Treasury of the District of Columbia, under regulations issued by the Mayor, and accounted for in the General Fund as a separate revenue source allocable to provide authority for the Board of Education to expend for the custody, cleaning, heating, air-conditioning, lighting, maintenance, security, and improvement of public school buidings and grounds, and the management of these leases, licenses, and use agreements. Any unobligated balance remaining 90 days subsequent to the end of the fiscal year in which the revenues were received shall be transferred by the Board of Education to the debt service fund to be applied toward the repayment of capital outlay loans and interest outstanding on public school buildings and grounds acquired and held for school purposes, pursuant to Section 1-105 over and above the amount appropriated by the Congress of the United States to the District of Columbia for such purposes.
(d) The authority of the Board of Education pursuant to this section shall be in addition to, and not in derogation of, the authority granted to the Board of Education by Section 31-106 and by Sections 8-212, 8-223, and 8-224, insofar as these provisions relate to the use of buildings and grounds under the control of the Board of Education.

(e) The Board of Education shall, in accordance with subchapter 1 of Chapter 15 of Title 1, issue rules for the consideration and review of applications for the use of public school buildings and grounds by lease or otherwise, pursuant to this section. Final approval of each lease, license, or use agreement entered into by the Board of Education pursuant to this act shall be reserved to the Board of Education which may delegate to the Superintendent any of its authority.