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Houston, Samuel Humes, Jr.

**THE LEGALITY OF USING PUBLIC TAX FUNDS FOR PAROCHIAL
ELEMENTARY AND SECONDARY SCHOOLS: THE UNITED STATES
SUPREME COURT--THE NINETEEN SEVENTIES**

The University of North Carolina at Greensboro

Ed.D. 1982

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THE LEGALITY OF USING PUBLIC TAX FUNDS FOR
PAROCHIAL ELEMENTARY AND SECONDARY
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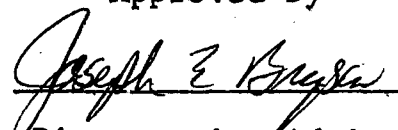
Samuel H. Houston, Jr.

A Dissertation Submitted to
the Faculty of the Graduate School at
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Doctor of Education

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1982

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APPROVAL PAGE

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This study is an investigation of the legality of using public tax funds for support of parochial elementary and secondary schools as determined by an analysis of United States Supreme Court cases of the decade of the seventies.

The following questions were proposed:

1. What are the major legal issues regarding public funding for parochial elementary and secondary schools?
2. Which of these issues are likely to be included in court cases related to public funds for parochial elementary and secondary schools?
3. Which of the legal principles established by the landmark decisions regarding public aid for parochial elementary and secondary schools are applicable to the fifty state general constitutional and statutory provisions?
4. Based on the results of recent court cases, what specific issues related to public tax funds for parochial elementary and secondary education are being litigated?
5. Can any specific trends be determined from analysis of the court cases?
6. Based on the established legal precedents, what are the legally acceptable criteria for using public tax funds for parochial elementary and secondary schools?

Thus, this dissertation provides insight concerning the future of church and state litigation and financing of

parochial elementary and secondary schools. The following conclusions were reached:

1. There will be continuous legal activity concerning church and state as various groups seek funding from nonpublic schools.
2. The tripartite test, designed in Lemon I, will continue to comprise a significant portion of the constitutional muster on which church-state cases will be evaluated.
3. A changing standard which will add sophistication and refinement to the Lemon test will evolve for the measure of constitutionality.
4. It is predictable that the "same" areas of legal questioning to secure funding will surface occasionally.
5. Debate concerning a voucher system will lead to litigation to determine constitutional acceptance of such a financing plan.
6. Until the infamous "insoluble paradox" is resolved, the Court will not act in a predictable fashion regarding church and state issues.
7. Cases which come before the Court following Regan will be scrutinized in a fashion which represents a renewed desire for clarification of the "wall of separation" of church and state.

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CHAPTER I

INTRODUCTION

The legality of using public tax funds for religious education has become a much litigated question in recent years. During the decade of the seventies, the United States Supreme Court handed down more church-state decisions than in the entire one hundred eighty years' history prior to the decade of the seventies. Competition for financial aid from religious schools is not a new occurrence in American society and certainly not a unique happening of the decade of the seventies although massive litigation concerning this topic did occur during that period of history. Current financial conditions within American society seem to indicate that there will be continued competition for public tax money by educational agencies other than public. An exploration of the history of the fight for financial aid will offer the framework for some predictions concerning the future of financial aid for parochial education.

In 1647 the General Court of the Colony of Massachusetts Bay passed the "Old Deluder Satan Act." Section Two of that Act provided that when a town increased to one hundred families or households, a grammar school would be established with a master capable of preparing young people for

university level study.¹ The Colony of Massachusetts Bay was not unique in its concern for education; other colonies also gave unrestricted aid through land grants and appropriations of money. Both practices were later adopted by the Continental Congress and the Congress of the United States.²

"At the time of the adoption of the Federal Constitution, nine of the American states had established churches with several denominations represented."³ In the very first public schools established in Massachusetts under the "Old Deluder Satan Act," a chief purpose of the schools was to prepare students to read the Holy Bible. Religious influences have pervaded the curriculum of a majority of schools during much of the history of the nation.⁴ "People were only too happy to have any kind of school established that would provide young people with the elements of learning."⁵

¹Edgar W. Knight and Clifton L. Hall, Reading in American Educational History (New York: Appleton-Century-Crofts, 1951), pp. 62-63.

²Robert A. Koenig, The Courts and Education (Chicago, University of Chicago Press, 1978), p. 1.

³Peter H. Rossi and Alice S. Rossi, "Some Effects of Parochial School Education in America," in Society and Education: A Book of Readings, ed. Robert J. Havighurst, Bernice L. Neugarten, and Jacqueline M. Falk, (Boston: Allyn, Inc., 1967), p. 204.

⁴M. A. McGheney, Control of the Curriculum, (Chicago, University of Chicago Press, 1978), p. 140.

⁵Mary Perkins Ryan, Are Parochial Schools the Answer? (New York: Holt, Rinehart and Winston, Inc., 1964), p. 32.

In certain instances, "public funds and other forms of public aid were turned over to private agencies and religious groups for support of nonpublic education."⁶ In 1875, President Ulysses S. Grant, on the occasion of the first centennial celebration, proposed that a constitutional amendment be submitted to the legislature of each state to provide free public schools, but "forbidding the teaching in said schools of religious, atheistic, or pagan tenets,"⁷

Even prior to President Grant's proposal, enlightened educators voiced numerous concerns about the necessity for separation of religion and education. In 1837, Samuel Lewis, first superintendent of the common schools of Ohio, supported nondenominationalism in his First Annual Report to the Ohio Legislature. In New York the Reverend Horace Bushnell published an article saying that "to insist that the state shall teach the rival opinions of sects and risk the loss of all instructions for that would be folly and wickedness together."⁸

⁶Ronald F. Campbell, et al., The Organization and Control of American Schools, (Columbus, Ohio: Charles E. Merrill, 1970), p. 528.

⁷James D. Richardson, ed., Compilation of the Messages and Papers of the Presidents, 1789-1897, Vol. 7, Record, 1876, 4, 175-181, (Washington, D. C.; Government Printing Office, 1898).

⁸Vincent P. Lannie, Public Money and Parochial Education, (Cleveland: Press of Case Western Reserve University, 1968), p. 3.

During this era of discussion and concern there developed a moderation of religious activity in the public schools which soon developed into a code of religious inclusion in the school day. Reading of the Bible was accepted without rebellion. Problems developed, however, when Protestant approaches to Biblical scripture and interpretation came in conflict with Catholic religious attitudes.

Americans were culturally unprepared to adopt and accept varied life styles and group behaviors which appeared when large numbers of Catholics immigrated to the country. Immigrants retained their native customs, mores, language, family leadership, and educational desires. The view of education proposed by some American immigrants was not compatible with the envisioned "American Dream." The new American Catholic immigrants desired an education for survival and religious continuity. Moreover, as the new American Catholics clustered together in ghettos with subsequent growth in numbers, they were seen as a threat to the new society.⁹

Native-born Americans had certain expectations of newcomers. Primarily, immigrants were expected to be hardworking, thrifty, honest, and to assimilate democratic ideals. It was thought they could not accomplish all this by

⁹Samuel Eliot Morison, Henry Steele Commager, and William Luechtenberg, The Growth of the American Republic, (New York: Oxford University Press, 1969), I, p. 452.

keeping to themselves, retaining old customs, and their old languages. Even the old religion was suspect. American Catholics were expected to send their children to public school where the young could be properly indoctrinated with rules of living in a democratic society.¹⁰

Early in the nineteenth century, Bishop John Hughes of New York led a fight for aid to Catholic parochial schools on the basis that public schools were actually Protestant and anti-Catholic in nature. He met with failure and thus began the Catholic church's own system of schools separate from the public school system.¹¹

Protestant influence in public education was a source of concern for Catholic leaders and theorists. Catholic desires were centered around a lobby to remove Protestant leadership and doctrine from public schools and at the same time gain financial support for parochial schools. Nineteenth-century Catholics concentrated upon the development of a parochial school system. At first bishops merely urged each parish to establish a church school. However, in 1884 when the Third Plenary Council of the church hierarchy met in Baltimore, "the Church made it obligatory

¹⁰
Ibid.

¹¹Edwin Scott Guastad, A Religious History of America (New York: Harper and Row Publisher, 1966), pp. 212-213.)

for each parish to set up its own school and for each Catholic to send his children to a parochial school."¹²

Elywn Smith's understanding was that the difficulty between the participants in the controversy lay in the realm of civil liberties. Smith said:

The touchstone of Freedom was conscience. If conscience should be taken captive by spirit of dogma, restrictive education, authoritative rule or coercion, freedom would die. Here was America's precise and most elemental quarrel with Roman Catholicism; in the American view--not solely the Protestant view, much less than that of a tiny band of propagandists--the Catholic conscience, both in principle and in fact was captive to the Pope.¹³

"It was assumed that Protestantism had given birth to republicanism in government; Catholicism reflected the support of old monarchial tyrannies and had no understanding or appreciation of civil liberties."¹⁴ It seemed perfectly logical to men like Lyman Beecher that in order for Catholics to understand the meaning of America they should be assimilated in the "common schools."¹⁵ The Jeffersonian basis for a Republic such as the United States depended upon an "enlightened"

¹²Rossi and Rossi, p. 205.

¹³Elywn A. Smith, Religious Liberty: The Development of Church and State Thought Since the Revolutionary Era, (Philadelphia: Fortress Press, 1972), p. 103.

¹⁴Ibid., p. 105.

¹⁵Ibid.

citizenry. Therefore, it would be required for the citizens to learn the meaning of great documents, such as the Constitution.¹⁶ In addition, they were to be permitted freedom of thought and expression, so that the Republic may continually renew itself.¹⁷ Reluctance on the part of the Catholics to "mingle" with the natives promoted the suspicion that they were indeed subject politically to a foreign power and, therefore, could not be trusted to become "good citizens."¹⁸

This brief historical sketch describes the early beginnings of a battle for control of education by various interest groups. Well defined differences of belief which separated Catholics from other groups have paved the way for what is presently a battle for financial aid to parochial education at public expense. Herein lies the basis of this dissertation.

Purpose

The purpose of this study is to determine the legality of using public funds to support religious elementary and secondary schools in the fifty states through analysis of United States Supreme Court decisions of the decade of the

¹⁶Ibid., p. 101.

¹⁷Ibid.

¹⁸Ibid.

seventies and by analysis of statutory provisions established by the laws of each state. This study is being developed in a factual manner and will deal with the legal questions. No attempts will be made to relate these questions to social or economic factors.

Questions to be Answered

The study will answer some very basic questions relating to the topic.

1. What are the major legal issues regarding public funding for parochial elementary and secondary schools?
2. Which of these issues are likely to be included in court cases related to public funds for parochial elementary and secondary schools?
3. Which of the legal principles established by the landmark decisions regarding public aid for parochial elementary and secondary schools are applicable to the fifty state general constitutional and statutory provisions?
4. Based on the results of recent court cases, what specific issues related to public tax funds for parochial elementary and secondary education are being litigated?
5. Can any specific trends be determined from analysis of the court cases?
6. Based on the established legal precedents, what are the legally acceptable criteria for using public tax funds for parochial elementary and secondary schools?

Scope of the Study

This is a historical study of the legal ramifications of using public tax funds to finance religious education in the United States as determined by United States Supreme

Court decisions of the decade of the seventies. The research describes the extent to which these funding practices have been challenged and litigated, the reasons for the litigation, the results of the Supreme Court decisions. The possible effects these judicial decisions will have on the use of public tax funds for parochial education is also discussed.

The study is limited to the litigation related directly to the Supreme Court decisions of the decade of the seventies which have a relationship to the funding of religious elementary and secondary schools.

Methods, Procedures, and Sources of Information

The basic research technique of this historical study is to examine and analyze the available references concerning the legal aspects of public tax funds being used to finance parochial schools.

In order to determine whether a need existed for such research, a search was made of Dissertation Abstracts for related topics. Journal articles related to the topic were located through use of such sources as Reader's Guide to Periodical Literature, Education Index, and the Index to Legal Periodicals.

General research summaries were found in the Encyclopedia of Educational Research, various books on school law, and in a review of related literature obtained through a computer search from Educational Resources 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, and the American Digest System. 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 the issues noted from the general literature review.

Design of Study

This study is an investigation of the legality of using public tax funds for support of parochial elementary and secondary schools as determined by an analysis of United States Supreme Court cases of the decade of the seventies. Chapter I will serve as an introduction which will describe the study.

The remainder of the study is divided into four major parts. Chapter II contains a review of related literature dealing with the legal aspects of public tax usage for education and also includes a summary review of all Supreme Court decisions concerning public tax use for religious elementary and secondary schools prior to Lemon I of 1971.¹⁹

¹⁹Lemon v. Kurtzman, 91S Ct. 2111, p. 2133 (1971).

Chapter III encapsulates a thorough review and analysis of both State and Federal constitutional and statutory provisions concerning church-state separations and public funds for religious elementary and secondary schools. The data is presented in a continuum ranging from general prohibition against church-state involvement, to specific prohibition against public tax funds used to support sectarian education, to specific efforts allowing public funds to be used supporting sectarian elementary and secondary education. Complete "codes" to all constitutional and statutory provisions will be included in the Appendices.

Chapter IV includes a narrative discussion of the major legal issues relating to public aid supporting parochial elementary and secondary schools. An attempt is made in this chapter to show the relationships between the legal issues and the fifty state general constitutional and statutory provisions and in some cases Federal statutes that became questionable points in litigation.

Chapter V presents the story of the United States Supreme Court's decisions during the decade of the seventies which related to funding of parochial elementary and secondary schools.

Chapter VI contains a general review, analysis and discussion of Supreme Court decisions during the decade of

the seventies increasing the use of public tax funds for parochial elementary and secondary schools. The category of cases includes all United States Supreme Court landmark decisions increasing public support for sectarian elementary and secondary schools.

The concluding chapter contains a review and summary of information obtained from review of literature and from Supreme Court decisions. Finally, legally acceptable criteria for public funding of religious elementary and secondary schools is included.

DEFINITION OF TERMS

Certiorari means a writ of review or inquiry.

Child-benefit theory means that the benefit is intended for the child and any simultaneous benefit occurring to a religious institution is incidental.

Concurring opinion means an opinion separate from that which embodies the views and decisions of the majority of the court, prepared and filed by a judge who agrees in the general result of the decision, and which either reinforces the majority opinion by the expression of the particular judge's own views or reasoning, or voices his disapproval on the grounds of the decision or the arguments on which it was based, though approving the final result.

General Welfare theory is derived from the fact that congress is constitutionally charged with maintaining the

welfare of all citizens; therefore, aid may be extended under this theory, even though it incidentally aids a sectarian institution.

Public funds means either federal or state revenues.

Public schools refers to schools established under the law of the state (usually regulated in matters of detail by the local authorities), in various districts, counties, or towns, maintained at the public expense by taxation, and open with or without charge to the children of all the residents of the town or other district.

Parochial school means a school maintained by a religious group.

Independent school means a school other than public or parochial.

Tripartite test refers to a test of constitutional muster which was designed in arriving at a decision in Lemon v. Kurtzman 1971. The test consists of three measures of constitutionality.

1. Does the statute have a secular legislative purpose?
2. Is its primary effect to neither advance nor inhibit religion?
3. Does the statute foster an excessive government entanglement with religion?

Private school in this dissertation refers to any school which is not parochial or public.

CHAPTER II
REVIEW OF LITERATURE
OVERVIEW

The early English settlers in the colonies brought with them a heritage of English education that was centered around family, community and church.¹ The American colonists also sought a country where they could worship according to the dictates of conscience, a country unstained by state-established religions.² This desire for freedom of worship set the stage for a battle that was beyond the perception of the earliest American colonists. The desire of the colonist to break the political bonds of a historical relationship with the church of England led the way to a need for a well defined separation of church and state.

"At the time of the adoption of the Federal Constitution, nine of the American states had established churches, with

¹Stephen Goldstein, Law and Public Education - Cases and Materials (Indianapolis, Indiana: The Bobbs-Merrill Company, Inc.), p. 7.

²Joseph E. Bryson and M. R. Smith, Church-State Relations: The Legality of Using Public Funds for Religious Schools (Topeka, Kansas: National Organization on Legal Problems on Education, 1971).

several denominations represented."³ In certain instances "...public funds and other forms of public aid were turned over to private agencies and religious groups for the support of nonpublic education."⁴ "People were only too happy to have any kind of school established that would provide young people with the elements of learning."⁵

However, the enjoyment of such harmony was not lasting: "Immigration as well as schisms in established denominations brought about a proliferation of sects, so that by 1840 the separation of church and state had taken place in every state within the Union."⁶

"By 1840 there were two hundred Catholic schools in the country as a whole."⁷ In Lowell, Massachusetts, "provisions were made for a time for 'Irish' schools, which Catholic children only attended, to be taught by Catholic teachers."⁸

³Peter H. Rossi and Alice S. Rossi, "Some Effects of Parochial School Education in America," in Society and Education: A Book of Readings, ed. by Robert J. Havighurst, Bernice L. Havgarten, and Jacqueline M. Folk (Boston: Allyn, Inc., 1967), p. 204.

⁴Ronald F. Campbell, et al., The Organization and Control of American Schools (Columbus, Ohio: Charles E. Merrill Publishing Company, 1970), p. 528.

⁵Mary Perkins Ryan, Are Parochial Schools the Answer? (New York: Holt, Rinehart & Winston, Inc., 1964), p. 32.

⁶Rossi and Rossi, p. 205.

⁷Reginald A. Newwien, ed., Catholic Schools in Action (South Bend, Indiana: University of Notra Dame Press, 1966), p. 3.

⁸Ibid., p. 6.

The Catholics and Parochial Aid

The first significant battle for parochial aid was waged in New York City during the early 1840's. At the time, 20,000 children, primarily Catholic, refused to attend the public schools because of religious objections.⁹ Recognizing the seriousness of the situation, Governor William H. Seward urged the reorganization of New York City's school system. Under Seward's plan:

....the existing Catholic schools would become part of the State's common school system - Catholic public schools - even though they retained private charters and religious affiliation. Public funds would thus be appropriated to finance denominational schools which Catholic children could attend without violating their religious convictions.¹⁰

Seward's biographer, Glyndon Van Deusen, wrote that Seward hoped to achieve political advantage by siding with the Catholics on the school issue.¹¹ It may have been that Seward's motives were political, but the course advocated was consistent with Seward's deepest personal conviction.

[He wrote]to a friend in December 1840, as the political storm he had unleashed was breaking, "Knowledge taught by any sect is better than

⁹Bryson and Smith, p. 10.

¹⁰Vincent P. Lannie, Public Money and Parochial Education (Cleveland: The Press of Case Western Reserve University, 1968), p. 21.

¹¹Diane Ravitch, The Great School Wars (New York: Basic Books, Inc., 1974), p. 39.

ignorance. I desire to see the children of Catholics educated as well as those of Protestants; not because I want them Catholics, but because I want them to become good citizens. In due time these views will prevail notwithstanding the prejudices that have assailed them."¹²

The Catholic leadership of New York understood Seward's message as an invitation to apply for public funds and soon after the governor's address, Dr. John Power convened a meeting of the trustees of all the city's Catholic churches, who agreed to seek public subsidy for the Catholic Schools.¹³

Almost immediately, two other sects, one Jewish and one Presbyterian, set forth equal claims for funding:

If your Honorable Body shall determine to grant their (Catholic) request, and thus establish the principle that this fund, though raised by general tax, may be appropriated to church or Sectarian schools, then your memorialists respectfully but earnestly contend, that they are entitled to a rateable portion thereof...¹⁴

The New York Public School Society immediately advanced strong opposition to any possibility of funds being granted to religious groups for education.

¹²Glyndon Van Deusen, William H. Seward (New York: Oxford University Press, 1967), p. 70.

¹³Ravitch, p. 40.

¹⁴Lannie, p. 33.

The Catholics promised that if funds were granted to Catholic schools, religious instruction would be offered only after school with parental approval.¹⁵ The Society desired to offer an education to all children and hoped that a plan to remove all objections for support to Catholic schools could be developed. Negotiations to make public textbook use acceptable for the Catholic leadership were pushed into the background on April 27, 1840, when the Committee on Arts and Sciences and Schools brought in its report on the controversy, known as Document No. 80. It opposed the Catholic claim:

Religious zeal, degenerating into fanaticism and bigotry, has covered many battlefields with its victims To prevent, in our day and country, the recurrence of scenes so abhorrent to every principle of justice, humanity, and right, the Constitutions of the United States and of the several States have declared....that there should be no establishment of religion by law; that the affairs of the state should be kept entirely distinct from, and unconnected with, those of the Church; that every human being should worship God according to the dictates of his own conscience; that all churches and religions should be supported by voluntary contributions; and that no tax should ever be imposed for the benefit of any denomination of religion, for any cause or under any pretense whatever.¹⁶

¹⁵ Diane Ravitch, op. cit., p. 42.

¹⁶ Report of the Committee on Arts and Sciences, Document No. 80. (New York, Board of Assistant Aldermen, April 27, 1840).

The Separation of Church and State

One definition of "religion" is that any "individual or group belief is religious if it occupies the same place in the lives of its adherents that orthodox beliefs occupy in the lives of their adherents."¹⁷ Four characteristics should be present:

- (1) a belief regarding the meaning of life;
- (2) a psychological commitment by the individual adherent (or if a group, by the members generally) to this belief;
- (3) a system of moral practice resulting from adherence to this belief; and
- (4) an acknowledgement by its adherents that the belief (or belief system) is their exclusive or supreme system of ultimate beliefs.¹⁸

America was colonized by Europeans seeking an opportunity to worship freely. Although many countries function with a "state church" professing a reasonably uniform religious doctrine which can be a unifying force, the early settlers sought a land which did not have a "state church."¹⁹

In the United States any religious belief is given an opportunity to flourish with no official government-sponsored religion encouraged. Moreover, church and state are separate; religions in America coexist with each other

¹⁷ Defining Religion, University of Chicago Law Review 32 (1965): 550-51.

¹⁸ Arval A. Morris, The Constitution and American Education (St. Paul, Minnesota: West Publishing Company, 1977), p. 374.

¹⁹ Ibid, p. 374.

within a secular state. This is the American heritage, and while harmony usually prevails, it is sometimes a heritage of friction.²⁰

The First Amendment

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...."²¹ The First Amendment's purpose was not to strike merely at the official establishment, but to create a complete and permanent separation of the spheres of religious activity and civil authority by comprehensively forbidding every form of public aid or support for religion.²²

For James Madison and Thomas Jefferson religious freedom was the crux of the struggle for freedom in general.²³ The First Amendment, so appropriately numbered, broadly forbids state support, financial or other, of religion in any guise, form or degree. It disallows public funds being used for religious purposes.

The Supreme Court of the United States has ruled on numerous decisions concerning the separation of church and

²⁰Ibid,

²¹U.S. Constitution, Amend. I.

²²Everson v. Board of Education, 330 U. S. 1, 67 S. Ct. 504.

²³Morris, op. cit., p. 377.

state. All Court rulings have been determined based on the First Amendment and the Fourteenth Amendment, which extends to citizens of the states protection of the First Amendment.

Cochran and the Development of the
Child Benefit Theory

In 1928 Louisiana enacted a law that compelled the state board of education to provide "school books for school children free of cost." The books were in fact to be lent to all the children of the state, including children of private (secular or sectarian) schools. The cost was to be born out of tax funds.²⁴

Cochran objected and sought an injunction on grounds that supplying books to private schools amounted to taking his property without due process of law, a violation of the Fourteenth Amendment.

The state maintained that the purpose of the act was to aid children and not schools. "It was for the children's benefit and the resulting benefit to the state that the appropriations were made."²⁵ The state was persistent in its view that schools did not benefit from the appropriations. "The schools obtain nothing from them, nor are they relieved of a single obligation because of them.

²⁴Cochran v. Louisiana State Board of Education, 281 U.S. 370-374 (1930).

²⁵Ibid., 375.

The school children and the state alone are the beneficiaries."²⁶
 It was on this contention that the lower court's decision was affirmed. Chief Justice Charles E. Hughes delivered the opinion of the Court;

Viewing the statute as having the effect thus attributed to it, we can not doubt that the taxing power of the state is exerted for a public purpose. The legislature does not segregate private schools or their pupils, as its beneficiaries, or attempt to interfere with any matters of exclusively private concern. Its interest is education, broadly; its method, comprehensive. Individual interests are aided only as the common interest is safeguarded. Judgment affirmed.²⁷

With that brief statement, the court gave rise to the child-benefit theory.

The child-benefit opinion of Cochran was an extremely important decision and established a significant trend in the Court's behavior.

Everson and the Accommodationist Phase

New Jersey enacted a law that would reimburse parents for the cost of transporting their children to public or parochial schools, as long as these schools were not operated for a profit raised objections to the law which were

²⁶Ibid.

²⁷Ibid.

twofold; first, because it allegedly took public property and bestowed it for private usage without due process of law — a violation of the Fourteenth Amendment; and second, because the law would use tax money for the support of religious schools, thus establishing certain religions — a violation of the First Amendment.

To Everson's second charge, the Court first reviewed the history surrounding the First Amendment and then called into view the meaning of that Amendment:

The "establishment of religion" clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or nonattendance, no tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect "a wall of separation between church and state."²⁸

Notwithstanding such words, the Court held that the New Jersey statute did not make the slightest breach in the

²⁸Everson v. Board of Education, 330 U.S. 1, 75, (1974).

wall between religion and government. Moreover, the Court held, to inhibit New Jersey in its attempt to extend to its citizens the safety provided by the enactment would preclude the neutral stance required by the First Amendment.²⁹

"The First Amendment requires the state to be a neutral in its relations with groups of religious believers and non-believers; it does not require the state to be their adversary."³⁰

The Courts ruling in Everson began what appears to be an accommodationist phase of Supreme Court decisions.³¹ Despite the strident language of its separation between church and state rationale, the holding in Everson was generally consistent with the Court's earlier decision in Pierce v. Society of Sisters, a case that recognized the right of parents to send children to private schools that complied with minimal state accreditation standards.³² The holding in Everson also appeared consistent with several prior Court opinions upholding general welfare programs that incidentally benefited religion.³³

²⁹Bryson and Smith, p. 49.

³⁰Everson v. Board of Education, p. 15.

³¹Peter M. Schotten, The Establishment Clause and Excessive Governmental - Religious Entanglement: The Constitutional Status of Aid to Nonpublic Elementary and Secondary Schools (Atlanta: Darby Printing Company, 1979), p. 210.

³²Pierce v. Society of Sisters, 268 U.S. 510 (1925).

³³Quirk Bear v. Leupp, 210 U.S. 50 (1908).

A significant case concerning religious instruction in the public schools was McCullum v. Board of Education.³⁴ The Board of Education of Champaign County, Illinois had an agreement whereby several denominations could use part of the school day to instruct students who volunteered for such instruction on matters of their faith. The public school facilities were used and those students not desiring religious instruction continued to pursue secular education.

The plaintiff sought a court order to force the Board of Education of Champaign County, Illinois to:

...adopt and enforce rules and regulations prohibiting all instruction in and teaching of religious education in all public schools...and in all public school houses and buildings in said district when occupied by public schools.³⁵

In the state courts of Illinois the plaintiff was denied relief, and the case reached the United States Supreme Court on appeal.

Justice Hugo Black gave the Court's decision:

"This is beyond all question a utilization of the tax-established and tax-supported public school system to aid religious groups to spread their faith."³⁶

The Court relied on Everson and repeated its definition of the First Amendment, first given in Everson; the Court said:

The First Amendment rests upon the premise that both religion and government can best work to achieve their lofty aims if each is left free from the

³⁴McCullum v. Board of Education, 333 U.S. 203 (1948).

³⁵Ibid., p. 205. ³⁶Ibid., p. 210.

other within its respective sphere. Or, as we said in Everson, the First Amendment has erected a wall between church and state which must be kept high and impregnable.³⁷

Another important case involving aid to private elementary and secondary schools resolved prior to 1970 was Board of Education v. Allen.³⁸ In an opinion written for the Court, by Justice Byron White, Allen reaffirmed the principle—this time explicitly—under the First Amendment's establishment clause and the Fourteenth Amendment's due process clause—that the Constitution did not bar public schools from lending approved religiously neutral school books to children attending non-public schools.³⁹ The Cochran-Everson-McCollum-Allen era of decision making by the Court constituted a period when opinion outweighed precision. The Court ruled on various questions of separation of church and state in a reasonably consistent fashion in keeping with the logical mandates of the Constitution. However, not having a clear plan for decision making allowed for little consistency. Beginning with the second series of decisions related to the separation of church and state, the Court began the application and development of the now well-known tripartite test.

³⁷Ibid., p. 212.

³⁸Board v. Education v. Allen, 392 U.S. 236 (1968).

³⁹Ibid., p. 248.

CHAPTER III

FEDERAL AND STATE CONSTITUTIONAL AND STATUTORY
PROVISIONS FOR THE SEPARATION
OF CHURCH AND STATE

Governments have in one manner or another expressed a concern that seeks to maintain a wall of separation between church and state. Federal and state constitutional enactments vary in form but are explicit in intent of separation.

Federal Provisions

The First Amendment of the Bill of Rights embodies two provisions for separation of church and state.

The First Amendment reads:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances.¹

Questions as to the relationship of church and state have perplexed nations of western civilization for centuries. The establishment clause of the First Amendment was finally clarified in 1947, when the United States Supreme Court said:

¹U.S. Constitution, "Bill of Rights," Amendment I.

The "Establishment of Religion" clause of the First Amendment means at least this: Neither a state nor a Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or instructions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect "a wall of separation between church and state."²

The Fourteenth Amendment, known for its absorption concept, ended all speculation that states' provisions had any variance from those of the federal government in that it extended to citizens First Amendment freedom of religion. The Fourteenth Amendment reads:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any

²Everson v. Board of Education, 330 U.S. 1, 15 (1947).

person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.³

There have been numerous Constitutional entanglement decisions involving the state and federal government. The basic arguments insisted that the Fourteenth Amendment did not bind the states to the Establishment Clause of the First Amendment. In the 1940 Cantwell⁴ decision, the Supreme Court ruled that the federal and state governments have the same relationship to religion.

State Provisions

God and country - the religious ethic of the land - testifies to the fact that America is a religious nation. Nearly all State Constitutions offer a reference to God and a request for the Almighty's consideration in the State's endeavors. Nowhere do states become hostile to religion. In the 1952 Zorach decision, the Supreme Court stated:

We are a religious people whose institutions presuppose a Supreme Being. We guarantee the freedom to worship as one chooses. We make room for as wide a variety of beliefs and creeds as the spiritual needs of men deem necessary... We find no constitutional requirement which makes it necessary for government to be hostile to

³U. S. Constitution, "Bill of Rights," Amendment XIV.

⁴Cantwell v. Connecticut, 310 U.S. 296 (1940).

religion, and to throw its weight against efforts to widen the effective scope of religious influence.⁵

Preambles to the State Constitutions

All but five states have preambles to their state constitutions which acknowledge God or a "Supreme Being." Only New Hampshire, Ohio, Oregon, Vermont, and Virginia have no preamble. The forty-five states with preambles, and the five without, make statements which express a reliance on God and acknowledgement of a "Supreme Being." As an example, Virginia's new constitution adopted in 1971, reads from the Bill of Rights:

Article I - Section 16. Free Exercise of Religion;
No Establishment of Religion.
That religion is the duty which we owe to our creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and, therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity towards each other. No man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, or molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but all men shall be free to profess and by argument to maintain their opinions in matters of religion, and the same shall in nowise diminish, enlarge, or affect their civil capacities. And the General Assembly shall not prescribe any religious test whatever, or confer any peculiar privileges or

⁵Zorach v. Clausen, 343 U.S. 306, 314 (1952).

advantages on any sect or denomination, or pass any law requiring or authorizing any religious society, or the people of any district within this Commonwealth, to levy on themselves or others, any tax for the erection or repair of any house of public worship, or for the support of any church or ministry; but it shall be left free to every person to select his religious instructor, and to make for his support such private contract as he shall please.⁶

Virginia also incorporated into Section 16 of the Bill of Rights clear wording concerning appropriations to religious or charitable bodies. The wording established greater clarity concerning separation of church and state while acknowledging the duty of government to a Creator.⁷

The only other state to adopt a new constitution since 1970 was Montana. Less elaborate in its wording about a creator or a wall of separation, Montana's Preamble reads:

We, the people of Montana grateful to God for the quiet beauty of our state, the grandeur of our mountains, the vastness of our rolling plains, and desiring to improve the quality of life, equality of opportunities and to secure the blessings of liberty for this and future generations, do ordain and establish this constitution.⁸

⁶Virginia, Constitution, Article 1, Section 16 (1971).

⁷Ibid.

⁸Montana, Constitution, Preamble, p. 1., (1972).

The Declaration of Rights of Montana, Article I, Section 5, reads:

Section 5. Freedom of religion—The state shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.⁹

The framers of the new Montana constitution describe an appreciation for God, but erect in Article 1, Section 5 of the Declaration of Rights a wall of separation encompassing both the First and Fourteenth Amendments of the Federal Bill of Rights.

Thus, while most states have clauses that guarantee church-state separation, their constitutions reflect an acknowledgement of God. Table I shows that forty-five states have preambles which invoke God's favor or express gratitude to God. (All state preambles are presented in Appendix A.)

In addition to this, various preambles express hopes for a more perfect government, recognize the privilege of choosing and forming their own government, set forth the desire to ensure tranquility, and demonstrate the willingness to transmit to posterity aspirations of the future.

⁹Montana, Constitution, Art. I, Sec. 5 (1972).

TABLE I

STATES WITH PREAMBLES WHICH
 INVOKE GOD'S FAVOR OR
 EXPRESS GRATITUDE

States with Preambles	Invoke God's Favor	Express Gratitude
Alabama	X	
Alaska		X
Arizona		X
Arkansas	X	X
California	X	X
Colorado	X	X
Connecticut		X
Delaware		
Florida	X	X
Georgia		
Hawaii		X
Idaho	X	X
Illinois	X	X
Indiana		X
Iowa	X	X
Kansas		X
Kentucky	X	X
Louisiana	X	X
Maine	X	X
Maryland		X
Massachusetts	X	X
Michigan	X	X
Minnesota	X	X
Mississippi	X	X
Missouri		X
Montana		X
Nebraska		X
Nevada	X	X
New Jersey	X	X
New Mexico		X
New York	X	X
North Carolina	X	X
North Dakota		X
Oklahoma	X	
Pennsylvania	X	X
Rhode Island	X	X
South Carolina		X
South Dakota		X

TABLE I (Continued)

States with Preambles	Invoke God's Favor	Express Gratitude
Tennessee		X
Texas	X	
Utah		X
Washington		X
West Virginia		X
Wisconsin	X	X
Wyoming	X	X

All state constitutions provide for the separation of church and state, though many state legislators are feeling pressures for constitutional revisions to eliminate such separation.

Separation is accomplished in various ways. Prohibitions typically exist against one or more of the following:

(1) required attendance at religious worship; (2) establishment of religion; (3) interference with freedom of worship or conscience; (4) religious tests as a qualification for holding a public office, being a witness in a court, or being admitted to a public school; (5) questions touching on matters of religious beliefs in any court; (6) sectarian instruction in public schools; and (7) required support for religious or sectarian institutions, or religious or sectarian schools.

Table II establishes that thirty-eight states have constitutional prohibitions against religious qualifications for holding a public office, being a witness, or being admitted to a public school. (All fifty states' constitutional religious provisions are recorded in Appendix A.)

Alabama's constitutional prohibition against religious tests for holding public office is "...that

TABLE II

STATE PROHIBITIONS AGAINST RELIGIOUS TESTS
AS QUALIFICATIONS FOR HOLDING A PUBLIC
OFFICE, BEING A WITNESS BEING
ADMITTED TO A PUBLIC SCHOOL

States	Holding a Public Office	Being a Witness	Admission to a Public School
Alabama	X		
Arizona	X	X	X
Arkansas	X	X	
California		X	
Colorado	X		
Delaware	X		
Florida		X	
Georgia	X		
Idaho	X		X
Illinois	X		
Indiana	X	X	
Iowa	X	X	
Kansas	X	X	
Louisiana	X		
Maine	X		
Maryland	X		
Michigan	X		
Minnesota	X		
Mississippi	X		
Missouri	X		
Montana			X
Nebraska	X	X	X
Nevada		X	
New Jersey	X		
New Mexico			X
New York		X	
North Dakota		X	
Ohio	X	X	
Oklahoma	X		
Oregon	X	X	
Rhode Island			
South Dakota	X		
Tennessee	X		
Texas	X	X	
Utah	X	X	X
Washington	X	X	
Wisconsin	X	X	
Wyoming	X	X	

no religious test shall be required as a qualification to any office of public trust under this State."¹⁰ Nebraska's constitution states in very concise fashion that "no religious test shall be required as a qualification for office."¹¹

Colorado's constitution is similar to other state constitutions in the area of prohibitions against religious tests for admittance to public schools: "No religious test or qualifications shall ever be required of any person as a condition of admission into any public educational institution of the state, either as teacher or student..."¹²

Arizona's Article XI, Section 7 reads:

"No sectarian instruction shall be imparted in any school or State educational institution that may be established under this Constitution, and no religious or political test or qualification shall be required as a condition of admission into any public educational institution of the State, as teacher, student, or pupil..."¹³

¹⁰Alabama, Constitution, Art. I, Sec. 3.

¹¹Nebrasks, Constitution, Art. I, Sec. 4.

¹²Colorado, Constitution, Art. IX, Sec. 8.

¹³Arizona, Constitution, Art. XI, Sec. 7.

Table III indicates that forty-six states prohibit interference with free exercise of worship of conscience. Most states equate freedom of worship with liberty of conscience.

Nineteen states have clauses designed to ensure that freedom of religion does not allow for the destruction of peace. The Georgia constitution is an example: "The right of liberty of conscience shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of the State."¹⁴ Twenty-nine states prohibit required church attendance. Thirty-six states have laws which eliminate the development of a state-supported religion, denomination or form of worship.

Table IV presents a listing of states which have laws restricting state-supported development of religion and which abolish required church attendance at the direction of the state.

Table V indicates that ten state constitutions prohibit sectarian instruction in the public schools: Arizona, California, Colorado, Idaho, Montana, Nebraska, Nevada, South Dakota, Wisconsin, and Wyoming. For example, Arizona's constitution reads:

¹⁴ Georgia, Constitution, Article I, Sec. 2-103, § 13.

TABLE III

STATE PROHIBITIONS AGAINST INTERFERENCE
WITH FREEDOM OF WORSHIP OR CONSCIENCE

States	Freedom of Worship	Freedom of Conscience
Alabama	X	
Arizona	X	
Arkansas	X	X
California	X	
Colorado	X	
Connecticut	X	
Delaware	X	X
Florida	X	
Georgia	X	
Idaho	X	
Illinois	X	
Indiana	X	
Kansas	X	
Kentucky	X	
Louisiana	X	
Maine	X	
Maryland	X	
Massachusetts	X	
Michigan	X	
Minnesota	X	X
Mississippi	X	
Missouri	X	X
Montana	X	
Nebraska	X	X
Nevada	X	
New Hampshire	X	
New Jersey	X	
New Mexico	X	
New York	X	
North Carolina	X	X
North Dakota	X	
Ohio	X	X
Oklahoma	X	
Oregon	X	X
Pennsylvania	X	X
Rhode Island	X	
South Dakota	X	
Tennessee	X	X
Texas	X	X

TABLE III (Continued)

States	Freedom of Worship	Freedom of Conscience
Utah	X	
Vermont	X	X
Virginia		X
Washington	X	
West Virginia		X
Wisconsin	X	X
Wyoming	X	

TABLE IV

STATE PROHIBITIONS AGAINST REQUIRING CHURCH ATTENDANCE AND
AGAINST STATE-SUPPORTED ESTABLISHMENT OF RELIGION

States	Requiring Church Attendance	Establishment of Religion
Alabama	X	X
Alaska		X
Arkansas	X	X
California		X
Colorado	X	X
Connecticut	X	X
Delaware	X	X
Florida		X
Hawaii		X
Idaho	X	X
Illinois	X	X
Indiana	X	X
Iowa	X	X
Kansas	X	X
Kentucky	X	X
Louisiana		X
Maine		X
Maryland	X	
Michigan	X	
Minnesota	X	X
Mississippi		X
Missouri	X	X
Montana	X	X
Nebraska	X	X
New Hampshire		X
New Jersey	X	X
New Mexico	X	X
New York		X
North Dakota		X
Ohio	X	X
Pennsylvania	X	X
Rhode Island	X	
South Carolina		X
South Dakota	X	X
Tennessee	X	X
Texas	X	X
Utah		X
Vermont	X	
Virginia	X	X
West Virginia	X	
Wisconsin	X	X

No sectarian instruction shall be imparted in any school or state educational institution that may be established under this Constitution, and no religious or political test or qualification shall ever be required as a condition of admission into any public educational institution of the state, as teacher, student, or pupil; but the liberty of conscience hereby secured shall not be so construed as to justify practices or conduct inconsistent with the good order, peace, morality, or safety of the state, or with the rights of others. ¹⁵

Table V also lists forty-two states that have constitutional provisions that either prohibit the support for or deny the payment of any tax monies for sectarian institutions. Massachusetts has a most elaborate and classic constitution which reads concerning prohibition of public monies for education as follows:

No grant, appropriation or use of public money or property or loan of credit shall be made or authorized by the Commonwealth or any political subdivision thereof for the purpose of founding, maintaining or aiding any infirmary, hospital, institution, primary or secondary school, or charitable or religious undertaking which is not publicly owned and under the exclusive control, order and supervision of public officers or public agents authorized by the Commonwealth... ¹⁶

In addition to restricting tax usage for religious instruction, many states have restrictions against grants or donations of land received by contributions for use by sectarian institutions. Montana's constitution

¹⁵ Arizona, Constitution, Art. XI, Sec. 7.

¹⁶ Massachusetts, Constitution, Art. XVIII, Sec. 2.

TABLE V

STATE PROHIBITIONS AGAINST REQUIRING SUPPORT FOR RELIGIOUS OR
SECTARIAN INSTITUTIONS AND RELIGIOUS OR SECTARIAN SCHOOLS

States	Religious or Sectarian Institutions	Religious or Sectarian Schools
Alabama		X
Alaska	X	X
Arizona		X
Arkansas	X	X
California	X	X
Colorado	X	X
Connecticut	X	
Delaware	X	
Florida	X	
Georgia	X	
Hawaii	X	x
Idaho	X	X
Illinois	X	X
Indiana	X	
Iowa	X	
Kansas	X	
Kentucky	X	X
Louisiana	X	X
Maryland	X	
Massachusetts	X	X
Michigan	X	
Minnesota	X	X
Mississippi		X
Missouri	X	X
Montana	X	X
Nebraska	X	X
Nevada	X	
New Hampshire		X
New Jersey	X	
New Mexico	X	
New York		X
Ohio	X	
Oklahoma	X	
Oregon	X	
Pennsylvania	X	
Rhode Island	X	
South Carolina	X	X
South Dakota	X	
Tennessee	X	
Texas	X	
Utah	X	X

TABLE V (Continued)

States	Religious or Sectarian Institutions	Religious or Sectarian Schools
Vermont	X	
Virginia	X	X
Washington	X	X
West Virginia	X	
Wisconsin	X	
Wyoming	X	X

maintains in Article X, Section 6, Education and

Public Lands:

The legislature, counties, cities, towns, school districts, and public corporations shall not make any direct or indirect appropriation or payment from any public fund or monies, or any grant of lands or other property for any sectarian purpose or to aid any church, school, academy, seminary, college, university, or other literary or scientific institution, controlled in whole or in part by any church, sect, or denomination.¹⁷

Twenty-four states specifically prohibit the use of public support in any fashion for parochial schools.

As indicated, Virginia and Montana are states which have constitutions rewritten during the decade of the seventies. The new writings clearly reflect denial of any appropriations for parochial schools and institutions. Reference has also been made to Montana's direct and indirect constitutional control of appropriations for religious activities. Virginia's new constitution maintains a firm perspective concerning appropriations to religious or charitable bodies. Article IV, Section 16 of the Virginia constitution reads:

The General Assembly shall not make any appropriation of public funds, personal property, or real estate to any church or sectarian society, or any association or institution of any kind whatever which is entirely or partly, directly or indirectly,¹⁸ controlled by any church or sectarian society.

¹⁷Montana, Constitution, Article X, Section 6.

¹⁸Virginia, Constitution, Article IV, Section 16.

This chapter indicates that every state has some constitutional provision for church and state separation.

CHAPTER IV

FEDERAL AND STATE CONSTITUTIONAL AND STATUTORY
PROVISIONS PERMITTING THE USE OF PUBLIC
FUNDS FOR PAROCHIAL SCHOOLS

Forty states now provide some assistance to parochial schools. Federal assistance, almost nil before 1965, totals millions of dollars in aid each year.¹

Federal Aid to Parochial Schools

The Smith-Hughes Act (1917) marked the beginning of direct federal grants of cash funds to schools below the college level. The Act provided for annual appropriations allotted on the basis of rural population. The Smith-Hughes Act requires the approval by federal authorities of state plans for courses of study, the preparation of teachers, and even the allocation of time of the pupils. The Act requires the state to provide at least fifty percent of the cost of the program. The Smith-Hughes Act provided aid to vocational programs.

In 1965 the most massive aid bill to have an impact on parochial education was passed into law.

¹Elementary and Secondary Education Act, Title I,
P.L. 95-561.

The Elementary and Secondary Education Act was passed releasing assistance to parochial schools in numerous forms, though nowhere are the words parochial or church-related schools found. The Elementary and Secondary Education Act of 1965 has grown and undergoes constant renovation. It is also likely that federal support for both public and nonpublic education will change drastically as a result of financial and philosophical considerations. Listed below are many of the federal programs which offer support for public and nonpublic institutions.

Office of Compensatory Education

The Education for the Disadvantaged Act of the Elementary and Secondary Education Act, Title I, provides funding for programs meeting special needs of educationally disadvantaged children in low-income areas in public and nonpublic schools.²

Follow-Through is a program which provides effective comprehensive services to children from low-income families and strives to increase understanding about effective practices in educating these children.³

²Ibid.

³Economic Opportunity Act of 1964, P.L. 95-568,

Follow Through is an outgrowth of the Economic Opportunity Act of 1964.

Office of Educational Support

The Office of Educational Support directly administers thirteen federal programs. Five programs provide opportunities for public and private nonprofit organization participation.

The Career Education Model Demonstration Program provides under the Career Education Incentive Act funds to demonstrate effective career education techniques at the elementary and secondary level.⁴

The Education Amendments of 1976 and 1978 provide for programs in guidance, counseling, and testing. The purposes of these programs are coordination of guidance and counseling activities at the federal, state and local levels and to improvement of the qualifications of guidance and counseling personnel.⁵

The Higher Education Act provides federal assistance to local education agencies and to

⁴Career Education Incentive Act, P.L. 95-207.

⁵Education Amendments of 1976 and 1978, P.L. 94-482, 95-561, Title III-D.

postsecondary schools for planning and operating teacher centers.⁶

Office of Special Education

The Office of Special Education presently administers sixteen federal programs; six programs make funds available to nonpublic nonprofit organizations.

The Early Education for Handicapped Children program provides aid to public and private nonprofit agencies to build model programs for handicapped children from birth through age eight.⁷

Public and private non-profit organizations may apply for funds through the Information and Recruitment Act. The specific purposes of this Act are to provide funds to disseminate information, to provide referral services for parents of handicapped children, and to recruit educational personnel into hard-to-staff areas.⁸

The Media Services and Captioned Film Loan Program provides funds to establish and operate

⁶Higher Education Act, Title V-B, Sec. 532.

⁷Education of the Handicapped Act, P.L. 94-142, Part C, Sec. 623.

⁸Ibid., P.L. 94-142, Part D., Sec. 633.

centers for materials for the handicapped. The program funding is through contracts.⁹

Model Programs for Severely Handicapped and Deaf-Blind Children and Youth provides funds for attaching innovative educational models or service-delivery components onto ongoing educational services. This program is also funded through contracted arrangements.¹⁰

The Personnel Training for the Education of the Handicapped Act provides funding for the preparation of educators and other personnel who work with handicapped children, through preservice and in-service training.¹¹

In addition to programs mentioned, federal funds are provided for various educational activities from a variety of departments in the Office of Education; such as (1) Rehabilitation Services Administration, (2) Office of

⁹Ibid., P.L. 94-142, Part F.

¹⁰Ibid., P.L. 94-142, Part C., Sec. 624.

¹¹Ibid., P.L. 94-142, Part D.

Student Financial Assistance; (3) Office of Higher and Continuing Education, (4) Office of International Education, (5) Office of Vocational and Adult Education, (6) Youth Employment Program.

United States Department of Agriculture

The Department of Agriculture operates a reimbursement program designed to increase the consumption of fluid milk. Public Law 84-752 provides that milk may be distributed to "children in the United States in (1) nonprofit schools of high school grade and under, and (2) nonprofit nursery schools, child-care centers, settlement houses, summer camps, and similar nonprofit institutions devoted to the care and training of children."¹²

National School Lunch Act of 1946

This Act provides, to the extent that funds are available, reimbursement for the cost of producing and serving lunch to pupils in public and/or nonpublic schools. The program also applies to residential child

¹²Special Milk Program, P.L. 84-752.

care institutions for which applications have been approved.¹³

In conjunction with Public Law 85-478 and by amendment to the National School Lunch Act of 1946, a School Breakfast Program— (Child Nutrition Act of 1966) was developed to provide breakfast program reimbursement, the same qualifying standards of the National School Lunch Program apply to the breakfast program.¹⁴

State Aid to Parochial Schools

Although all state constitutions provide for a clear church-state separation, and in the majority of cases make direct statements prohibiting financial aid to sectarian institutions, public tax dollars are in fact flowing to religious schools by way of a variety of statutory mandates. In 1981 forty states made public assistance available to parochial elementary and/or secondary schools. In many instances appropriations are made directly to students rather than schools. See Appendix B for a listing of state statutes applicable to this chapter.

Table VI identifies states that have enacted into law either purchase-of-secular-educational services statutes or other statutes providing direct financial aid to elementary and secondary schools.

¹³National School Lunch Act of 1946, P.L. 85-478.

¹⁴Child Nutrition Act of 1966, P.L. 85-478.

Transportation, textbooks and other materials, lunches, and health services are the most common forms of aid to religious schools. Most recently, legislative activities which are getting the greatest attention are tax reductions or parental reimbursement statutes, and legislation approaching direct aid to parochial schools.

Purchase-of-Secular-Educational-Services Laws

In 1970 six states had laws which allowed for purchase-of-secular-educational services within mandated state guidelines as defined by state law. Table VI indicates that at the present time Louisiana is the only state which has a purchase of services act.

The Louisiana Law, Section 1321, reads:

Section 1321. Short Title: This Act may be referred to as the "Louisiana Secular Educational Services Act."

Section 1322. Findings of Fact, Declaration of Necessity, and Statement of Public Policy. It is hereby determined and declared as a matter of legislative finding;

(1) A clear and present crisis exists in the State of Louisiana with respect to the education of children in elementary and secondary schools.

TABLE VI

STATES WITH PURCHASE OF SECULAR
EDUCATIONAL SERVICES LAWS AND
OTHER DIRECT AID LAWS

States	Purchase of Services Laws	Other Direct Aid
Connecticut		X
Louisiana	X	
Mississippi		X
New York		X
Pennsylvania		X
Rhode Island		X
Vermont		X

(2) This crisis is the result of unprecedented rising costs in all areas of operation, and unprecedented demand for improvement in the quality and calibre of education and opportunities for education available for Louisiana children, including those who are being educated in nonpublic schools;

(3) Certain of the financial aspects of this crisis in education in nonpublic schools are the direct result of state and local government taxation to support pay increases for public school teachers, and to defray costs of improved public school facilities; nonpublic schools have been reduced to a noncompetitive position for the employment of qualified teachers of secular educational subjects;

(4) In some of its aspects the crisis in education is national in scope, e.g., the demand for excellence in all programs of instruction, for the creation and implementation (sic) of innovative methods and techniques of teaching, and for improvement of teacher salary schedules to assure a high level of quality within the teacher corps itself;

(5) That the State of Louisiana recognizes the fact that its literacy rate is among the lowest in the nation and that only through continued concentrated efforts on the part of of the Legislature and educators can the educational level be raised;

(6) That the elementary and secondary education of children is today recognized as a public welfare purpose; that nonpublic education, through providing instruction in secular subjects, makes an important contribution to the achieving of such public welfare purpose; that the governmental duty to support the achieving of public welfare purposes in education may in part be fulfilled through governmental contracts for secular educational services provided by teachers in nonpublic schools.

(7) Attendance of children at nonpublic schools constitutes compliance with the Louisiana

Compulsory School Attendance law; and that nonpublic education in the State of Louisiana today, as during past years, bears the burden of educating 15 percent of all elementary and secondary school pupils in Louisiana, thus making a significant educational and economic contribution to education in the state;

(8) It is in the public interest that all Louisiana children receive the best education its citizens can provide; that the State of Louisiana has the right, the responsibility, the duty and the obligation, in order to accomplish the objective of quality education for Louisiana children, to provide financial assistance to qualified teachers of secular subjects in nonpublic schools, by the purchase of their secular educational services.

Section 1323. Definitions. The following terms, whenever used or referred to in this Act, shall have the following meaning and interpretation:

(1) "Nonpublic School Teacher" means any person employed by an approved nonpublic school, as defined herein, for the teaching of secular subjects in such school.

(2) "Approved Nonpublic School" means

(a) Any non-profit elementary or secondary school within the State of Louisiana or which may hereafter be established within the state of Louisiana, offering education to the children of this State in any grades one through twelve, wherein a pupil may fulfill the requirements of the Compulsory School Attendance Law;

(b) Which is supported predominately from funds or property derived from non-governmental sources; and

(c) No teacher shall be denied the benefits of this Act because of his or her race, creed, religion or national origin and no teacher shall be denied the benefits of this Act because of the race, creed, religion or national origin of the children he or she teaches.

(3) "Purchase of Secular Educational Services" means the purchase by the Department of Education, from a school teacher, of services in teaching secular subjects to children enrolled in approved nonpublic schools. Payments shall be made directly to the teacher and such payments shall not exceed the State scale paid to teachers in the public school system.

(4) "Secular Subject" means any course of study in the curricula of the public schools, and shall include, but not necessarily be limited to, the teaching of mathematics, language arts, general and physical sciences, physical education, art and music, crafts and trades, home economics, or any other course of study in the curricula of the public schools, other than those involving the teaching of religious beliefs or any form of worship of any sect or religion.

The Louisiana statute has been challenged on constitutional grounds, but until litigation runs the judicial course the statute remains in place.

Other Direct Aid Laws

Other state laws which appropriate direct aid to parochial schools, as listed in Table VI, include Connecticut's demonstration Scholarship program, Mississippi's student loan law, Vermont's law which pays for the tuition of private school children of elementary and secondary schools, and Pennsylvania's parental reimbursement for nonpublic education. Rhode Island and New York reimburse nonpublic schools for the actual costs incurred due to state-required record keeping.

The Mississippi statute provides that private school students can borrow up to \$200 a year for a maximum amount of \$2400. If upon high school graduation the recipient continues to live in the state, the loan is forgiven at the rate of \$100 a year for up to five years. In addition, if the recipient continues to live in the state and attends a Mississippi institution of higher education, the loan is forgiven at the rate of \$100 per year. In addition, if the recipient teaches in Mississippi, the loan is forgiven at the rate of \$200 per year.

Vermont's law pays for the tuition of private school pupils up to an amount equal to the average cost of a comparable year of public school education if there is no public school available and if the school board feels that it is in the best interest of the pupils to do so.

The Connecticut demonstration scholarship program is a program for developing and testing the use of educational scholarships for all pupils eligible to attend school within the demonstration area. These scholarships are made available to parents or legal guardians of the recipient and may not be redeemed except for educational purposes at an approved school. An approved school is one which does not discriminate on the basis of race, color or economic status and has filed a certificate with the State Board of Education

that the school is in compliance with Title VI of the Civil Rights Act of 1964. Nor can the school require any fee above the amount of the scholarship.

The parental reimbursement for nonpublic education law enacted in Pennsylvania is similar to the act in Connecticut. Each approved school must meet the requirements of Title VI of the Civil Rights Act of 1964. Pennsylvania reimburses the parents of each elementary-aged child attending nonpublic school seventy-five dollars. Secondary students' parents are entitled to receive \$150 reimbursement.

Shared-Time and Driver Education Laws

Table VII indicates that twenty-one states have laws providing for shared time or providing driver education courses to parochial elementary and secondary schools.

Parochial school students involved in shared-time activities go to the public schools for specific courses, and then return to their respective schools for the additional hours of the school day. Often courses taken in the shared-time realm are those that the religious schools are ill-equipped to provide.

Shared-time funds are disbursed on an average daily attendance computation normally. For example, Illinois state law reads: "Pupils regularly enrolled in a public school for only a part of the school day may be counted on

TABLE VII

STATES WHICH MAKE SHARED-TIME OR
DRIVER EDUCATION AVAILABLE TO
ELEMENTARY AND/OR SECONDARY
PAROCHIAL SCHOOLS

States	Shared-Time	Driver Education
California		X
Colorado	X	
Connecticut		X
Delaware		X
Hawaii		X
Idaho		X
Illinois	X	X
Iowa	X	X
Kentucky	X	
Michigan		X
Minnesota	X	X
Mississippi		X
New Hampshire	X	X
Oregon		X
Pennsylvania	X	X
Rhode Island	X	
South Dakota		X
Utah		X
Vermont		X
Washington	X	
Wisconsin		X

the basis of 1/6 day for every class hour attended pursuant to such enrollment"¹⁵

Colorado's shared-time statute utilizes federal funds for private school purposes. Pennsylvania's law which provides for shared time is unique and reads:

Section 5-502. Additional schools and departments. In addition to the elementary public schools, the board of school directors in any school district may establish, equip, furnish, and maintain the following additional schools or departments for the education and recreation of persons residing in said district, and for the proper operation of its schools, namely:--

High schools,	Museums,
Vocational schools,	Reading-rooms,
Trade Schools,	Gymnasiums,
Technical schools,	Playgrounds,
Cafeterias,	Schools for physically and
Agricultural schools,	mentally handicapped,
Evening schools,	Truant schools,
Kindergartens,	Parental schools,
Libraries,	Schools for adults,
	Public lectures,

Such other schools or educational departments as the directors, in their wisdom, may see proper to establish.

Said additional schools or departments, when established, shall be an integral part of the public school system in such school district and shall be so administered.

No pupil shall be refused admission to the courses in these additional schools or departments, by reason of the fact that his elementary or academic education is being or has been received in a school other than a public school.¹⁶

¹⁵ Illinois, Smith-Hurd Illinois Annotated Statutes, Chapter 122, Section 18-8, 1(a).

¹⁶ Pennsylvania, Public Laws of Pennsylvania, Section 5-502.

Driver education is usually provided for in the area public high schools when not available to private school students on the respective campuses. California's law concerning driver education reads:

Section 41902. Allowances by the Superintendent of Public Instruction shall be made only for driver training classes maintained in accordance with the rules and regulations as set forth by the State Board of Education.

Driver training shall be available without tuition to all eligible students commencing on July 1, 1969. The governing board of a district may make driver training available during school hours, or at other times, or any combination thereof.¹⁷

Transportation and Textbooks

Table VIII indicates that there are twenty-six states providing transportation and/or textbooks to parochial elementary and secondary schools.

Eleven states loan textbooks to nonpublic school students. California's law concerning loan of state-adopted instructional materials to nonpublic school pupils is an example typical of textbook and materials loan laws.

Section 60315 of the California statutes reads:

Section 60315. Loan of state-adopted instructional materials to nonpublic school pupils. The Superintendent of Public Instruction shall lend to pupils entitled to attend the public elementary schools of the district, but in attendance at a school other than a public school under the provisions of Section 48222, instructional materials adopted by the state board for use in the public elementary schools. No charge shall be made to any pupil for the use of such adopted materials.

¹⁷California, Public Laws of California, Section 41902.

TABLE VIII

STATES WHICH MAKE TRANSPORTATION AND/OR
TEXTBOOKS AVAILABLE TO ELEMENTARY
AND/OR SECONDARY PAROCHIAL
SCHOOLS

States	Transportation	Textbooks
Alaska	X	
California	X	X
Connecticut	X	X
Delaware	X	
Illinois	X	
Indiana	X	
Iowa	X	X
Kentucky	X	
Louisiana	X	X
Maine	X	X
Maryland	X	
Massachusetts	X	
Michigan	X	
Minnesota	X	
Mississippi		X
Montana	X	
New Hampshire	X	
New Jersey	X	
New York	X	X
North Dakota	X	
Ohio	X	X
Oregon	X	
Pennsylvania	X	X
Rhode Island	X	X
West Virginia	X	X
Wisconsin	X	

Materials shall be loaned pursuant to this section only after, and to the same extent that, materials are made available to students in attendance in public elementary schools. However, no cash allotment may be made to any nonpublic school.

Materials shall be loaned for the use of nonpublic elementary school students after the nonpublic school student certifies to the State Superintendent of Public Instruction that student materials are desired and will be used in a nonpublic elementary school by the nonpublic elementary school student. Enacted Stats 1976 ch 1010 Section 2, operative April 30, 1977.¹⁸

It should be noted that emphasis in the California law is placed on the term loaned and requires that no cash grant to nonpublic schools ever be allowed.

Twenty-five states have statutes requiring school boards to provide transportation for parochial elementary and secondary school students. Many of the statutes providing transportation by nonpublic students are designed in such elaborate fashion as to allow for no greater transportation service than approved for public school students. Massachusetts has a simple transportation statute which is comprehensive yet very concise and reads as follows:

Chapter 76, section 1. School attendance regulated.-- Pupils who, in the fulfillment of the compulsory attendance requirements of this section, attend private schools of elementary and high school grades so approved shall be entitled to the same rights and privileges as to transportation to and from school as are provided by law for pupils of public schools and shall not be denied

¹⁸Ibid., Section 60315.

such transportation because their attendance is in a school which is conducted under religious auspices or includes religious instruction in its curriculum, nor because pupils of the public schools in a particular city or town are not actually receiving such transportation.¹⁹

In 1947 the United States Supreme Court, in Everson v. Board of Education, 330 U.S. 1 (1947), upheld New Jersey's transportation law which allows parents to be reimbursed by tax money for the cost of transporting pupils to parochial schools. New Jersey's law differs from many by allowing for a tax reimbursement for the cost of transportation.²⁰

Lunches and Health Services

Table IX lists states having statutes which provide for lunches and health services for nonpublic school students. Only nine states make any reference to lunch assistance for nonpublic school students. In most cases these state statutes are really enabling legislation for the use of federal funds for feeding programs. Connecticut's Health and Sanitation Act reads:

Section 10-215a. Nonpublic school participation in feeding programs. Nonpublic schools may participate in the school breakfast, lunch and other feeding programs provided in sections 10-215

¹⁹Massachusetts, Public Law of Massachusetts, Chapter 76, Section 1.

²⁰Everson v. Board of Education, 330 U.S. 1 (1947).

TABLE IX

STATES WHICH MAKE LUNCHESES AND/OR HEALTH
SERVICES AVAILABLE TO ELEMENTARY AND/OR
SECONDARY PAROCHIAL SCHOOLS

States	Lunches	Health Services
Arizona		X
California	X	
Connecticut	X	X
Hawaii		X
Illinois	X	
Iowa	X	X
Kansas		X
Louisiana	X	
Maine		X
Maryland		X
Michigan		X
Mississippi		X
Missouri	X	
New Hampshire		X
New York		X
Ohio		X
Oregon	X	
Pennsylvania	X	X
Rhode Island	X	

to 10-215c under regulations promulgated by the state board of education in conformance with said sections and the federal laws governing said programs.²¹

Thirteen states have legislation equalizing health services in public and nonpublic schools. Federal activity has forced the creation of state legislation accommodating the needs of exceptional children attending school whether the institutions are public or nonpublic. Six states have developed legislation since 1970 to accommodate this new mandate for services.

Miscellaneous Assistance

Table X indicates there are twelve states (Alaska, Arizona, Florida, Maryland, Nevada, California, South Carolina, Connecticut, Michigan, New Hampshire, New Jersey, and Ohio) with miscellaneous parochial-aid statutes that would not fit neatly into any of the preceding categories.

(1) Alaska has a statute exclusively oriented toward eighth grade pupils in private schools. The law provides for the furnishing of final examination questions and the granting of eighth grade diplomas in the same manner as in the public schools.

(2) Arizona has a statute exempting motor vehicles owned and operated by nonprofit schools and used exclusively for the transportation of pupils from the state weight fee.

²¹Connecticut, Public Law of Connecticut, Section 10-215a.

(3) California's statute enables visually handicapped students in nonpublic schools to have access to specialized books, equipment and materials without cost.

(4) Connecticut's statute is exclusively oriented toward aiding educationally deprived children in private schools. The act provides for a range of services, including pre-kindergarten programs, remedial programs, drop-out programs, special library collections, funds for reducing class sizes, and various experimental programs.

(5) Florida's statute allows nonpublic school pupils to use the diagnostic and resource centers available to public school children for a fee.

(6) Private and parochial schools in Maryland, may connect their facilities to a closed-circuit educational television system maintained for use by the public school system.

(7) Michigan has an auxiliary services act which, in effect, requires local school districts to provide the same services to private schools as public schools. Specifically mentioned in the bill are such services as street crossing guards, school diagnostician services for mentally handicapped children, teacher counselor services for physically handicapped children, and remedial reading programs.

(8) California and Nevada have statutes which provide for the procurement and distribution of federal surplus property to nonprofit schools and other eligible institutions.

(9) New Hampshire has a permissive act enabling school districts to provide private schools, at state expense, such child-benefits as educational testing, and school guidance and psychologist services.

(10) In New Jersey a statute provides for special classes and other facilities for all, including parochial, handicapped students.

(11) Finally, an Ohio statute allows public boards of education to purchase from private agencies or from any private individual, services designed to promote vocational education or vocational rehabilitation.

(12) South Carolina provides for itinerant teachers to assist in all schools where there are visually handicapped students in attendance.

Table XI presents all the states' respective parochial-aid laws as of 1980. Undoubtedly, as General Assemblies continue to gather, other state and legislative activities will harden into statutes providing tax funds for private and parochial elementary and secondary schools.

TABLE X (Continued)

States	Types of Assistance	Transportation	Textbooks	Lunches	Health Services	Shared-Time	Driver Education	Teachers' Salaries	Other Direct Aid	Miscellaneous
Ohio	X	X			X		X			X
Oregon	X		X	X			X			
Pennsylvania	X	X	X	X	X	X	X		X	
Rhode Island	X	X	X	X		X			X	
South Carolina										X
South Dakota							X			
Utah							X			
Vermont							X			
Washington						X				
West Virginia	X		X							
Wisconsin	X						X			

CHAPTER V

THE LEGALITY OF USING PUBLIC TAX FUNDS
FOR PAROCHIAL ELEMENTARY AND SECONDARY
SCHOOLS: THE UNITED STATES SUPREME
COURT— IN THE NINETEEN SEVENTIES

Questions of separation of church and state have frequented the court rooms of the United States. It is not unusual, also, that the two most public activities of American society, church and school, would run into conflict in the realm of constitutional separation.

During the seventies the pace of legal activity involving church, state and schooling increased at a frantic pace. The United States Supreme Court was tireless during the seventies in its rulings on numerous cases. More accurately, the decade of the seventies involved more legal activity concerning funding, and religious schools' use of tax dollars, and separation of church and state than in all previous United States Supreme Court history.

The Court's effort to consider and reconsider questions of separation and funding of parochial education seemed to indicate a desire to establish a legal precedent which would support the mandates of the Constitution of the United States.

Constitutional Concerns

The Supreme Court has historically ruled on questions of public tax dollars used for parochial education and separation of church and state by applying the mandates of the First and Fourteenth Amendments of the Constitution.

First Amendment

The First Amendment of the Bill of Rights embodies two provisions for separation of church and state.

The First Amendment reads:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances.¹

It was not until 1947 that the United States Supreme Court finally clarified the establishment clause of the First Amendment when it said in the Everson case:

The "Establishment of Religion" clause of the First Amendment means at least this: Neither a state nor a Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs

¹U.S. Constitution, "Bill of Rights," Amendment I.

or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or instructions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa. In the words of Jefferson, the clause against establishment of religion by law was intended to erect "a wall of separation between church and state."²

Thus, the boundaries of religious involvement by the federal government were clearly established in this 1947 interpretation of the First Amendment.

Fourteenth Amendment

The Fourteenth Amendment ended all speculation that the states' responsibilities had any variance from that of the federal government, in that the Fourteenth Amendment extended to the states all the protections and rights granted by federal law. This activity of extending all rights and responsibilities of the United States Constitution to the citizens of the states gained the Fourteenth Amendment the title of the "absorption Amendment." The Fourteenth Amendment reads:

²Everson v. Board of Education, 330 U.S. 1, 15 (1947).

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall a state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.³

By interpretation of the Fourteenth Amendment above, it is clear that states are entangled in the mandates of the federal Constitution and must not establish laws which are contrary. Although numerous arguments have been offered that the Fourteenth Amendment did not bind the states to the Establishment Clause of the First Amendment, in 1940 the Supreme Court ruled that the federal and state governments have the same relationship with respect to religion.⁴

Decision Making and the United States Supreme Court

The Supreme Court of the United States has based its rulings all separation of church and state cases on a constitutional muster developed by an analysis and evaluation of the First and Fourteenth Amendments. This process led to the development of the tripartite test,

³U.S. Constitution, "Bill of Rights," Amendment XIV.

⁴Cantwell v. Connecticut, 310 U.S. 296 (1940).

Schempp, Walz, and the Tripartite Test

The Schempp⁵ case concerned the Pennsylvania law requiring that the Bible be read, without accompanying dialogue, and the Lord's Prayer be recited at the start of each school day. Although mandatory participation in these two religious activities was not a requirement of the statute, suit was brought in the District Court for the Eastern District of Pennsylvania in an effort to enjoin the enforcement of the statute. The District Court granted relief to the plaintiffs. Upon appeal by the school district, the United States Supreme Court affirmed the decision of the lower court.⁶

The Court in Schempp first reviewed the cases of the preceding twenty years in which the First Amendment clause concerning an establishment of religion had been upheld. Upon the determination that the Court had consistently ruled against the violation of the establishment clause, the Court then developed the following guide:

The test may be stated as follows: What are the purposes and the primary effects of the enactment? If either is the advancement or inhibition of religion then the enactment exceeds the scope of legislative power as circumscribed by the Constitution. That is to say that to

⁵Abington School District v. Schempp, 374 U.S. 203 (1963).

⁶Ibid., p. 203.

withstand the strictures of the establishment clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion.⁷

The Court made clear that "the breach of neutrality that is today a trickling stream may all too soon become a raging torrent." and in the words of Madison, "it is proper to take alarm at the first experiment on our liberties."⁸

Justice William O. Douglas concurred with the opinion of the Court in saying that, "through the mechanism of the State, all of the people are being required to finance a religious exercise that only some of the people want and that violates the sensibilities of others."⁹

In conclusion, Justice Douglas made his oft-quoted remarks concerning the financing of religious schools with public funds.

The most effective way to establish any institution is to finance it; and this truth is reflected in the appeals by church groups for public funds to finance their religious schools. Financing a church either in its strictly religious activities or in its other activities is equally unconstitutional, as I understood the Establishment Clause. Budgets for one activity may be technically separable from budgets for others. But the institution is an inseparable whole, a living organism, which is strengthened in any department by contributions from other than its own

⁷Ibid., p. 222.

⁸Ibid., p. 225.

⁹Ibid., p. 228.

members. Such contributions may not be made by the State even in a minor degree without violating the Establishment Clause. It is not the amount of public funds expended, as this case illustrates, it is the use to which public funds are put that is controlling. For the First Amendment does not say that some forms of establishment are allowed; it says that "no law respecting an establishment of religion" shall be made. What may not be done directly may not be done indirectly lest the Establishment Clause becomes a mockery.¹⁰

Theory conceived during the Schempp case establishes the first and second legal tenets of the tripartite test. The final criterion was supplied seven years later in Walz v. Tax Commission,¹¹ a case that upheld exemptions for church property used solely for religious purposes.

In Walz v. Tax Commission, the Court's majority opinion upheld tax exemptions for properties used solely for religious purposes.¹² The pertinent provisions of the challenged New York state law provided that

Real property owned by a corporation or association organized exclusively for the moral and mental improvement of men and women, or for religious, Bible, tract, charitable, benevolent, missionary, hospital, infirmary, educational, public playground, scientific, literary, bar association, library, patriotic, historical or cemetery purposes... and used exclusively for carrying out thereupon one or more such purposes... shall be exempt from taxation as provided in this section.¹³

¹⁰Ibid., pp. 229-230.

¹¹Walz v. Tax Commission, 397 U.S. 664 (1976).

¹²Ibid., p. 664.

¹³Ibid., p. 667.

Chief Justice Warren Burger argued the consequence of New York's exemption standard was not to sponsor religion, but was to minimize a debilitating interdependence between religion and government.¹⁴ Hence, although all entanglement could not be prohibited, the contested law specifically avoided the "involvement of government by giving rise to tax valuation of church property, tax liens, tax foreclosures, and the direct confrontations and conflicts that follow in the train of those legal processes."¹⁵

In the words of the Chief Justice Burger:

The questions are whether the involvement is excessive, and whether it is a continuing one calling for official and continuing surveillance leading to an impermissible degree of entanglement. Obviously, a direct money subsidy would be a relationship pregnant with involvement and as with most governmental grant programs, could encompass sustained and detailed administrative relationships for enforcement of statutory or administrative standards...¹⁶

This new test concerning the degree of "entanglement" between church and state that a given law might create became the third measure of the establishment prohibition of the First Amendment. Chief Justice Burger's excessive

¹⁴Ibid., p. 675.

¹⁵Ibid., p. 674.

¹⁶Ibid., p. 675.

entanglement test in Walz initially stressed a totally different concern.¹⁷ Justice Burger contended that the establishment clause prohibited an impermissible degree of governmental supervision of religion.¹⁸

The tripartite test was first applied in the 1971 Lemon I decision.¹⁹ In this first Lemon decision, the Court developed the analysis of the Establishment Clause challenging state funding of church-school related activities. To determine whether the lines of constitutionality had been breached, the Court asks three now familiar questions: 1) Does the statute have a secular legislative purpose? 2) Does its primary effect to either advance or inhibit religion? and 3) Does the statute foster an excessive government entanglement with religion?

It is important to understand at this point that the Court said "...far from being a wall, the line is a blurred, indistinct and variable barrier depending on all circumstances of a particular relationship."²⁰

¹⁷Ibid., p. 664.

¹⁸Ibid., p. 674.

¹⁹Lemon v. Kurtzman, 403 U.S. 607 (1971).

²⁰Lemon v. Kurtzman, 403 U.S. 614 (1971).

Although the three-prong test was imposed to generate theory leading to a decision, the relationships have always been complex and unstable yet imperative to constitutional acceptance.

Throughout the decade of the seventies the confusion concerning implementation of the three-prong test continued to generate concern within the Court but prevailed as the benchmark for decision making. However, the "insoluble paradox" of separation of church and state and entanglement continued to grow.

The Watershed Year

In 1973, the watershed year, seven very important decisions were handed down, all evaluated on the three-prong muster. Lemon II²¹ began the year and ironically Lemon III²² drew this most active year to a close.

Lemon II, 1973, represented the same case as Lemon I, 1971. Lemon II sought further clarification of the powers of the state and federal governments to recall payments made before a program may be ruled unconstitutional or enjoined.²³

²¹Lemon v. Kurtzman, 411 U.S. 192 (1973).

²²Sloan v. Lemon et al., 413 U.S. 825 (1973).

²³Lemon v. Kurtzman, 411 U.S. 209 (1973).

The second case heard by the Court in 1973 was Norwood v. Harrison.²⁴ This Mississippi case involved textbook loans and was not decided based on the Lemon tripartite muster but on the equal protection grounds of the Fourteenth Amendment.

Levitt v. Committee for Public Education²⁵ came out of an April, 1970, New York statute which authorized \$28,000,000 for the purpose of reimbursing nonpublic schools in the state for expenses incurred in the administration, grading, compiling and reporting of the results of tests required by state law, and also for expenses incurred in tabulating enrollment, health, personnel qualifications, and characteristic reports required by law.

The Court found the New York statute unconstitutional and dismissed the fanciful argument that the state should be permitted to pay for any activity "mandated or required by state law."²⁶

A higher education case, Hunt v. McNair,²⁷ resulting from a test of a South Carolina statute enacted in 1970 provided financial assistance to "institutions for higher

²⁴Norwood v. Harrison, 413 U.S. 461-463 (1973).

²⁵Levitt v. Committee for Public Education, 413 U.S. 474 (1973).

²⁶Ibid., p. 481.

²⁷Hunt v. McNair, 413 U.S. 736 (1973),

education in construction, financing, and refinancing of projects." Projects could encompass buildings, facilities, site preparation and related items, but could not include any facility used for sectarian instruction or as a place of worship or use by a department of divinity.²⁸

The Court found no violation of the Lemon I test and held the statute constitutional based on the rationale that the legislation clearly provided protection from violation of the establishment clause.²⁹ The Hunt v. McNair decision confirmed that each case in the realm of establishment must be measured on the individual factors of the case.³⁰

The Committee for Public Education v. Nyquist decision was handed down the same day as Hunt v. McNair but was found to be totally unconstitutional.³¹

Nyquist involved New York law and was a three-part financial aid scheme.³²

The first program provided direct money grants to qualifying nonpublic schools from the state to be used "for the maintenance and repair of school facilities and equipment to ensure the health, welfare and safety of enrolled pupils."³³

²⁸Ibid., pp. 736-737.

²⁹Ibid., p. 749.

³⁰Ibid.

³¹Committee for Public Education v. Nyquist, 413 U.S. 761 (1973).

³²Ibid., pp. 761-762. ³³Ibid., p. 763.

The second program establishe a reimbursement plan for costs of tuition.³⁴

The third program would give tax relief to parents failing to qualify for tuition reimbursement.³⁵

The Court held the maintenance and repair program unconstitutional because it had the primary effect of advancing religion.³⁶

The second program was found to violate prohibitions against advancing religion as well.³⁷ The money grants, the Court held, "results in the state picking up the bills for the religious schools."³⁸

The third program, that of income tax deductions, was found to be as much forbidden as the first and second programs.³⁹

The sixth case, Public Funds for Public Schools v. Marburger, to reach the Court during 1973 generated from a New Jersey statute which established two separate programs to aid nonpublic schools.⁴⁰ The first furnished parents of such nonpublic school students reimbursements

³⁴Ibid., p. 764.

³⁵Ibid., p. 765.

³⁶Ibid., pp. 779-780.

³⁷Ibid.

³⁸Ibid., p. 785.

³⁹Ibid., p. 794.

⁴⁰Public Funds for Public Schools v. Marburger, 358 F. Supp. 31 (1973).

for the cost of "secular, non-ideological textbooks, instructional materials and supplies."⁴¹

The second program provided that all funds left from appropriations after the above reimbursements were met would be assigned to qualifying nonpublic schools, in accordance with the respective number of pupils, to acquire secular supplies, equipment and auxiliary services,⁴²

The United States District Court for the District of New Jersey granted an injunction against application of the two programs.⁴³ The defendants, pending appeal, petitioned the United States Supreme Court to lift the injunction. The Supreme Court refused to hear the case thereby permanently enjoining application of either program.⁴⁴ Thus, the District Court had to decide the constitutionality of the programs.⁴⁵

The Court then proceeded to apply the three-part Lemon test to each program.⁴⁶ The primary effect of the program was seen as advancing religion, and the Court distinguished this program from the textbook loan program in Allen, noting that while Allen aided all parents of school children, the first program here aided only a special

⁴¹Ibid.

⁴²Ibid.

⁴³Ibid.

⁴⁴Public Funds for Public Schools v. Marburger, 358 F. Supp. 29, 417 U.S. 961 (1974).

⁴⁵Public Funds for Public Schools v. Marburger, 358 F. Supp. 33 (1974).

class of parents -- those whose children attended nonpublic schools which were primarily religiously oriented.⁴⁷

Turning to the second program, the Court again held that the secular purpose was seen as being different from the loan program in Allen, because the schools retained the equipment for its useful life.⁴⁸ The Court characterized the program as "indistinguishable from a direct grant of public funds, held unconstitutional in Lemon,"⁴⁹

The final case considered during 1973, Lemon III,⁵⁰ involved a Pennsylvania statute which sought to cure the problems of prior legislation found unconstitutional in Lemon I.

The Court found little difference between this case and that struck down in Nyquist.⁵¹ Finding no significant constitutional differences, "the Court notes that both use tax-raised funds for tuition reimbursements, neither tell the parent how to use the money, and none of the defendants in the case have offered any distinctions between the two plans."⁵² Calling this plan "quite unlike" the

⁴⁷Ibid., pp. 35-36.

⁴⁸Ibid., p. 37. ⁴⁹Ibid.

⁵⁰Sloan v. Lemon et al., 413 U.S. 837 (1973).

⁵¹Ibid., p. 830.

⁵²Ibid., pp. 830-831.

indirect benefits that flowed to sectarian schools from programs aiding all parents by supplying bus transportation or secular textbooks, the Court held that the Act violated the constitutional mandate against advancing a religion.⁵³

The Court had remained consistent during this watershed year and added no further refinement to the tripartite test. The lines of evaluation of each case remained very personal to the various relationships of the relevant facts of the individual question.

In 1975 the Supreme Court established a slightly different interpretation of what was permissible based primarily on who gained from the funding assistance. In 1972, the state of Pennsylvania enacted a statutory scheme which provided to all children enrolled in nonpublic elementary and secondary schools certain auxiliary services included counseling, testing, psychological services, speech and hearing therapy, and teaching for exceptional children, for remedial students, and for educationally disadvantaged students.⁵⁴ The Act further provided that these services

⁵³Ibid., p. 832.

⁵⁴Meek v. Pittenger, 421 U.S. 349 (1975)

were to be carried out in the nonpublic schools by personnel taken from the public schools of that district.⁵⁵ The act required that a nonpublic school meet Pennsylvania's compulsory attendance requirements in order to be eligible for the services.⁵⁶

Textbooks would be loaned directly to the children if the book was "acceptable for use in the public schools."⁵⁷

The Supreme Court held that every part of the Pennsylvania scheme was unconstitutional, with the exception of the textbook loan provisions.⁵⁸ The Court had little problem in upholding the textbook loan program, stating that benefit was to the children and not to the schools, and specifically noting that "...the record in the case before us,....contains no suggestion that religious textbooks will be lent or that the books provided will be used for anything other than purely secular purposes."⁵⁹ The Court is willing to allow state funds that provide benefits for nonpublic school children, but not the schools themselves. This is evident by the Court upholding the textbook loan program to children

⁵⁵ Ibid., pp. 352-353.

⁵⁶ Ibid., pp. 353-354.

⁵⁷ Ibid., p. 354.

⁵⁸ Ibid., p. 373.

⁵⁹ Ibid.

while invalidating the loans of instructional materials and equipment for the schools.

The excessive entanglement provisions and Establishment Clause of the First Amendment became confused and blurred in Meek. The reason aid has the primary effect of advancing religion is the same reason that government runs the risk of excessive entanglement, that being the parochial school's overriding religious atmosphere and mission.⁶⁰

In 1977 with the Wolman v. Walter⁶¹ decision the Supreme Court began a series of what could be considered as compromises. Wolman developed after certain taxpayers of Ohio instituted action against the Ohio State Superintendent of Public Instruction and other state officials.⁶² The plaintiffs challenged the constitutionality of an Ohio statute which authorized various forms of aid to nonpublic schools, most of which were parochial.⁶³ Specifically, the statute provided funding for the use of nonpublic school children for these

⁶⁰Roemer v. Board of Public Works, 426 U.S. 737, 768-69 (1976).

⁶¹Wolman v. Walter, 433 U.S. 229 (1977).

⁶²Ibid., p. 232.

⁶³Ibid., p. 233.

purposes: 1) the purchase of secular textbooks, approved by the superintendent of public instruction for use in public schools, to establish a loan program of those books to nonpublic school children or their parents; 2) to supply the nonpublic schools with such standardized tests and scoring services as are used in public schools, with no nonpublic school personnel being involved in the test drafting or scoring, and also providing speech and hearing diagnostic services and diagnostic psychological services, all such diagnostic services being performed by local board of education employees and such services to be administered on nonpublic school premises; 3) supplying to nonpublic school children needing specialized attention therapeutic, guidance, and remedial services, performed by public school employees only in a public school or mobile unit located off nonpublic school premises; 4) to purchase for loan to nonpublic school children or their parents instructional materials and instructional equipment of the kind used in public schools that are incapable of diversion to religious use; 5) to provide field trip transportation and services to nonpublic schools which are available to public schools, with special private transportation contracting permitted if that particular school district's buses were unavailable.⁶⁴

⁶⁴Ibid., pp. 234-235.

The plaintiffs contended that the use of these public funds for the above purpose violated the First Amendment to the United States Constitution.⁶⁵ The District Court held the statute constitutional in all respects, and the plaintiffs appealed.⁶⁶

The Supreme Court upheld the statute in part and struck down the statute in part: 1) In Part III of the Court's opinion, Justice Harry A. Blackmun held that the funding of textbooks for loan to nonpublic school children was constitutional.⁶⁷ Ruling that the system was strikingly similar to the loan programs approved in Board of Education v. Allen, 392 U.S. 236 (1968), and Meek v. Pittenger, 421 U.S. 349 (1975), the Court found the system to have built-in protection against abuse, and rejected the contention that the statute provision was so vague as to fail to insure against sectarian abuse.⁶⁸ 2) Basing its ruling on the legitimate state interest in insuring that all children of the state receive an adequate secular education, the Court upheld the statutory provisions providing funds for the

⁶⁵ Ibid., p. 232.

⁶⁶ Ibid., p. 233.

⁶⁷ Wolman v. Walter, 433 U.S. 236-238 (1977).

⁶⁸ Ibid.

standardized testing and scoring of those tests for nonpublic school children.⁶⁹ The Court also upheld funding for speech and hearing diagnostic services, as well as diagnostic psychological services to be provided nonpublic school children.⁷⁰ Although recognizing the slight danger that the instructors of these services might engage in unrestricted conversation with the pupils, providing an impermissible opportunity for the intrusion of religious influence, the Court relied on Lemon v. Kurtzman, 403 U.S. 602 (1971), to hold these dangers so insubstantial as not to render the provision unconstitutional.⁷¹ 3) The Court upheld funding for therapeutic, guidance and remedial services to be provided at neutral sites or in public schools.⁷² The fact that all the services were to be performed on public or neutral sites, apart from a sectarian environment, remedied the danger that religious influence may be exerted by the instructor due to pressures of his setting caused by the sectarian atmosphere.⁷³ 4) The Court found unconstitutional

⁶⁹Ibid., pp. 238-241.

⁷⁰Ibid., pp. 241-244.

⁷¹Ibid.

⁷²Ibid., p. 244-248.

⁷³Ibid., p. 247.

the funding of purchases of instructional materials and equipment for loan to nonpublic schools.⁷⁴ These materials were projectors, tape recorders, record players, maps and globes, science kits, and the like.⁷⁵ Following its decision in Meek v. Pittenger, 421 U.S. 349 (1975) the Court ruled that even though the loan program ostensibly was limited to neutral and secular instructional material, it had the primary effect of providing a direct and substantial advancement of sectarian enterprises.⁷⁶ 5) The Court found that the providing of field trip transportation to nonpublic schools was unconstitutional.⁷⁷ In ruling this way, the Court drew a sharp contrast between the Ohio statute and a plan used in New Jersey which the Court had approved,⁷⁸ Everson v. Board of Education, 330 U.S. 1 (1947). The Everson plan provided for reimbursement to parents for the transportation costs of sending their children to and from school, be it public or parochial, by public carrier.⁷⁹ The Court distinguished the Ohio

⁷⁴Wolman v. Walter, 433 U.S. 248-251 (1977).

⁷⁵Ibid., p. 249.

⁷⁶Ibid., pp. 248-251.

⁷⁷Ibid., pp. 252-255.

⁷⁸Ibid., p. 253.

⁷⁹Ibid.

Plan by noting that the field trips were controlled by the nonpublic school officials, both in timing and destination.⁸⁰ Holding that the schools, rather than the children were the true recipients of the service, the Court said this created an unacceptable risk of fostering religion.⁸¹

The holdings of the Court with respect to the five categories of funding indicated a strict following of its precedents laid down in prior establishment cases. The Court utilized the now well-known tripartite test that a particular statute must pass in order to achieve constitutional muster. The three parts are 1) the statute must have a secular legislative purpose, 2) must have a primary effect that neither advances nor inhibits religion, and 3) must not foster an excessive government entanglement with religion.

The Court noted that the Ohio statute was enacted in an attempt to conform with the Court's May, 1975 opinion in Meek v. Pittenger, 431 U.S. 349 (1975).⁸² As indicated, the Ohio legislature partially conformed and partially violated the holding in that case. In drawing a line

⁸⁰Ibid., p. 253.

⁸¹Ibid., pp. 253-254.

⁸²Meek v. Pittenger, 431 U.S. 349 (1975).

between the various categories of funding, the Court further defined the limits of what "advances or inhibits a religion, and also further delineated what amounts to "excessive government entanglement." This delineation is a factual one, however, leaving future legislative drafters only the specific facts involved as guidelines. This lack of a precise rule as to what amounts to advancement or inhibition of a religion, or exactly what amounts to excessive government entanglement will undoubtedly continue, for as the Court noted:

"We have acknowledged before, and we do so again here, that the wall of separation that must be maintained between church and state is a blurred indistinct and variable barrier depending on all the circumstances of a particular relationship."⁸³

The Wolman decision represents a series of compromises which indicated a desire by the Court to provide a legal means to help children, where possible, while remaining clear of unconstitutional activities which have been identified in past case history.

Justice John Paul Stevens, out of concern for the decision made in Wolman, quoted Clarence Darrow's argument in the Scopes case:

⁸³Wolman v. Walter, 433 U.S. 236 (1977).

"The realm of religion...is where knowledge leaves off, and where faith begins, and it never has needed the arm of the State for support, and wherever it has received it it has harmed both the public and the religion that it would pretend to serve."⁸⁴

Justice Stevens believed that the line drawn by the Establishment Clause of the First Amendment must have a fundamental character. It should not differentiate between direct and indirect subsidies.⁸⁵ "For that reason," Justice Stevens continued, "rather than the three-part test described in Part II of the Court's opinion, I would adhere to the test enunciated for the Court by Justice Hugo L. Black:

"No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever form they may adopt to teach or practice religion."⁸⁶

Under that test, a state subsidy for sectarian schools is invalid regardless of the form it takes.⁸⁷

Justice Stevens surmised that it is the sectarian school itself, not the legislation, that is "entangled" with a religion: "The very purpose of many of these schools is to provide an integrated secular and religious education:

⁸⁴Scopes v. State, 154 Tenn. 105, 289 SW 363 (1927).

⁸⁵Wolman v. Walter, 53 L. Ed. 2d 743 (1977).

⁸⁶Ibid.

⁸⁷Ibid.

the teaching process is, to a large extent, devoted to the inculcation of religious values and belief."⁸⁸

Substantial aid to the educational function of such schools, accordingly, necessarily results in aid to the sectarian school enterprise as a whole. The secular education these schools provide goes hand in hand with the religious mission that is the only reason for the schools' existence. Within the institution, the two are inextricably intertwined.⁸⁹

The "insoluble paradox" of 1971 begins to dissolve with the Wolman case and its decision.

The Committee for Public Education and Religious Liberty et al. v. Regan (1980) was the final case of the decade of the seventies.

The Regan case is a follow-up to Levitt in 1973.⁹⁰ The 1973 decision struck down a New York statute appropriating public money to private and parochial schools for state-mandated testing and reporting services. The new statute which sought to remove all unconstitutional provisions provided only for actual cost of providing secular

⁸⁸ Lemon v. Kurtzman, 403 U.S. 616-617 (1971).

⁸⁹ Ibid., p. 657.

⁹⁰ Levitt v. Committee for Public Education, 93 S. Ct. 2814 (1973).

services. Moreover, the statute provided for auditing payments and verifying services. The Federal District Court (7th district) of New York initially declared the statute unconstitutional and the United States Supreme Court on appeal remanded the case in light of *Wolman*.⁹¹

With Justice Byron White writing the majority (5-4) opinion, the statute was said not to violate the First Amendment Establishment Clause.⁹² The statute, said Justice White, was "purely secular" for the purpose of preparing New York citizens" for the challenge of American life in the last decades of the twentieth century...⁹³

Ironically William H. Seward, Governor of New York in December of 1840

[wrote] to a friend, as the political storm he had unleashed was breaking, "Knowledge taught by any sect is better than ignorance. I desire to see the children of Catholics (New York) educated as well as those of Protestants, not because I want them Catholics, but because I want them to become good citizens. In due time these views will prevail notwithstanding the prejudices that have assailed them."⁹⁴

⁹¹*Wolman v. Walter*, 433 U.S. 229, 93 S. Ct. 2593 (1977).

⁹²*Committee for Public Education and Religious Liberty et al. v. Regan*, 63 L. Ed. 2d 95 (1980).

⁹³Ibid.

⁹⁴Glyndon Van Deusen, William H. Seward (New York: Oxford University Press, 1967), p. 70.

Justice White may have been aware of this historical writing of Seward as the majority opinion for Regan was developed.

Four United States Supreme Court Justices dissented, insisting that while the Regan statute had manifested a "clear secular purpose, it had a primary effect of advancing religion and also fostered excessive government entanglement with religion."⁹⁵

Justice John Paul Stevens maintained the statute in every element violated the First Amendment establishment clause.⁹⁶

The Regan decision may very well, because of the polarization created within the Court, lead to a new era in constitutional theory on First Amendment considerations.

The tripartite test was applied in Regan and a clear "muster" prevailed with regard to two prongs of the test. The New York statute seemed to have a secular purpose and seemingly adequate safeguards were established which eliminated "excessive government entanglement." The

⁹⁵ Committee for Public Education and Religious Liberty et al. v. Regan, 63 L. Ed. 2d 95 (1980).

⁹⁶ Ibid.

question of "establishment" remained blurred and indistinct even with Regan. Justice White pointed out the difficulty in the "Establishment Clause" cases, lamenting that they are "not easy; they stir deep feelings; and we're divided among ourselves, perhaps reflecting views on this subject of the people of this country."⁹⁷ Justice White, while acknowledging that his decision was no "litmus-paper test," suggested the Court had never intended to establish "categorical imperatives and absolute approaches..."⁹⁸ Justice White then presented a sentence describing the last five years of the decade of the seventies church-state decisions:

The course sacrifices clarity and predictability, but this promises to be the case until the continuing interaction between the courts and the states—the former charged with interpreting and upholding the Constitution and the latter seeking to provide education for their youth—produce a single, more encompassing construction of the Establishment Clause.⁹⁹

Perhaps Justice White is suggesting a new standard for church-state questions.

Justice Harry A. Blackmun began his dissent;

The Court...takes a long step backward in the inevitable controversy that emerges when a state legislature continues to insist on providing aid to parochial schools.¹⁰⁰

⁹⁷Ibid., p. 107.

⁹⁸Ibid., p. 108.

⁹⁹Ibid.

¹⁰⁰Ibid.

Church-state litigation during the decade of the seventies was frantic. The Supreme Court of the United States sought a precise legal measure to approach establishment clause cases in an effort to devise a clear distinction of separation of church and state. An instrument to measure constitutionality was not agreed upon, leading one to believe that a continued effort to develop a test will characterize the Courts' behavior as new establishment cases are heard.

CHAPTER VI

CHURCH-STATE AND THE UNITED STATES SUPREME
COURT: CASES OF THE NINETEEN
SEVENTIES

The legality of using public tax funds for religious education has become a much litigated question in recent years. During the decade of the seventies, the United States Supreme Court handed down more church-state decisions than in the entire one hundred ninety years' history prior to 1970. The level of legal action in this area of church-state separation is characteristic of the times and reflects the urgency of competing groups for financial aid for education.

This chapter will explore those cases which have had an influence on the use of public tax funds for elementary and secondary schools with religious affiliations. Twenty cases are presented in this chapter and represent all litigation handed down by the Supreme Court in the area of church-state relations and funding of elementary and secondary education. Three cases having to do with higher education have been included due to the significance and relationship of each case to the greater question of Supreme Court activity and direction. The cases included in Chapter VI begin with the landmark decision of Lemon I, 1970, and

conclude with the Regan case of 1980. The cases are presented in chronological order.

The Cases

Lemon V. Kurtzman
Early v. Dicenso
Robinson v. DiCenso
 403 U.S. 602 (1971) reh. den. 404 U.S. 602 (1971)

Facts

Pennsylvania and Rhode Island enacted in 1968 and 1969 programs which provided state aid to parochial elementary and secondary schools. The statutes, while both aiding parochial schools, did so through different financing mechanisms.

Rhode Island authorized state funds to provide a salary supplement to teachers of secular subjects in nonpublic elementary schools by paying directly to the teacher an amount not in excess of fifteen percent of their annual salary.¹ The teacher had to be certified by the state board of education, and the total salary with the supplement would not exceed the maximum paid to teachers

¹Lemon v. Kurtzman, 403 U.S. 607 (1971).

in the public schools.² There were also requirements that teachers teach in a school where the average per-pupil expenditure on secular education was less than the average in the public schools during a specified period.³ The statute further restricted supplement to teachers who teach only those subjects that are offered in the public schools,⁴ Finally, any teacher applying for a salary supplement must first agree in writing "not to teach a course in religion for as long as or during such time as he or she receives any salary supplements,"⁵

A three-judge federal court found the Rhode Island statute violated the Establishment Clause of the First Amendment, relying on the excessive government entanglement that the Act fostered.⁶

Pennsylvania passed in 1968 a statute which authorized the state Superintendent of Public Instruction to "purchase" specified secular educational services from nonpublic schools.⁷ The state directly reimbursed nonpublic schools for actual expenditure for teachers' salaries,

²Ibid.

³Ibid.

⁴Ibid., p. 608.

⁵Ibid.

⁶Ibid., p. 609.

⁷Ibid.

textbooks, and instructional materials.⁸ Nonpublic schools seeking funds must separately account and identify the separate costs of secular educational services.⁹ Reimbursement was limited to courses in public schools and further limited to secular subjects: mathematics, modern foreign languages, physical science, and physical education.¹⁰ All textbooks and materials were subject to approval by the state Superintendent of Public Instruction. The statute prohibited reimbursement for any course that contains "any subject matter expressing religious teaching, or the morals or forms of worship of any sect."¹¹

A three-judge federal court found the Pennsylvania statute constitutional holding that it violated neither the Establishment nor the Free Exercise Clause of the First Amendment.¹²

Decision

The Supreme Court held that both state statutes were unconstitutional.¹³ A three-prong analysis was used to draw lines with reference to the three main evils against which the Establishment Clause was designed to protect:

⁸Ibid.

¹⁰Ibid., p. 610.

¹²Ibid.

⁹Ibid., p. 609-610.

¹¹Ibid.

¹³Ibid., p. 625.

"sponsorship, financial support, and active involvement of the sovereign in religious activity,"¹⁴ The initial question involves the requirement that the statute have a secular legislative purpose. The Court noted both statutes clearly stated the intent to enhance the quality of the secular education in all schools covered by the compulsory attendance laws.¹⁵ Recognizing the legitimate concern a state has in maintaining minimum standards in all schools allowed to operate, the Court held the secular purpose requirement was met by both statutes.¹⁶

The Court never discussed the second prong of the analysis, which requires that statute to neither advance or inhibit religion. Rather, the Court discussed the mechanisms by which both states sought to prevent the statute from violating the Establishment Clause. These were restrictions on the funds, based on the religious involvements of each school or teacher. The Court then held that it was not necessary to determine whether the restrictions accomplished their task. The cumulative impact of the entire statutory relationship constituted excessive entanglement between government and religion.¹⁷

¹⁴Ibid., p. 612.

¹⁵Ibid., p. 613.

¹⁶Ibid.

¹⁷Ibid., p. 613-614.

The Federal District Court acknowledged the Rhode Island statute had a grave potential for excessive entanglement. The Supreme Court noted many of the same reasons used by the lower court in affirming the decision.¹⁸ The church schools involved in the program were located very close to the parish churches.¹⁹ The buildings, classrooms and hallways contained identifying religious symbols such as crosses, religious printings, and statues.²⁰ Approximately two-thirds of the teachers in these schools were nuns of various religious orders.²¹ The Court also found that religious indoctrination of the schools was further enhanced due to the impressionable age of pupils, particularly in primary schools.²² The potential for teachers to invoke religious influences was seen by the Court as substantially different from textbooks being provided by the state.²³ The textbook's potential for religious influence is readily ascertainable by the content, while a teacher's potential is unmeasurable.²⁴ The Court recognized that a dedicated religious person, teaching in a religious school and operating to inculcate religious tenets, will inevitably experience great difficulty in

¹⁸Ibid., p. 615.

²⁰Ibid.

²²Ibid., p. 616.

²⁴Ibid.

¹⁹Ibid.

²¹Ibid.

²³Ibid., p. 617.

remaining religiously neutral.²⁵ Thus, state funding creates an excessive entanglement between government and religion, because the state regulations mandated a comprehensive evaluation of the religious content of the teacher's class.²⁶

The Pennsylvania statute was found to create the same constitutionally forbidden entanglement.²⁷ The statute required restrictions and surveillance of each school receiving funds. Accounting procedures were established to determine the cost of the secular as distinguished from religious instruction.²⁸ In addition, the statute provided direct financial aid to the church-related school, a factor which the Court insisted

"...would be a relationship pregnant with involvement and, as with most governmental grant programs, could encompass sustained and detailed administrative relationships for enforcement of statutory or administrative standards..."²⁹

The Court also noted that state power to inspect and evaluate a church-related school's financial records and to determine which expenditures are religious and which are secular creates an intimate and continuing relationship between church and state, which the Establishment Clause forbids.³⁰

²⁵ Ibid., p. 620.

²⁷ Ibid., p. 624.

²⁹ Ibid.

²⁶ Ibid.

²⁸ Ibid., p. 621.

³⁰ Ibid., p. 622.

Finally, the Court addressed both programs with regard to their divisive political potential.³¹ Opponents of the programs will respond each year by employing all of the usual political campaign techniques to defeat the program. Candidates will be forced to take a side and voters forced to choose.³² The Court stated that division along religious lines was one of the principal evils against which the First Amendment sought to protect.³³ The nature of the two programs prompted this evil, and according to the Supreme Court, led to their unconstitutionality.

Discussion

In this first Lemon decision, the Court established the framework for analysis of the Establishment Clause challenging state funding of church-school related activities. The Court began with a desire to draw lines to protect against three evils--"sponsorship, financial support, and active involvement of the sovereign in religious activity." To determine whether the lines have been breached, the Court asks three now familiar questions; 1) Does the statute have a secular legislative purpose? 2) Is its primary effect to neither advance nor inhibit religion?

³¹Ibid.

³²Ibid.

³³Ibid.

and 3) Does the statute foster an excessive government entanglement with religion?

In applying this framework, there are not clear cut lines to differentiate an unconstitutional act from a valid one. Rather, as the Court says: ". . . far from being a wall, the line is a blurred, indistinct and variable barrier depending on all the circumstances of a particular relationship."³⁴ The Rhode Island and Pennsylvania programs failed to pass constitutional muster for one primary reason: The aid given was recognized as being very close to "advancing a religion." Therefore, each state drew comprehensive limitations, restrictions and inspections on the uses of the funds. This led to a violation of the third prong, that of excessive government entanglement.

Tilton v. Richardson
403 U.S. 672 (1971)

Facts

This case involved Title I of the Higher Education Facilities Act of 1963.³⁵ Under the act the federal government made available to colleges funds which would

³⁴Ibid., p. 614.

³⁵Tilton v. Richardson, 403 U.S. 672 (1971).

be used for constructing buildings and facilities.³⁶ The buildings and facilities had to be for secular educational purposes, because the act itself in Section 751 (a) (2) expressly states that the funds could not be given to construct buildings used for religious purposes.³⁷ To assure compliance with the act the federal government retained a twenty-year interest in the building.³⁸ If at any time during that twenty years the building was used for religious purposes, then the federal government was entitled to recover money from the college in an amount equal to that portion of the value of the building which was attributable to federal funds.³⁹ For example, if in 1960 the federal government gave the college one half of the money needed to construct a building, and the violation occurred in 1970, the federal government was entitled to recover one half of the present value of that building.

Plaintiffs who brought the suit were citizens and taxpayers of the United States.⁴⁰ Plaintiffs sought an injunction to stop the federal government from giving funds to four church-related colleges.⁴¹ In this case money was to be used for a library, a drama-music-arts

³⁶ Ibid.

³⁸ Ibid.

⁴⁰ Ibid., p. 676.

³⁷ Ibid.

³⁹ Ibid.

⁴¹ Ibid.

building, a science building, another library, and a language lab.⁴² The Federal District Court denied the injunction, so plaintiffs appealed to the Supreme Court.⁴³

Decision

As a prerequisite to reaching the constitutional issue in this case, the Supreme Court had to first decide if the Higher Education Facilities Act allowed money to be given to church-related colleges. The Supreme Court recognized that certain types of colleges are excluded from funding but that the Act did not specifically exclude church-related colleges.⁴⁴ This fact, along with the written record encapsulating the congressional debate at the statute passing, led the Supreme Court to conclude that under the Act the federal government could provide money to church-related colleges.⁴⁵

The next problem confronting the Court was whether the Act was constitutional. The Supreme Court held the Act was constitutional except that portion giving the federal government claim in the building for twenty years.⁴⁶

⁴²Ibid.

⁴⁴Ibid., p. 677.

⁴⁶Ibid., p. 689.

⁴³Ibid.

⁴⁵Ibid.

The Court began the discussion by acknowledging that there can be no absolute test that can be used to determine if a law violates either the Establishment Clause or the Free Exercise Clause of the First Amendment.⁴⁷ Instead Chief Justice Warren Burger suggested we must look at four questions: 1) Does the Act reflect a secular purpose? 2) Is the primary effect of the act to advance or inhibit entanglement with religion? 3) Does administration of the Act foster excessive government entanglement with religion? and 4) Does the implementation of the Act inhibit the Free Exercise of religion?⁴⁸

The Court proceeded to consider the four questions.

a) Does the Act reflect a secular purpose?

Chief Justice Warren Burger began the analysis of this question by including the Preamble to the Act in the opinion.⁴⁹ The preamble states the Act was passed to insure America's future by allowing colleges to have facilities to educate the youth of the country.⁵⁰

Justice Burger concludes this a legitimate secular objective entirely appropriate for governmental action.⁵¹

⁴⁷Ibid., p. 677.

⁴⁸Ibid., p. 678.

⁴⁹Ibid.

⁵⁰Ibid.

⁵¹Ibid., p. 679.

The Court then turned its attention to the arguments which the plaintiffs used to challenge the Act. First, the Court said it is no longer a persuasive argument that funds used to sponsor church activity violate the religion clauses.⁵² The Court recognized that past governmental assistance in providing bus transportation, textbooks, and tax exemptions have been held constitutional.⁵³ (Everson v. Bd. of Education 330 U.S. 1 (1971), Bd. of Education v. Allen 392 U.S. 236 (1968), Walz v. Tax Comm. 397 U.S. 664 (1970)). Finally, the Court stated that the question is whether the Act's principal effect advances religion, and not whether some benefits accrue to a religious institution.⁵⁴

In supporting the Act, the Court cited that the Act was carefully drafted so as to provide adequate protection against use of federal funds for religious purposes.⁵⁵ Also, the Court maintained that certain institutions have had to repay money to the government and that there is no evidence that the four institutions in this case have violated the Act.⁵⁶ Finally, the Court dismissed the

⁵²Ibid.

⁵³Ibid.

⁵⁴Ibid.

⁵⁵Ibid.

⁵⁶Ibid., p. 680.

argument that religion so permeates a secular education that it is impossible to separate the two.⁵⁷ In so doing the Court noted that Congress debated the issue and that the Supreme Court previously discredited the argument in Allen.⁵⁸ Again, Justice Burger cited the total lack of evidence in support of the plaintiff's claim.

b) Is the primary effect of the Act to advance or inhibit religion?

The Court addressed this question by acknowledging that even though the Act withstands broad constitutional attack, the twenty-year federal claim raises substantial constitutional problems.⁵⁹ After twenty years a college might divert the building for religious purposes into a chapel. Justice Burger insists this is advancing religion.⁶⁰ Continuing, Justice Burger maintains that as long as the buildings have value they must be subject to federal restrictions.⁶¹ Finally, Justice Burger insisted that Congress did not intend the twenty-year limitations to be essential to the entire Act; therefore, only that part is invalidated.⁶²

⁵⁷Ibid., p. 681.

⁵⁸Ibid., p.680-681.

⁵⁹Ibid., p. 682.

⁶⁰Ibid., p. 683.

⁶¹Ibid., p. 684.

⁶²Ibid.

c) Does Administration of the Act foster excessive government entanglement with religion?

The Court sees this third question meaning whether there is a risk that government aid will in fact serve to support religious activities. Justice Burger stated that three factors diminish the risk of excessive entanglement.⁶³ The first factor is that church-related colleges present a different picture from church-related elementary schools and secondary schools.⁶⁴ Justice Burger concluded that college students are less impressionable and less susceptible to religious indoctrination than younger students.⁶⁵ Further, he believes academic freedom limits the extent to which religion permeates the college educational experience.⁶⁶

The next factor which the Court believed lessened governmental entanglements is the nature of the aid.⁶⁷ Here the buildings are "religiously neutral." Justice Burger contrasts this with the Lemon v. Kurtzman case, where state programs subsidized teachers. Justice Burger concludes that "religiously neutral" aid lessens the risk of entanglement.⁶⁸

⁶³Ibid., p. 685.

⁶⁴Ibid.

⁶⁵Ibid., p. 686.

⁶⁶Ibid.

⁶⁷Ibid., p. 687.

⁶⁸Ibid.

The final factor which Justice Burger believes lessens entanglements is that these are one-time payments; thus, no need arises for annual audits or analysis of yearly expenditures.⁶⁹

Summing up the entanglements questions, Justice Burger admitted "his statements are difficult to document, but that the plaintiffs have not disproved his conclusions."⁷⁰

d) Does the implementation of the Act inhibit the Free Exercise of religion?

The Court approached this question by addressing plaintiffs' argument that the Free Exercise Clause is violated because they are compelled to pay taxes, proceeds of which finance grants under the Act.⁷¹ Justice Burger rejects this argument stating that the plaintiffs have not shown how payment of the tax inhibits the practices of religion.⁷² Because they have not shown any restriction of ability to practice religion the Court dismissed this argument.⁷³

The Act was upheld except for the twenty-year limit on federal rights in the buildings.⁷⁴

⁶⁹Ibid., p. 688.

⁷¹Ibid., p. 689.

⁷³Ibid.

⁷⁰Ibid.

⁷²Ibid.

⁷⁴Ibid.

Discussion

The major importance of this case is that it laid down an analytical approach to addressing Religion Clause cases. Chief Justice Burger's opinion is that Religious Clause cases should be analyzed by considering four questions: 1) Does the Act reflect a secular legislative purpose? 2) Is the primary effect of the Act to advance or inhibit religion? 3) Does the administration of the Act foster excessive government entanglements with religion? 4) Does the implementation of the Act inhibit the free exercise of religion?

With respect to the facts of this case, the Court found that aid to construct college educational buildings was permissible and the following factors led to their decision: 1) the federal government has an interest in educating the youth of America; 2) a college education poses less risk of excessive entanglements; 3) religiously neutral aid is less risky, compared to subsidizing teachers' salaries; and 4) one-time grants are less risky than aid which requires constant supervision.

Finally, it deserves attention that the plaintiffs in this case offered very little evidence to establish violation of the Constitution. Plaintiffs stood on the assertion that giving federal money to a church-related activity is unconstitutional. The Court struck down this

position, thus, the Court implies that to challenge a statute's constitutionality, factual evidence to develop a position must be established.

Johnson v. Saunders
319 F. Supp. 421 (1970)

Facts

The case involved a challenge to the Connecticut Nonpublic School Secular Education Act. The Act authorized the State Board of Education to contract with privately owned nonprofit schools for the rendition of secular education services for Connecticut residents.⁷⁵ The state payments could be used for any course that was also taught in public school,⁷⁶ but the payments could not exceed twenty percent of the teacher's salary.⁷⁷ The Act also allowed payments for textbooks.⁷⁸ The Act also established a reimbursement program, in which nonpublic schools were required to file a certificate claiming that race was not considered concerning admissions.⁷⁹ However, the so-called "open admissions" requirement was limited. If the state contributed ten percent of the

⁷⁵Johnson v. Saunders, 319 F. Supp. 432 (1970).

⁷⁶Ibid.

⁷⁷Ibid.

⁷⁸Ibid.

⁷⁹Ibid., p. 424.

school's operating cost then one tenth of the enrollment was subject to "open admission."⁸⁰ The other ninety percent of the seats in classes could be filled with preference to members of the group contributing the other ninety percent. As an example, if the state gave a Catholic school twenty percent of its budget, then twenty percent of the seats were under "open admission," while the other eighty percent of the seats could be filled by Catholic students.

Decision

The District Court, sitting in a three-judge panel held the Act violated the Establishment Clause of the First Amendment.⁸¹

The Court began by an analysis of the Establishment of Religion claim. The Court held in Allen that a state statute must have a secular legislative purpose and a primary effect of neither advancing nor inhibiting religion.⁸² Next, the Court found the Act did have a secular purpose but that the primary effect of a law is not always reflected in its purpose.⁸³ The Court cited that in the past, bus transportation and health and welfare services had been made available and the Court never held that these types of aid promoted sectarian education.⁸⁴ However, the

⁸⁰Ibid.

⁸¹Ibid., p. 436.

⁸²Ibid., p. 425.

⁸³Ibid., p. 426.

⁸⁴Ibid.

Court viewed the Connecticut Act as sharply altering the state's relationship with parochial schools.⁸⁵

Under the Act the state established a state office which would police schools to see that public funds were not used to pay for religious teachings.⁸⁶ Further, the Act required that teachers in nonpublic schools meet educational requirements of state schools, thus bringing about another area of policing.⁸⁷ In light of this the court held that the Connecticut Act's primary effect was to create a state-financed and extensively state-regulated nonpublic school system.⁸⁸ The next issue the Court considered was whether this type of aid to nonpublic schools advanced or inhibited religion.

The Court found that the Connecticut Act required state supervision into every area of nonpublic school administration.⁸⁹ First, the Court believed that the state had to judge what was secular instruction and what was sectarian, and that fact the Court felt would create unavoidable confrontations.⁹⁰ Secondly, the Court believed that public aid made religiously affiliated

⁸⁵Ibid.

⁸⁶Ibid., p. 428.

⁸⁷Ibid., p. 429.

⁸⁸Ibid., p. 430.

⁸⁹Ibid.

⁹⁰Ibid.

schools quasi-public agencies without prohibiting religious activities, and therefore, advanced religion.⁹¹ Further, if no policing of the system occurred there could be no assurance that funds were not being used for a religious purpose, a result just as illegal.⁹²

The final argument the Court entertained was that of equal protection as it related to the case. The plaintiffs contended that the admissions program allowed by the statute (percentage of funds equaling percentage of open enrollment) violated the Equal Protection Clause.⁹³ The plaintiffs believed that allowing any preference in admission practices allowed discrimination based on race, color, or creed.⁹⁴ The Court held that none of the plaintiffs had children who were denied admittance thus the Court would not decide that issue.⁹⁵

Discussion

What the Court seemed to be saying is that reimbursement to parochial schools leads to two constitutional problems. Either the funds bring about too much policing of the schools or there is too little policing to insure whether or not public money is being spent for religious

⁹¹Ibid.

⁹⁴Ibid.

⁹²Ibid.

⁹⁵Ibid.

⁹³Ibid., p. 435.

purposes. What seems important is the impression the Court leaves that there probably is no middle ground. There is no such thing as the right amount of policing of a school's activities or intended purposes for existence and use of tax funds. This being true, it is doubtful that public funds directly applied towards teachers' salaries in nonpublic schools could ever be found constitutional.

Wolman v. Essex
342 F. Supp. 399 (1972)

Facts

This case involved an Ohio Statute which appropriated funds raised by tax dollars for expenditures to insure per pupil dollar amounts for public school children.⁹⁶ The statute also appropriated tax dollars for nonpublic parental reimbursement grants and materials and services for nonpublic school pupils.⁹⁷ All children from six to eighteen are required to attend schools and nonpublic schools of Ohio must comply with state standards.⁹⁸ Many of these nonpublic schools are religiously oriented.⁹⁹ For the parental grants, the statute requires that parents

⁹⁶Wolman v. Essex, 342 F. Supp. 402 (1972).

⁹⁷Ibid.

⁹⁸Ibid.

⁹⁹Ibid.

file an application requesting reimbursement.¹⁰⁰ The application must aver that 1) the parent has spent money on a nonpublic education, 2) their child is enrolled in a non-tax-supported school, 3) such school meets the requirements of the federal Civil Rights Acts, 4) such schools do not discriminate in hiring, and 5) the applicant is an Ohio resident.¹⁰¹ The amount to be reimbursed could vary, but for the years 1971-1973 it would be ninety dollars per student per year.¹⁰² The statute enumerated those materials and services for which the state would pay. Examples were guidance, testing and counseling programs, and audio-visual aids.¹⁰³

Decision

The District Court, as a three-judge panel, held that the parental reimbursement program violated the Establishment Clause of the First Amendment.¹⁰⁴ As an introductory matter, the District Court found that the large majority of nonpublic schools in Ohio were sectarian and the schools maintained a substantial religious purpose and denominational character.¹⁰⁵ This factor raised First

¹⁰⁰Ibid.

¹⁰¹Ibid.

¹⁰³Ibid.

¹⁰⁵Ibid., p. 403.

¹⁰²Ibid.

¹⁰⁴Ibid., p. 419.

Amendment questions. The Court noted that this case concerns solely the Establishment Clause of the First Amendment; therefore, the Court chose to analyze recent Establishment Clause cases to develop a decision.¹⁰⁶

The District Court began with Everson stating that no tax can be levied to support religious activities or institutions.¹⁰⁷ The District Court then referred to Schempp, Allen, and Walz to further develop an analysis.¹⁰⁸ From these three cases the District Court developed a three-requirement test analyzing Establishment Clause cases: The statute 1) must be predominately secular in purpose, 2) must be neutral in its effect—that is, it neither advances nor inhibits religion, and 3) must not lead to excessive government entanglement with religion.¹⁰⁹

The District Court then turned to Lemon I, which was the most recent case.¹¹⁰ The District Court noted that in Lemon the Court had reaffirmed the three-part test stated above. The District Court then entered into an analysis of the facts of this case based solely on that three-part muster.

¹⁰⁶Ibid., p. 405. ¹⁰⁷Ibid., pp. 406-407.

¹⁰⁸Ibid., pp. 407-410.

¹⁰⁹Ibid., p. 410.

¹¹⁰Ibid., p. 409.

The District Court said that in light of the three-pronged test announced in Lemon, the parental reimbursement program was unconstitutional.¹¹¹ While admitting the Lemon test lacked refinement through application, the Court did recognize that a statute must satisfy all three requirements.¹¹²

The District Court had little difficulty in finding a secular purpose behind the statute,¹¹³ and stated that most statutes would have a valid secular purpose when dealing with funds for education; thus, the District Court felt time was better spent on the remaining two parts of the test.

As to whether the statute advanced or inhibited religion, the District Court noted immediately that this statute differed from statutes in Tilton, Everson, and Allen. In this case the statute affected only a small portion of the total student population of the state, and that portion was predominately secular.¹¹⁴ In cases where statutes have been held constitutional the statutes had broad range.¹¹⁵ This fact the District Court

¹¹¹Ibid., p. 411.

¹¹²Ibid.

¹¹³Ibid.

¹¹⁴Ibid.

¹¹⁵Ibid., p. 412

said did not automatically make the statute invalid but did bring it under suspicion.¹¹⁶ Next, the District Court stated that the neutrality prong of the Lemon test is inversely related to the entanglement prong.¹¹⁷ The more neutral a statute, the less time the court spends on the entanglement question.¹¹⁸ Where neutrality is suspect, the District Court will closely scrutinize the statute to see if it creates excessive entanglements.¹¹⁹

The District Court stated that there may be administrative and also political entanglements.¹²⁰ The former concerns the extent government must intervene to assure proper spending; the latter concerns the extent to which aid to such schools has an effect on the political process.

The District Court began by addressing excessive administrative entanglements,¹²¹ and found none. In fact, it found so little administration over funds that the Court believed there was no way the state could be assured that state money was not being used for

¹¹⁶Ibid.

¹¹⁸Ibid.

¹²⁰Ibid.

¹¹⁷Ibid., p. 413.

¹¹⁹Ibid.

¹²¹Ibid., p. 417.

religious purposes.¹²² The fact that money was being given to parents and not schools had no effect.¹²³ The District Court would not let the state give funds to schools indirectly.¹²⁴ The District Court then noted that this aid, which was the same as direct aid, tended to create political fragmentation and division upon religious lines.¹²⁵ Based on the fact that such aid tends to mix politics and religion, the District Court held the reimbursements to be unconstitutional.¹²⁶

Discussion

The District Court in this case applied the tri-partite Lemon test. The important point seemed to be that the less neutral a statute, the more entanglement it creates. Next, the Court distinguished between administrative entanglements and political entanglements. The Court held that little or no administration cannot pass constitutional scrutiny because the state must know how tax money is spent. Finally, the Court concluded that reimbursement for tuition is the same as direct payments to schools, a process that is unconstitutional because money may be spent for religious purposes.

¹²²Ibid., pp. 415-417. ¹²³Ibid., p. 416

¹²⁴Ibid. ¹²⁵Ibid., p. 418.

¹²⁶Ibid., p. 419.

Further, these indirect payments will, like direct payments, foster political debate and friction and that is what the Establishment Clause was created to avoid.

Johnson v. N. Y. State Education Dept.
409 U.S. 75 (1972)

Facts

This case involved a New York state law which required that books be provided free for grades seven through twelve, but provided free books for grades one through six only upon vote of a majority of the school district's eligible voters to assess a tax to provide funds for purchase of such textbooks. Plaintiffs contended that since they had to buy books for children, this created a wealth classification and as such denied them equal protection of law. The District Court dismissed the case upon finding the law to be constitutional. By the time the case reached the Supreme Court a tax had been passed. So the Supreme Court sent the case back down to see if there was still any controversy concerning the books.

Discussion

Since the Court did not address the issues in this case it has no actual value to this discussion.

Lemon v. Kurtzman
411 U.S. 192 (1973)

Facts

This is the same case as Lemon v. Kurtzman (1971).¹²⁷ The Supreme Court remanded the 1971 case to the District Court. On remand the District Court held that the state could not reimburse nonpublic sectarian schools for certain secular educational services under the current Pennsylvania plan.¹²⁸ The District Court enjoined payment of state funds for services rendered after the Court decided Lemon in 1971.¹²⁹ The palintiffs sought an injunction to cover payments made before the 1971 Lemon decision was rendered.¹³⁰

Decision

The Supreme Court upheld the decision of the lower court; thus, only post-Lemon I (1971) payments were enjoined.¹³¹ Most of the decision was a rehash of the 1971 Lemon opinion. The only constitutional law contained in Lemon II concerns a law being retroactively applied.

The Court first addressed whether payment of pre-Lemon I funds would lead to "excessive entanglements."

¹²⁷Lemon v. Kurtzman, 411 U.S., p. 193 (1973).

¹²⁸Ibid., p. 194. ¹²⁹Ibid.

¹³⁰Ibid.

¹³¹Ibid., p. 209.

The Court held there was nothing left to do but make payments; therefore, the payments would not undermine the Court's Lemon I decision.¹³² Since this was so, there was no reason to have payments applied retroactively.¹³³

Finally, the Court held state officers should not be required to have programs judicially approved before they are enacted, and if Lemon I was applied retroactively then the states would be hard pressed to make payments which later would have to be repaid.¹³⁴

Discussion

This case establishes that state officials may make payments and parochial schools may accept them until the programs are enjoined or declared unconstitutional. This enables parochial schools to accept money or make expenditures relying on later reimbursements without the fear of repayment or not being reimbursed.

Norwood v. Harrison
413 U.S. 455 (1973)

Facts

The state of Mississippi enacted a program in 1940 that provided free textbooks to all the children

¹³²Ibid., p. 198.

¹³³Ibid., p. 199.

¹³⁴Ibid., p. 204.

of the state,¹³⁵ The state established a Textbook Purchasing Board, with authority to select, purchase and distribute free textbooks.¹³⁶ The loans were made to both private and public schools, without reference to participating private schools having racially discriminating policies.¹³⁷ The books could only be purchased by the Board if they were for subjects in the course of study adopted by the State Board of Education, a course established by the legislature.¹³⁸ Each school would be sent a list of approved textbooks available from the state, and would submit a requisition form to the Board for approval by the Board's executive secretary.¹³⁹ Upon approval, requested books would be sent directly to the school district or private school.¹⁴⁰

Plaintiffs in this case were parents of children who attended public schools in Mississippi.¹⁴¹ Plaintiffs sought to enjoin the loan program as it applied to certain private schools that excluded students on the basis of race.¹⁴² By supplying these schools with textbooks, the plaintiffs alleged that the state was providing direct aid to racially segregated education.¹⁴³

¹³⁵Norwood v. Harrison, 413 U.S., p. 456 (1973).

¹³⁶Ibid., p. 458.

¹³⁷Ibid., p. 456.

¹³⁸Ibid., p. 458.

¹³⁹Ibid., p. 459.

¹⁴⁰Ibid.

¹⁴¹Ibid.

¹⁴²Ibid.

¹⁴³Ibid.

A three-judge panel of the District Court for the Northern District of Mississippi dismissed plaintiff's action, holding that the case should be held to exact standards of an Establishment Clause challenge, and that the Mississippi program was secular in nature, and that the Supreme Court in Board of Education v. Allen, 392 U.S. 236 (1968) had approved of providing textbooks to private sectarian schools.¹⁴⁴

Decision

The Supreme Court reversed the lower court decision, holding the Mississippi scheme unconstitutional.¹⁴⁵

The Court relied on the Equal Protection Clause in reaching a decision, stating that since racial discrimination in state-operated schools is barred by the Constitution, it follows that a state cannot encourage or promote private citizens to do what it is constitutionally forbidden to do.¹⁴⁶ The District Court held and the state of Mississippi advanced the argument that providing private schools with textbooks should be analyzed in the framework set out in Lemon v. Kurtzman, 403 U.S. 602 (1971).¹⁴⁷ The District

¹⁴⁴Ibid., p. 460.

¹⁴⁵Ibid., p. 471.

¹⁴⁶Ibid., pp. 461-463.

¹⁴⁷Ibid., p. 462.

Court argued that the state's interest in providing all school children with textbooks is a completely secular interest, and the state should provide these books without regard to whether the private school discriminates on the basis of race,¹⁴⁸ The Court, however, rejected this argument, distinguishing the present case from Lemon.¹⁴⁹ Inherent in a church-related school are two functions—one to provide religious instruction, and one to provide a sound secular education.¹⁵⁰ These two functions can be separated and the secular education function aided by the state, while the religious function left undisturbed.¹⁵¹ However, in a private school that discriminates based on race, the legitimate educational function cannot be isolated from those discriminatory practices.¹⁵² Such practices enact a pervasive influence on the entire educational process.¹⁵³ The Court notes that such private bias is not barred by the Constitution, but neither can a state provide material aid to further or enhance this bias.¹⁵⁴

The Court enjoined the loan of textbooks to schools which were found through a certification procedure to

¹⁴⁸Ibid.

¹⁵⁰Ibid., 468.

¹⁵²Ibid., p. 470.

¹⁵⁴Ibid.

¹⁴⁹Ibid., pp. 462-463.

¹⁵¹Ibid., p. 469.

¹⁵³Ibid., p. 469.

discriminate based on race.¹⁵⁵ Other private schools which passed the certification procedure continued to enjoy the benefits of the program.¹⁵⁶

Discussion

This case presents an attempt by a state to justify its textbook loan program by its completely secular nature, without regard to its effect of aiding schools that practice racial discrimination. The Court quickly distinguishes this situation from the religious-advancement-entanglement situation, and decides the case under the Equal Protection Clause of the Fourteenth Amendment.

Levitt v. Committee for Public Education
413 U.S. 472 (1973)

Facts

In April, 1970, the New York legislature authorized \$28,000,000 for the purpose of reimbursing nonpublic schools in the state for expenses incurred in the administration, grading, compiling and reporting of results of tests required by state law, and also for expenses incurred in tabulating enrollment, health, personnel qualifications, and characteristic reports required by the

¹⁵⁵Ibid., p. 471.

¹⁵⁶Ibid.

state.¹⁵⁷ By far the most expensive of the required reports is that of testing.¹⁵⁸ New York state required two kinds of testing: 1) state-prepared examinations, known as the "Regents' Examination" or the "Pupil Evaluation Program Tests," and 2) traditional teacher-prepared tests given to measure the pupil's progress in every subject required to be taught under state law.¹⁵⁹ Church-related private schools were eligible for the reimbursement program; however, Section 8 of the statute indicated that nothing in the Act shall be construed to authorize any payment for religious worship or instruction.¹⁶⁰

There are no requirements for accounting reports by the qualifying schools to indicate how funds received are expended.¹⁶¹ Schools receive annual payments of \$27 for each student in grades one through six, and \$45 for each student in grades seven through twelve, based on average daily attendances.¹⁶² The funds are paid semi-annually by an "estimated total apportionment," and a school is not required to return any money received in excess of their actual expenses.¹⁶³

Plaintiffs are taxpayers of New York who formed an unincorporated association to challenge the Act.¹⁶⁴

¹⁵⁷Levitt v. Committee for Public Education, 413 U.S., P. 474 (1973).

¹⁵⁸Ibid., pp. 474-475. ¹⁵⁹Ibid., p. 475.

¹⁶⁰Ibid., p. 477. ¹⁶¹Ibid.

¹⁶²Ibid., p. 476. ¹⁶³Ibid., p. 477. ¹⁶⁴Ibid., p. 478.

A three-judge panel of the District Court for the Southern District of New York held the Act unconstitutional under the Establishment Clause of the First Amendment, and enjoined completely the operation of the statute.¹⁶⁵

Decision

The Supreme Court affirmed the lower court opinion and held the Act unconstitutional.¹⁶⁶ The opinion was decided the same day as Committee for Public Education v. Nyquist, 413 U.S. 756 (1973) (discussed supra) another New York case brought by the same plaintiffs, in which the Court struck down state funds being used for maintenance and repair of nonpublic schools,¹⁶⁷ The Court relied on the Nyquist holding that the Act constitutes an impermissible aid to religion because aid given to secular functions is not identifiable and separable from aid to sectarian activities.¹⁶⁸

In the opinion lies the concern over the lack of assurance that internally prepared tests are free of religious instruction.¹⁶⁹ The Act provides no safeguards

¹⁶⁵Ibid.

¹⁶⁶Ibid., p. 482.

¹⁶⁷Ibid., p. 479.

¹⁶⁸Ibid., p. 482.

¹⁶⁹Ibid., p. 480.

that tests prepared by private school teachers will not be "drafted with an eye, unconsciously or otherwise, to inculcate students in the religious precepts of the sponsoring church."¹⁷⁰ Such potential for conflict between state monies and religion, absent safeguards, violates the second prong of Lemon, in that it advances a religion.¹⁷¹

The Court dismissed as "fanciful" the argument that a state should be permitted to pay for any activity "mandated or required by state law."¹⁷² A state may require sanitary facilities or minimum lighting for all school buildings, but the Court holds that this requirement does not impose upon the state a duty or right to reimburse all who comply.¹⁷³

Discussion

Levitt and companion case Nyquist dealt a severe blow to parochial schools in New York. The Court in Levitt utilized the Lemon framework and found no safeguards to avoid advancing religion. The Levitt case indicated a desire of the Court to further define the tripartite test, but to continue to do so on a case-by-case basis.

¹⁷⁰Ibid.

¹⁷²Ibid., p. 481.

¹⁷¹Ibid.

¹⁷³Ibid.

Hunt v. McNair (1973)
 413 U.S. 734
 37 LED 2nd 923
 93 S. Ct. 2868

Facts

The state of South Carolina enacted in 1970 legislation which provided financial assistance to "institutions for higher education in the construction, financing and refinancing of projects."¹⁷⁴ Projects could encompass buildings, facilities, site preparation and related items, but could not include any facility used for sectarian instruction for worship, or for use by a department of divinity.¹⁷⁵ Termed the South Carolina Educational Facilities Authority Act, the plan called for the State Educational Authority to issue revenue bonds upon proper application by an institute of higher education, public or private.¹⁷⁶ The proceeds from the revenue bonds were given to the institution, to finance the particular project.¹⁷⁷ The institution would convey title to the project to the Authority without cost; in return the Authority would lease the project to the institution.¹⁷⁸ After full payment of the bonds, the project would be conveyed to the institution.¹⁷⁹

Neither the Authority nor the state of South Carolina were obligated on the bonds, directly or indirectly,

¹⁷⁴Hunt v. McNair, 413 U.S. 736 (1973).

¹⁷⁵Ibid., pp. 736-737. ¹⁷⁶Ibid., p. 736.

¹⁷⁷Ibid., p. 737. ¹⁷⁸Ibid., p. 738. ¹⁷⁹Ibid.

and none of the general revenues of South Carolina were used to support the projects.¹⁸⁰

On January 6, 1970, the Baptist College at Charleston (the College) submitted an application for the issuance of revenue bonds.¹⁸¹ The College requested a total of \$1.25 million in bonds be issued.¹⁸² One million fifty thousand dollars was to be applied to short term financing of capital improvements and two hundred thousand was to be used to complete a dining facility.¹⁸³

Plaintiff was South Carolina taxpayer challenging the Act as a violation of the Establishment Clause of the First Amendment.¹⁸⁴ The South Carolina Supreme Court upheld the statute after the United States Supreme Court remanded the case for reconsideration in light of Lemon I and Tilton v. Richardson.¹⁸⁵

Decision

The Supreme Court affirmed the lower court decision, holding the Act constitutional.¹⁸⁶ After stating the principles which govern challenges based on the Establishment Clause, the Court, in an opinion written by Justice Lewis F. Powell, proceeded to analyze the case in that light.

¹⁸⁰ Ibid., p. 737.

¹⁸¹ Ibid., p. 738.

¹⁸² Ibid.

¹⁸³ Ibid.

¹⁸⁴ Ibid., pp. 735-736. ¹⁸⁵ Ibid., p. 736.

¹⁸⁶ Ibid., p. 749.

First, the Court held that the act possessed a manifestly secular purpose.¹⁸⁷ The benefits of the Act were available to all institutions of higher learning whether or not they were religiously affiliated.¹⁸⁸ After quoting the legislature's declaration of purpose that accompanied the act, the Court noted that the College had an enrollment of over 2,000 students, ninety-five percent of which were South Carolina residents who were thereby receiving a college education without financial support from the State of South Carolina.¹⁸⁹

Second, the Court examined the "primary effect" of the Act, finding it neither advancing nor inhibiting the free exercise of religion.¹⁹⁰ The Court rejected the argument that any aid to a religiously affiliated school has the effect of advancing religion.¹⁹¹ Rather, the Court noted that where sectarian and secular functions may be separated, the secular ones may be funded by public means.¹⁹² Although the College was governed through the South Carolina Baptist Convention, there are no religious qualifications for faculty membership or student admission, and in fact, only sixty percent of the College student body was Baptist, a percentage roughly equivalent

¹⁸⁷Ibid., p. 741.

¹⁸⁹Ibid., p. 742.

¹⁹¹Ibid., p. 743.

¹⁸⁸Ibid.

¹⁹⁰Ibid., p. 745.

¹⁹²Ibid., p. 744.

to the percentage of Baptists in that area of South Carolina.¹⁹³ On the basis of these facts, the Court held that the College's operations were not oriented significantly towards sectarian rather than secular education.¹⁹⁴

Further, the Court held the Act itself contained limitations which prevent the Authority from providing aid to religious as opposed to the secular activities of the College.¹⁹⁵ The Act specifically excludes from the list of eligible "projects" any building or facility used for religious purposes.¹⁹⁶ In addition, lease of the project to the College must contain a clause forbidding religious use, and the authority also retains the power to inspect the projects and to enforce the agreement.¹⁹⁷ Thus, the statute passes the "primary effect" prong of the three-part test enunciated in Lemon I.

Finally, the Court addressed the third prong, that of excessive government entanglement. Using Lemon I and Tilton as guideposts, the Court stated that the entanglement issue must be viewed in light of the extent to which religion permeates the institution.¹⁹⁸ As previously

¹⁹³Ibid., pp. 743-744. ¹⁹⁴Ibid.

¹⁹⁵Ibid., p. 744. ¹⁹⁶Ibid.

¹⁹⁷Ibid. ¹⁹⁸Ibid., p. 746

noted, the Court found no evidence that the College was any more an instrument of religious indoctrination than were the colleges and universities involved in the Tilton case.¹⁹⁹ Thus, the question narrowed to whether the Authority would become involved in the day-to-day financial and policy decisions of the College.²⁰⁰ Under the Act, the Authority has the power to fix and revise the rates, rents, fees and charges for any of the services furnished.²⁰¹ However, the Court adopted the South Carolina Supreme Court's interpretation of these powers, and held that they were not so sweeping as to violate the entanglement prong.²⁰² Also, the Authority's powers would not become available until after the College had defaulted on its obligations.²⁰³

Because the Court found no violation of the three pronged Lemon I test, the Court upheld the Act, limiting its holdings to the facts of this particular case.²⁰⁴

¹⁹⁹Ibid., p. 747.

²⁰⁰Ibid.

²⁰¹Ibid.

²⁰²Ibid., pp. 747-748.

²⁰³Ibid., p. 748.

²⁰⁴Ibid., p. 749.

Discussion

This decision was issued the same day as the Levitt and Nyquist decisions. Thus, the Court struck down the two New York funding schemes while upholding the South Carolina Act. This action emphasizes the approach of the Court in dealing with Establishment cases, and indicates once again that there are no clear dividing lines in such cases.

The lack of sectarian influence within the College, coupled with the particular revenue bond financing plan adopted by the Act saved the plan involved. The Court relied heavily on its holding in the Tilton scheme, drawing an analogy between the schools involved in each case. Finally, the Court deferred to state law, interpreting the powers possessed by the Authority, which enabled the Act to pass the excessive entanglement hurdle.

Committee for Public Education v. Nyquist
413 U.S. 756 (1973)

Facts

In 1973, New York passed legislation that enacted into law several amendments to the state's education and tax laws.²⁰⁵ Established were three distinct

²⁰⁵Committee for Public Education v. Nyquist, 413 U.S. 761 (1973).

financial aid programs for nonpublic elementary and secondary schools.²⁰⁶

The first program provided direct money grants to qualifying nonpublic schools from the state to be used "for the maintenance and repair of school facilities and equipment to ensure the health, welfare and safety of enrolled pupils."²⁰⁷ To qualify, a school must serve a "high concentration" of pupils from low-income families.²⁰⁸ Such schools then received thirty dollars per pupil per year, or forty dollars per pupil if the school was over twenty-five years old.²⁰⁹ In no event could the grant exceed fifty percent of the average per pupil cost for equivalent maintenance and repair in the public schools.²¹⁰ Each school is required to submit annual accountings for maintenance and repair expenditures during the year.²¹¹

The second program establishes a reimbursement plan for costs of tuition.²¹² Parents of students in nonpublic schools who have an annual taxable income of \$5,000 or less receive fifty dollars per child in grade

²⁰⁶Ibid., pp. 761-762. ²⁰⁷Ibid., p. 763.

²⁰⁸Ibid. ²⁰⁹Ibid.

²¹⁰Ibid. ²¹¹Ibid.

²¹²Ibid., p. 764.

school and one hundred dollars per child in high school.²¹³
 The amount given a parent for each child could not exceed
 fifty percent of the actual tuition paid.²¹⁴

The third program gives tax relief to parents failing
 to qualify for tuition reimbursement.²¹⁵ The parent of
 a child in nonpublic school would receive an income tax
 deduction for each child.²¹⁶ The amount of the deduction
 is unrelated to the amount of tuition, and decreases as
 taxable income increases.²¹⁷

Other pertinent facts cited in the three programs
 pertain to the eligible students and schools. About
 twenty percent of the students in New York attend nonpublic
 schools, while eighty-five percent of those schools are
 church related.²¹⁸ Also, practically all of the schools
 entitled to aid under the first program are related to
 the Roman Catholic Church.²¹⁹

Plaintiffs are an unincorporated association and
 several New York taxpayers.²²⁰ They challenge all
 three programs of the scheme.²²¹ The District Court for

²¹³ Ibid.

²¹⁵ Ibid., p. 765.

²¹⁷ Ibid.

²¹⁹ Ibid.

²²¹ Ibid.

²¹⁴ Ibid.

²¹⁶ Ibid.

²¹⁸ Ibid., p. 768.

²²⁰ Ibid., p. 762.

the Southern District of New York held unconstitutional the first and second programs, and upheld the third.²²²

Decision

The Court held the maintenance and repair program unconstitutional stating it had a primary effect of advancing religion.²²³ The lack of restrictions on the use of the funds prompted this holding.²²⁴ No attempt was made to restrict the use of the money for the maintenance and repair of secular buildings or facilities; in fact, money could be used to pay the salary of an employee that maintained the school chapel, or to pay the cost of renovating classrooms in which religion is taught.²²⁵

State officials argued that prior cases provided authority to uphold the program.²²⁶ However, the Court relied on Tilton v. Richardson²²⁷ to strike the first program down. In Tilton the secular function and the religious function could be separated, with the secular functions funded with carefully limited construction grants to colleges and universities.²²⁸ In the present case, the Court expressed doubt that it was possible to separate

²²² Ibid.

²²³ Ibid., pp. 779-780.

²²⁴ Ibid., p. 776.

²²⁵ Ibid., p. 777.

²²⁶ Ibid., p. 774.

²²⁷ Ibid., p. 776.

²²⁸ Ibid., p. 775.

the two functions in light of the religiously oriented schools involved, and especially in light of the lack of restrictions contained in the plan.²²⁹ The Court dismissed the argument that the limit of fifty percent of comparable repair costs in public schools will force the nonpublic schools into using state funds for secular purposes only, noting the Act itself does not so limit the use of funds to that means.²³⁰

The second program was found to violate the prohibition against advancing religion as well.²³¹ In the opinion of the Court, the unconstitutionality of the fifty or one hundred dollar grant per pupil would be unquestionable had the money gone directly to the schools.²³² Therefore, the question addressed was whether the fact that the grants are paid to the parents rather than the schools is of such significance as to compel a different result.²³³ Cases such as Everson (reimbursement for bus fare) and Allen (direct loan of textbooks to children) were examined, with the conclusion that the fact that aid is sent directly to a parent is only one among many factors

²²⁹ Ibid.

²³⁰ Ibid., p. 777.

²³¹ Ibid., p. 780.

²³² Ibid.

²³³ Ibid., p. 781.

considered.²³⁴ Still further, the bus rides in Everson had no inherent religious significance, and textbooks in Allen could easily be evaluated for religious influence.²³⁵ Conversely, the New York Act in Program Two has no such restrictions to guarantee separation between secular and religious educational functions.²³⁶ Indeed, the money grant results in the state's 'picking up the bills for the religious schools,'²³⁷ The difference between this New York statute and prior cases prompted the Court to hold the second program unconstitutional.²³⁸

The third program, that of income tax deductions, was found to be as much forbidden as the first and second programs.²³⁹ The tax benefit was seen as having little difference from tuition grant in the second program.²⁴⁰ The Court summarily rejected the argument that parents, and not schools are benefited by the deduction, and relied on the handling of that issue during discussion of the second program.²⁴¹ The only other argument advanced by the state was an analogy to tax-exempt

²³⁴ Ibid.

²³⁵ Ibid., pp. 781-782.

²³⁶ Ibid., p. 783.

²³⁷ Ibid., p. 785.

²³⁸ Ibid.

²³⁹ Ibid., p. 794.

²⁴⁰ Ibid., pp. 790-791.

²⁴¹ Ibid., p. 791.

status for church property.²⁴² It was argued that the tax benefit of the third program did essentially the same thing as the tax-exempt status, that of providing neutrality towards religious exercise.²⁴³ The Court found little persuasion in this analogy, stating that tax exempt status was upheld to minimize the involvement and entanglement between church and state, while the tax benefit here would tend to increase such involvement.²⁴⁴

Discussion

The two New York decisions, Levitt and Nyquist, dealt a blow to proponents of parochial schools being funded with state monies. The decisions carefully note that legislative intentions to aid children of the state, to improve the quality of education in all schools, and to insure continuance of the nonpublic school system are lofty goals to be applauded, but no matter how lofty the intention, programs must avoid the constitutional barriers of the now familiar tripartite test. The words of Justice Lewis F. Powell in Nyquist express this notion:

²⁴² Ibid.

²⁴³ Ibid., p. 792.

²⁴⁴ Ibid., p. 793.

"Indeed, it seems clear that tax benefits for parents, whose children attend parochial schools are a recent innovation, occasioned by the growing financial plight of such nonpublic institutions and designed albeit unsuccessfully to tailor state aid in a manner not incompatible with the recent decisions of this Court."²⁴⁵

Public Funds for Public Schools v. Marburger
358 F. Supp. 29 (1973)

Facts

The State of New Jersey established two separate programs to aid nonpublic schools.²⁴⁶ The first furnished parents of nonpublic school students reimbursements for the cost of "secular, non-ideological textbooks, instructional materials and supplies."²⁴⁷ Ten dollars for each elementary school child and twenty dollars for every high school child were available.²⁴⁸

The second program provided that all funds left over from the appropriation after the above reimbursements are met would be assigned to qualifying nonpublic schools, in accord with the respective number of pupils, to acquire secular supplies, equipment and auxiliary services.²⁴⁹

²⁴⁵Ibid., p. 792.

²⁴⁶Public Funds for Public Schools v. Marburger, 358 F. Supp. 31 (1973).

²⁴⁷Ibid.

²⁴⁸Ibid.

²⁴⁹Ibid.

Equipment includes projectors, viewers, recorders, cameras, typewriters and other apparatus used for instruction in science, math, music and art courses.²⁵⁰

Plaintiffs are taxpayers and citizens that seek a declaratory judgment on the constitutionality of the two programs.²⁵¹ Plaintiffs assert that both programs violate the Establishment Clause of the First Amendment and Equal Protection Clause of the Fourteenth Amendment.²⁵²

(Procedural Note): This case arose by the filing of this lawsuit in the United States District Court for the District of New Jersey. The decision of this Court, as will be discussed, was to grant a preliminary injunction against application of the two programs. The defendants, pending appeal, petitioned the United States Supreme Court to stay, or lift the preliminary injunction during the appeals process. Thereafter, the Supreme Court affirmed the decision without opinion, in 417 U.S. 961 (1973), thereby permanently enjoining application of either program.²⁵³

²⁵⁰Ibid.

²⁵¹Ibid.

²⁵²Ibid.

²⁵³Ibid., p. 29.

Decision

Plaintiffs sought a preliminary injunction against the application of both programs.²⁵⁴ To be entitled to this relief, plaintiffs must show irreparable harm and a reasonable probability of success in litigation. Thus, the District Court had to decide the constitutionality of the programs.²⁵⁵

The Court began with an analysis of the pertinent facts. Of the 752 nonpublic schools in New Jersey, only 113 were non-sectarian in nature.²⁵⁶ Almost ninety percent of the schools participated in one or both programs during the first year of their operation.²⁵⁷ The Court then noted that the Supreme Court had held in Allen that if secular objectives can be separated from sectarian ones, the secular ones may be funded by the state through programs such as these.²⁵⁸

The Court proceeded to apply the three-part Lemon I test to each program.²⁵⁹ As always, the first program met the secular purpose test.²⁶⁰ However, the other two prongs provided the real basis of the Court's opinion.²⁶¹

²⁵⁴Ibid., p. 32.

²⁵⁵Ibid., p. 33.

²⁵⁶Ibid.

²⁵⁷Ibid.

²⁵⁸Ibid., pp. 33-34.

²⁵⁹Ibid., p. 34.

²⁶⁰Ibid., p. 35.

²⁶¹Ibid.

The primary effect of the program was seen as advancing religion, and the Court distinguished this program from the textbook-loan program in Allen, noting that while Allen aided all parents of school children, the first program here aids only a special class of parents—those whose children attend nonpublic schools which are primarily religiously oriented.²⁶² Although the third prong received little attention, the Court held that the program could only lead to excessive entanglement between state and religion due to the extent of state supervision required to administer the program.²⁶³

Turning to the second program, the Court again held that the secular purpose was quite different from the loan program in Allen, because the schools retained equipment for their useful life.²⁶⁴ Rather, the Court characterized the program as "indistinguishable from a direct grant of public funds, held unconstitutional in Lemon."²⁶⁵

The Court noted that this direct grant had a primary effect of advancing religion and disposed of the second prong of the Lemon test.²⁶⁶ As for the entanglement issue,

²⁶²Ibid., pp. 35-36. ²⁶³Ibid., p. 36

²⁶⁴Ibid., p. 37.

²⁶⁵Ibid.

²⁶⁶Ibid.

provisions for equipment and those for auxiliary services were discussed separately.²⁶⁷ Although equipment itself is neutral, its uses can vary. To insure that equipment is not used for religious purposes, constant monitoring and review and control of equipment use would have to be maintained by the State,²⁶⁸ This extent of entanglement is constitutionally forbidden, says the Court,²⁶⁹

Auxiliary services included remedial and corrective instruction in reading, math, speech and physical education.²⁷⁰ Personnel providing these services must be employees of the local board of education.²⁷¹ The Court held that these services, like those in Lemon, would require constant monitoring by the State to insure that each teacher remained neutral.²⁷² The Court noted that while a textbook's potential for religious influence is readily ascertainable, no such certainty is available with a teacher.²⁷³ Thus, the second program was held unconstitutional as a violation of the entanglement prong of the Lemon test.²⁷⁴

²⁶⁷Ibid., p. 38.

²⁶⁸Ibid., pp. 39-49. ²⁶⁹Ibid., p. 40.

²⁷⁰Ibid., pp. 40-41. ²⁷¹Ibid.

²⁷²Ibid.

²⁷³Ibid.

²⁷⁴Ibid.

Discussion

The District Court opinion was affirmed by the United States Supreme Court primarily for the District Court's correctness in applying concepts of an Establishment Clause challenge. The Court's decision was indistinguishable from cases decided in full by the United States Supreme Court, and served to further enforce the tripartite analysis set forth in Lemon I.

Kosydar v. Wolman et al.
353 F. Supp. 744 (1972)

Facts

In 1972, the Federal Court for the Southern District of Ohio declared invalid an Ohio statute which authorized grants of ninety dollars per child to be paid to parents who sent children to nonpublic schools in Ohio.²⁷⁵ The United States Supreme Court affirmed that decision.²⁷⁶

The present case represented an attempt by the Ohio legislature to reinstitute the ninety-dollar grant in the form of a tax credit.²⁷⁷ The Tax Commissioner of Ohio filed this action seeking a declaratory judgment on the new plan's constitutionality.²⁷⁸

The new plan replaced the direct grant with a tax credit for parents who have children in nonpublic schools.²⁷⁹

²⁷⁵ Kosydar v. Wolman et al., 353 F. Supp. 748 (1972).

²⁷⁶ Ibid.

²⁷⁷ Ibid.

²⁷⁸ Ibid.

²⁷⁹ Ibid., p. 750.

The credit is a dollar for dollar reduction in taxes, and may be used to offset directly the total of state income taxes, sales taxes, excise taxes and real property taxes that the parent is assessed,²⁸⁰ However, the credit may not exceed the total of such tax liability.²⁸¹ In the event a parent is due a refund, the total tax refund may not exceed the sum of the income, sales, excise and property taxes which are paid by the parent.²⁸² The maximum amount of the credit is ninety dollars per pupil per year,²⁸³

The tax credit and refunds are expended from a rotary fund, financed by a legislative appropriation.²⁸⁴ Should this rotary fund become depleted, sales and excise taxes may be used to replenish it.²⁸⁵ The eligible recipients have been broadened in this new attempt, and in addition to parents described above, the new statute makes certain special classes of the public school population eligible for the credits.²⁸⁶ These include persons enrolled in home instruction programs, persons enrolled in public high school adult continuation programs, and those in vocational and basic literary programs,²⁸⁷

280 Ibid.

283 Ibid.

286 Ibid.

281 Ibid.

284 Ibid.

287 Ibid.

282 Ibid.

285 Ibid.

Also eligible are those who pay non-resident public school tuition payments, and handicapped persons in rehabilitative programs.²⁸⁸

Decision

As in the first Wolman case, the Federal Court for the Southern District of Ohio applied the three-prong analysis of Lemon I, and again found the statute unconstitutional.²⁸⁹ The Court did not dwell on the first prong of secular purpose, noting that rarely can the primary purpose of any such scheme be successfully challenged.²⁹⁰ Instead, the Court, in a per curiam opinion, (an opinion in which all three members contributed) addressed the second and third prongs just as they had done with Wolman I.²⁹¹

The effect prong and the entanglement prong are inversely related, says the Court.²⁹² Whenever a statute has little neutrality, it will be scrutinized carefully with respect to the entanglement it may foster.²⁹³ Conversely, where neutrality is predominant, the inquiry into

²⁸⁸ Ibid.

²⁸⁹ Ibid., p. 751.

²⁹⁰ Ibid.

²⁹¹ Ibid., p. 752.

²⁹² Ibid.

²⁹³ Ibid.

entanglement will be less strict.²⁹⁴ Also, the method of gauging neutrality is considered by viewing the class the statute is directed towards and that will be affected thereby.²⁹⁵ With these basic interpretations of the Supreme Court decisions, the Court addressed two arguments.

First, the Tax Commissioner argued that because the benefit is conferred by way of a tax credit, the constitutional infirmities of the direct grant program are not present.²⁹⁶ The Court saw little merit in this position, rejecting the same analogy to tax-exempt status that the State of New York had made to the Supreme Court in Nyquist.²⁹⁷ Noting that the tax exempt status provided very little (if any, only incidental) involvement between church and state, the Court emphasized the entirely different nature of the tax credit involved here.²⁹⁸

The second argument advanced was that the new statute had a greatly broadened class of beneficiaries eligible for aid.²⁹⁹ This made the statute more neutral in its effect, because more people than just parents with children in nonpublic schools benefited.³⁰⁰ The Court was equally

²⁹⁴ Ibid., p. 753.

²⁹⁵ Ibid.

²⁹⁶ Ibid., pp. 758-760.

²⁹⁷ Ibid.

²⁹⁸ Ibid., p. 758.

²⁹⁹ Ibid., p. 759.

³⁰⁰ Ibid., p. 760.

unimpressed with this argument, stating that even the new class "is considerably more narrow than the potential relevant class which might logically be expected to benefit from its avowed purposes."³⁰¹ The Court found others, such as parents of public school children, who must undertake substantial costs to educate those children but do not benefit from the statute.³⁰²

Parents sending their children to nonpublic schools should not be granted a relative economic advantage when compared to taxpayers generally.³⁰³ The Court delves into Equal Protection analysis and finds that where a class benefited is suspect because of a predominant sectarian character, an additional scrutiny is made to insure that the state had not used its taxing powers in violation of the First Amendment.³⁰⁴ The Court then held that the class benefited from the statute remains primarily sectarian, and therefore the statute has the forbidden effect of advancing religion.³⁰⁵

In an extraordinary lengthy portion of dictum the Court engaged in a broad spectrum of ideas relative

³⁰¹Ibid.

³⁰²Ibid.

³⁰³Ibid., p. 761,

³⁰⁴Ibid.

³⁰⁵Ibid., p. 762.

to the Free Religion Clause.³⁰⁶ A dialogue on Free Exercise and Political Entanglement continued for six pages after the Court struck down the statute.³⁰⁷

Discussion

This case represents a correct application of the tripartite Lemon I test, and the correct result under that test. However, this Federal Court took great liberties in crossing First Amendment-Establishment Clause analysis with such things as Equal Protection analysis. The strong points were the Court's ruling that indirect aid not be allowed to accomplish what direct aid could not. Also significant was the realization that the broadened class beneficiaries did not cure the statute's primary effect of advancing religion.

Sloan v. Lemon et al.
413 U.S. 825 (1973)

Facts

In Lemon I, 403 U.S. 602 (1971), the Supreme Court invalidated a Pennsylvania law which provided reimbursement to nonpublic sectarian schools for certain expenses

³⁰⁶Ibid., p. 763.

³⁰⁷Ibid., pp. 761-767.

relating to teacher's salaries, textbooks, and other instructional materials.³⁰⁸ The Court relied on the "excessive entanglement" prong of the three part test to hold the law unconstitutional and, in Lemon II the Court declined to apply Lemon I retroactively.³⁰⁹ Now, Pennsylvania had enacted new legislation, seeking to cure the prior problems with a new plan.³¹⁰

In an attempt to avoid the entanglement issue, the new Act provided for reimbursement to parents of nonpublic school children for a portion of their tuition costs.³¹¹ Qualifying parents were entitled to receive seventy-five dollars for each elementary school child, and one hundred fifty dollars for each secondary school child that attended nonpublic schools.³¹² However, the Act provide that the state administering authority had no "direction, supervision or control over the policy determinations, personnel, curriculum, or any other aspect of the administration of any nonpublic school."³¹³ Similarly, the Act imposed no restrictions on the uses to which the reimbursements could be put by the parents.³¹⁴

³⁰⁸Sloan v. Lemon et al., 413 U.S. 826 (1973).

³⁰⁹Ibid., p. 192.

³¹⁰Ibid., p. 827.

³¹¹Ibid.

³¹²Ibid., p. 828.

³¹³Ibid., p. 829.

³¹⁴Ibid.

The Act was funded by a portion of the revenues from the state's tax on cigarettes.³¹⁵ Plaintiffs were citizens and taxpayers of Pennsylvania.³¹⁶

Decision

As in all of the prior Establishment Clause challenges, the Court, in an opinion by Justice Lewis Powell, recognized that the purpose of the Act was legitimate and secular in nature.³¹⁷ Thus, the Court turned to the primary effect prong. The beginning point for the analysis was factual; more than ninety percent of the children attending nonpublic schools in the state attended religiously oriented schools.³¹⁸ This was consistent with the first Lemon case, where it was found that ninety-six percent of the nonpublic schools were religiously oriented.³¹⁹

The Court compared this Act with the law in New York which it struck down in Nyquist.³²⁰ Finding "no significant constitutional differences," the Court noted that both used tax-raised funds for tuition reimbursements, neither told the parent how to use the money, and the defendants in the case had not offered any distinctions between the two plans.³²¹ The Court dismissed the argument that the New York law was limited to low-income families,

³¹⁵Ibid.

³¹⁶Ibid., p. 827.

³¹⁷Ibid., p. 820.

³¹⁸Ibid.

³¹⁹Ibid.

³²⁰Ibid.

³²¹Ibid., pp. 830-831.

while the Pennsylvania law was not so limited,³²² Thus, said the defendants, the New York parents were more likely to have to use the money for tuition, while there was no such assumption as to how the parents in Pennsylvania will utilize the funds.³²³ The Court refused to engage in such speculation, instead focusing on the effect of the Act.³²⁴ The new plan still singled out a class of citizens for a special economic benefit, and the effect was to preserve and support religiously oriented schools.³²⁵ Calling this plan "quite unlike" the indirect benefits that flowed to sectarian schools from programs aiding all parents by supplying bus transportation or secular textbooks, the Court held that the Act violated the constitutional mandate against advancing a religion.³²⁶

The Court also addressed the contention that the Act was severable and aid to non-sectarian schools should be allowed to stand.³²⁷ However, the Court adopted a lower court finding that so many of the beneficiaries of the Act were sectarian that it could not be assumed the state legislature would have passed the law to aid only those attending the relatively few non-sectarian schools.³²⁸

³²²Ibid., p. 831.

³²³Ibid.

³²⁴Ibid., p. 832.

³²⁵Ibid.

³²⁶Ibid., p. 832.

³²⁷Ibid., p. 834.

³²⁸Ibid.

Discussion

The Court again applied the tripartite test found in Lemon I. However, the first prong, that of secular purpose, was recognized as having little or no strength when judging the majority of Establishment Clause challenges.

As the Court could find little difference between the Act here and the law in Nyquist, both plans were invalidated on the same day. Thus Levitt, Nyquist, and Sloan were all rejected as unconstitutional, and the revenue bond plan in the South Carolina Hunt case was upheld, all in the same term. Addressing the possible frustrations felt by the state officials in New York and Pennsylvania, the Court explained:

" . . . we are not unaware that appellants and those who have endeavored to formulate systems of state aid to nonpublic education may feel that the decisions of this Court have, indeed, presented them with the insolvable paradox But if novel forms of aid have not readily been sustained by this Court, the fault lies not with the doctrines. . . . but rather "329 the Establishment Clause itself."

Wheeler v. Barrera
417 U.S. 402 (1974)

Facts

In 1965, Congress passed the Elementary and Secondary Education Act.³³⁰ This provided for federal funding of

³²⁹Ibid., p. 835.

³³⁰Wheeler v. Barrera, 417 U.S. 405 (1974).

special programs for educationally deprived children in both public and private schools.³³¹

Plaintiffs commenced this action as a result of the claim that the public school authorities failed to provide adequate (Title I) funds and programs to parochial school students compared with those funds and programs provided public school children.³³² The defendants agreed that the programs sought were beyond the scope of Title I and also contravened the state's constitution.³³³ The action arose in the Western District of Missouri.³³⁴

Title I provides that local educational agencies will propose programs to a state agency, to be in turn forwarded for approval by the United States Commissioner of Education.³³⁵ In order to receive approval, a plan must, among other things, be designed to provide eligible private school students services that are "comparable in quality, scope and opportunity to those provided public school children."³³⁶ The questions presented the Court concern the scope of the state's duty to insure that programs do in fact provide comparable services for eligible

³³¹ Ibid.

³³² Ibid.

³³³ Ibid.

³³⁴ Ibid.

³³⁵ Ibid., p. 407.

³³⁶ Ibid.

private school children. Plaintiffs alleged that some \$13,000,000 in Title I funds have been misapplied.³³⁷

One item of concern included the failure of the officials to approve funding for teachers in parochial schools during regular school terms.³³⁸ Such refusal was based on the ground that it is forbidden under the Missouri law and the First Amendment.³³⁹

The District Court denied relief, stating that the officials were under no duty to grant such request, and had provided substantially for all other programs in a fashion comparable to those in public schools.³⁴⁰ The Court of Appeals reversed this decision, relying on the fact that all programs must be comparable, not just selected ones.³⁴¹ The Appeals Court also held that the State law had no application to Title I.³⁴² That Court refused to pass on the defendant's claim that the Establishment Clause of the First Amendment would be violated if the act did in fact require public school teachers to render services on private school premises.³⁴³

³³⁷ Ibid., pp. 408-409. ³³⁸ Ibid., p. 409.

³³⁹ Ibid. ³⁴⁰ Ibid., p. 410.

³⁴¹ Ibid., 411.

³⁴² Ibid., p. 412.

³⁴³ Ibid., p. 414.

Decision

The Court quickly narrowed the issue. First, the Court asked does Title I require that public teachers be assigned to provide remedial instruction during the regular school hours on the premises of private schools? Second, if this requirement does exist, does it contravene the First Amendment?

The Court held that it could not decide either issue, but affirmed the Court of Appeals decision, with several instructions.³⁴⁴ First, the lower court erred in holding that state law did not apply to Title I, because the legislative history so strongly indicates a desire to accommodate state law.³⁴⁵ Next, the Court held, as proper the determination that comparable services were not being rendered.³⁴⁶ However, the Court noted that "comparable" is not the same as "identical," and that it would be possible to structure a comparable program that did not provide for instruction on private school premises while still supplying that instruction on public school grounds.³⁴⁷ The key was not to approve plans that failed to make a genuine effort to employ comparable alternative programs

³⁴⁴Ibid., p. 415.

³⁴⁵Ibid., pp. 416-420.

³⁴⁶Ibid., pp. 420-421.

³⁴⁷Ibid.,

that make up for the lack of on-the-premises instruction for nonpublic school children,³⁴⁸ Alternatively, says the Court, on-the-premises instruction in public schools can be eliminated also, and neutral site or summer programs substituted.³⁴⁹

The Court dealt with the First Amendment issue by agreeing with the Court of Appeals: because no guidelines for private school on-the-premises instruction have been drafted, and no programs of that nature started, the determination would be based on a hypothetical question which may or may not arise, depending on which one of the Court's alternatives mentioned above the state wishes to implement.³⁵⁰

Discussion

This case represented the first federal program to come under attack. However, the case only touched upon the Establishment Clause issue, recognizing that if Title I requires public teachers to be assigned to parochial schools to instruct, then a First Amendment problem may arise. Because the case never reached that point, it is of little value for our purposes.

³⁴⁸Ibid., p. 423.

³⁴⁹Ibid., pp. 424-425.

³⁵⁰Ibid., pp. 426-428.

Luetkemeyer v. Kaufman
419 U.S. 888 (1974)

Facts

The state of Missouri provided bus transportation to school for public school children, but not for private school children who live specified distances from schools.³⁵¹ Plaintiff in this case sent children to a school related to the Roman Catholic Church.³⁵² This lawsuit claimed that the denial of bus transportation to parochial school children violates the due process, equal protection and free exercise rights of children involved.³⁵³

The United States District Court for the Western District of Missouri denied the plaintiff's claim.³⁵⁴ On direct appeal to the Supreme Court, that decision was affirmed without opinion, with Justice Byron White and Chief Justice Warren Burger dissenting.³⁵⁵

Decision

The District Court rejected the equal protection claim on the ground that the Missouri program, in excluding private school children from the bus service,

³⁵¹ Luetkemeyer v. Kaufman, 419 U.S. 888 (1974).

³⁵² Ibid., pp. 888-889. ³⁵³Ibid., p. 889.

³⁵⁴ Ibid. ³⁵⁵Ibid., p. 888.

was in pursuit of valid state interest in maintaining "a very high wall between church and state."³⁵⁶ By affirming without opinion, the Supreme Court adopted rationale for denying relief.

In their dissent, the Chief Justice and Justice White noted that the Court in Everson v. Board of Education,³⁵⁷ held that a state could provide bus service to parochial school children. The question then, according to the dissenters, was whether the state may be constitutionally compelled to provide such service.³⁵⁸

The dissenters cited Everson for the proposition that persons could not be excluded by a state "because of their faith, or lack of it," from receiving the benefits of public welfare legislation.³⁵⁹ Bus service was seen as so separate and indisputably marked separate from the religious function that it could not be considered aid to religious schools in violation of the Establishment Clause.³⁶⁰ The dissenters then analyzed the state interest in maintaining church-state separation, and arrived at the

³⁵⁶ Ibid., p. 376.

³⁵⁷ Ibid., p. 889.

³⁵⁸ Ibid.,

³⁵⁹ Ibid.

³⁶⁰ Ibid., pp. 889-890.

conclusion that it is very difficult to claim that refusal to provide bus service to parochial school students, without more, furthers a legitimate state interest in avoiding church-state entanglement.³⁶¹

Justice White and Chief Justice Burger continued saying that the benefits here-- "a general program to help parents get children safely to and from accredited schools"-- seem to be denied to private school students simply because the children and parents are seeking religious training.³⁶² In addition, the dissenters stated that the "arbitrariness of the denial of a general public service raises the question whether the State has not become the "adversary" of the religion and has placed burdens on the parent's free exercise rights.³⁶³

Discussion

This case queried whether a state must provide those same services to parochial schools that it does to public

³⁶¹Ibid., p. 890.

³⁶²Ibid.

³⁶³Ibid.

schools. In answering "no," the Court exhibits an awareness of practicalities-- to hold for the plaintiffs would mean that a state would be constantly pressed to provide more and more services to parochial schools, until they were in effect offering both groups the exact services.

Franchise Tax Board v. United Americans
95 S. Ct. 166 (1974)

This case arose in California, where the State provided income tax reductions for taxpayers sending children to nonpublic schools.³⁶⁴ The plan was identical to that in Nyquist, which the Supreme Court struck down.³⁶⁵

The case was not published in the federal reporters, so no analysis of the lower court opinion is available. Also, the Supreme Court affirmed the lower court's holding that the statute was unconstitutional without opinion.³⁶⁶

³⁶⁴ Franchise Tax Board v. United Americans, 419 U.S. 890 (1974).

³⁶⁵ Ibid.

³⁶⁶ Ibid.

The case merely reflected another unsuccessful attempt to provide aid to nonpublic school children and parents.

Meek v. Pittenger
421 U.S. 349 (1975)

Facts

The State of Pennsylvania enacted in 1972 a statutory scheme which provided to all children enrolled in nonpublic elementary and secondary schools certain auxiliary services and loans of textbooks.³⁶⁷ The auxiliary services included counseling, testing, psychological services, speech and hearing therapy, and teaching for exceptional children, remedial students, and educationally disadvantaged students.³⁶⁸ The Act provided that these services were to be carried out in the nonpublic schools by personnel taken from the public schools of that school district,³⁶⁹ The Act required that a nonpublic school meet Pennsylvania's compulsory attendance requirements in order to be eligible for services.³⁷⁰

Textbooks would be loaned directly to children if the book were "acceptable for use in the public schools."³⁷¹ Additionally, upon request from nonpublic school officials, the Secretary of Education was authorized to lend directly

³⁶⁷Meek v. Pittenger, 421 U.S. 352 (1975).

³⁶⁸Ibid., pp. 352-353. ³⁶⁹Ibid.

³⁷⁰Ibid., pp. 353-354.

³⁷¹Ibid., p. 354.

to those schools instructional materials and equipment, "useful to the education" of nonpublic school children.³⁷² These included periodicals, phonographs, maps, charts, films, projectors, recorders, and laboratory equipment.³⁷³

Plaintiffs were three citizen-taxpayers of Pennsylvania, and four organizations, including the ACLU and NAACP.³⁷⁴ Plaintiffs alleged that the Act violated the Establishment Clause of the First Amendment.³⁷⁵ A three-judge panel of the District Court for the Eastern District of Pennsylvania upheld all portions of the statute except that portion authorizing the expenditure of public funds for the purchase of instructional equipment for loan to nonpublic schools, to the extent that the equipment could be diverted to religious purposes.³⁷⁶ The Court cited projection and recording devices as an example of equipment that could be so diverted.³⁷⁷

Decision

The Supreme Court held that every part of the Pennsylvania scheme was unconstitutional, with the exception of the textbook loan provisions.³⁷⁸

³⁷² Ibid.

³⁷³ Ibid., p. 355.

³⁷⁴ Ibid., pp. 355-356. ³⁷⁵ Ibid., p. 356.

³⁷⁶ Ibid., p. 357.

³⁷⁷ Ibid.

³⁷⁸ Ibid., p. 373.

The Court held the loan of instructional materials and equipment to nonpublic schools was unconstitutional because it had the primary effect of advancing religion based on the predominantly religious character of the schools benefiting from those loans.³⁷⁹ The Court noted that of the 1,320 nonpublic schools in Pennsylvania that qualified for loans, more than seventy-five percent of them were religiously affiliated.³⁸⁰ In the 1972-73 school year, the state of Pennsylvania had authorized almost twelve million dollars of direct aid to the predominantly church related nonpublic schools, through the loan of instructional material and equipment.³⁸¹ Terming this "neither indirect nor incidental," the Court held that the Act "inescapably results in the direct and substantial advancement of religious activity," thus constituting an impermissible establishment of religion.³⁸²

Provisions authorizing the state of Pennsylvania to provide auxiliary services were also struck down.³⁸³ The provision provided such services directly to children, but were only provided on nonpublic school premises, and only when requested by nonpublic school representatives.³⁸⁴

³⁷⁹Ibid., pp. 359-361.

³⁸⁰Ibid., p. 364.

³⁸¹Ibid., p. 365.

³⁸²Ibid., p. 366.

³⁸³Ibid., p. 367.

³⁸⁴Ibid., p. 468.

The Court focused on the danger of impermissible fostering of religion that the plan contained.³⁸⁵ The fact that educators performing those services were employees of public schools did not, in the Court's opinion, substantially eliminate this risk.³⁸⁶ The educators would be operating in an atmosphere dedicated to the advancement of religious belief, and under those circumstances, potential for impermissible fostering of religion was present.³⁸⁷ In addition, the Court noted that the provision created a serious potential for political entanglement, because of the annual nature of funding.³⁸⁸ This entanglement would result from successive political fragmentation caused by proponents and opponents dividing along religious lines each year when the Act was reconsidered.³⁸⁹

The Court had little problem in upholding the textbook loan program, stating that benefit was to children and not to schools, and specifically noting that ". . . the record in the case before us, . . . contains no suggestion that religious textbooks will be lent or that the books provided will be used for anything other than purely secular purposes."³⁹⁰

³⁸⁵Ibid., 370-371.

³⁸⁶Ibid., p. 371.

³⁸⁷Ibid.

³⁸⁸Ibid., p. 372.

³⁸⁹Ibid.

³⁹⁰Ibid., p. 373.

Discussion

The Court continued to rely on the tripartite test of Lemon I in deciding this case. Primarily the Court relied on the second and third prongs of the test to invalidate most of Pennsylvania's statute.

Two basic themes emerged from this opinion. The first concerned the second prong of the Lemon test, the prohibition of a primary effect that advances religion. The Court was willing to allow state funds that provide benefits for nonpublic school children, but not for the schools themselves. This was made evident by the Court's upholding the textbook loan program while invalidating loans of instructional materials and equipment.

The second theme involved the third Lemon prong, that of excessive government entanglement. The Court cited a finding from the Lemon decision that noted ninety-six percent of the nonpublic elementary and secondary school students in Pennsylvania attended church-affiliated schools.³⁹¹ Also noted in Meek was the fact that seventy-five percent of the schools qualifying for the loans were church affiliated.³⁹² Thus, the Court placed significant importance on the degree of entanglement with religion that the particular statute imports. Evidence in the present

³⁹¹Ibid., p. 364.

³⁹²Ibid.

case indicated to the Court that an excessive percentage of the beneficiaries of the program were parochial schools, which the Court held was constitutionally impermissible under the First Amendment.

Roemer, et al. v. Bd. of Public Works of Maryland
426 U.S. 736 (1976)

Facts

In 1971, the state of Maryland enacted legislation that provided state funds to any private institution of higher learning that met certain minimum criteria.³⁹³ The aid was in the form of an annual fiscal year subsidy, based upon the number of students enrolled in the institution,³⁹⁴ Any institution which awarded only seminarian or theological degrees did not qualify for funds.³⁹⁵ Grants were conditioned on the institution's using funds for non-sectarian purposes.³⁹⁶ The program was administered by the Maryland Council for Higher Education, which receives information and determines whether an institution qualifies and complies with the conditions of the statute.³⁹⁷ At the end of the fiscal year, each recipient institution must file a report and separately identify the aided non-sectarian expenditures,

³⁹³Roemer, et al. v. Bd. of Public Works of Maryland, 426 U.S. 740 (1976).

³⁹⁴ Ibid.

³⁹⁵ Ibid.

³⁹⁶ Ibid., pp. 740-741.

³⁹⁷ Ibid., p. 741.

subject to Council's verification if necessary,³⁹⁸

Plaintiffs were four Maryland citizen-taxpayers, who challenged the scheme as a violation of the Establishment Clause of the First Amendment.³⁹⁹ Involved as defendants, along with the state officials, were four colleges affiliated with the Roman Catholic Church, whom the plaintiffs alleged were constitutionally ineligible for state aid,⁴⁰⁰ A three-judge panel of the United States District Court for the District of Maryland found the statute constitutional.⁴⁰¹

Decision

The Supreme Court affirmed the lower court decision, finding the statute met the three requirements of Lemon I.⁴⁰²

The first prong of the test, that of secular purpose, was not at issue in this case. Both parties agreed the purpose was to support higher education generally, as an economic alternative to a wholly public system of higher education.⁴⁰³

On the authority of Hunt v. McNair, the Court held that the Maryland statute did not have the primary effect of advancing a religion.⁴⁰⁴ The Hunt decision required:

³⁹⁸Ibid.

³⁹⁹Ibid., p. 744.

⁴⁰¹Ibid., p. 745.

⁴⁰³Ibid., p. 754.

⁴⁰⁰Ibid.

⁴⁰²Ibid., p. 767.

⁴⁰⁴Ibid., pp. 760-761.

1) that no state aid at all go to the institutions that are so "pervasively sectarian" that secular activities cannot be separated from non-sectarian ones, and 2) that if secular activities can be separated out, they alone may be funded.⁴⁰⁵ The District Court made findings that the colleges in question were not "pervasively sectarian."⁴⁰⁶ The Court, on review of this finding, had to uphold the facts unless found "clearly erroneous."⁴⁰⁷ Although noting that the evidence in the case showed more sectarian characteristics of the four colleges in certain areas that the District Court had ascribed, the Court found the facts to be not erroneous.⁴⁰⁸ The second requirement of Hunt was met by the statutory prohibition against sectarian use, along with administrative enforcement of that prohibition through the Council for High Education.⁴⁰⁹

The excessive entanglement prong of Lemon I was considered in light of several factors.⁴¹⁰ First, the character of the aided institution was examined.⁴¹¹ As the District Court found, the colleges performed essentially

⁴⁰⁵Ibid.

⁴⁰⁶Ibid.

⁴⁰⁷Ibid., p. 758.

⁴⁰⁸Ibid.

⁴⁰⁹Ibid., p. 769.

⁴¹⁰Ibid., p. 762.

⁴¹¹Ibid.

secular educational functions, that were distinct and separable from religious activity.⁴¹² Second, the Court noted that the process for disbursing aid was an annual one, and that the colleges proposed particular uses for the Council's approval, and that expenditures were reported in an annual report.⁴¹³ The Court held that the District Court was correct in its opinion that the statute did not foster excessive government entanglement, relying on the fact that the state of Maryland was able to identify and subsidize separate secular functions carried out at the school, without inspections being necessary to prevent diversion of funds to sectarian purposes.⁴¹⁴ Third, the Court focused on political divisiveness of the statute, and agreed with the District Court that the program does not create a substantial danger of political entanglement.⁴¹⁵ This is because there is less such risk when the aided institution is not an elementary or secondary school but rather a college, with a student constituency which is not local but diverse and widely dispersed.⁴¹⁶ The second reason advanced was that aid was extended to private colleges

⁴¹²Ibid.

⁴¹³Ibid., p. 763.

⁴¹⁴Ibid., pp. 763-764. ⁴¹⁵Ibid., p. 765.

⁴¹⁶Ibid., p. 764.

generally, and more than two thirds of those schools had no religious affiliation.⁴¹⁷ Finally, the Court noted that the substantial autonomy of the colleges that were affiliated with churches mitigated the risk of entanglement.⁴¹⁸

Discussion

The Court in this decision upheld an annual non-categorical subsidy to private institutions. Several factors impressed the Court and prompted the holding. The statute would aid colleges and universities rather than secondary or elementary schools, because college students were less impressionable and less subject to sectarian influence. Funds were strictly earmarked for non-sectarian use, and reporting controls were present to insure compliance. Funds had the general effect of promoting higher education in all private institutions, and in fact two-thirds of those institutions aided were not religiously affiliated. The Court in its decision reflected a move toward allowing funding for projects that benefit the entire public, notwithstanding the fact a religiously affiliated school may be benefited. This theme can be seen by the Court's remark:

"And religious institutions need not be quarantined from public benefits that are neutrally available to all."⁴¹⁹

⁴¹⁷ Ibid.

⁴¹⁸ Ibid.

⁴¹⁹ Ibid., p. 746.

Wolman v. Walter
433 U.S. 299 (1977)

Facts

Certain citizen-taxpayers of Ohio instituted this action against the Ohio State Superintendent of Public Instruction and other state officials.⁴²⁰ Plaintiffs challenged the constitutionality of an Ohio statute which authorized various forms of aid to nonpublic schools, most of which were sectarian.⁴²¹ Specifically, the statute provided funding for the use of nonpublic school children for these purposes: 1) the purchase of secular textbooks, approved by the superintendent of public instruction for use in public schools, to establish a loan program of those books to nonpublic school children or parents; 2) to supply nonpublic schools with such standardized tests and scoring services as are used in public schools, with no nonpublic school personnel being involved in the test drafting or scoring, and also providing speech and hearing diagnostic services and diagnostic psychological services, all such diagnostic services being performed by local board of education employees and such services to be administered on nonpublic school premises; 3) supplying to nonpublic school children needing specialized attention

⁴²⁰Wolman v. Walter, 433 U.S. 232 (1977).

⁴²¹Ibid., pp. 232-233.

therapeutic, guidance, and remedial services, performed by public school employees only in a public school or mobile unit located off nonpublic school premises; 4) to purchase for loan to nonpublic school children or parents instructional materials and instructional equipment of the kind used in public schools that are incapable of diversion to religious use; and 5) to provide field trip transportation and services to nonpublic schools which are available to public schools, with special private transportation contracting permitted if that particular school district's buses were unavailable,⁴²²

Plaintiffs contended that use of these public funds for the above purposes violated the First Amendment to the United States Constitution.⁴²³ Plaintiffs relied on the limitations imposed on state aid to church-related schools by the Establishment Clause in the First Amendment.⁴²⁴ The District Court held the statute constitutional in all respects, and plaintiffs appealed.⁴²⁵

Decision

The Supreme Court upheld the statute in part and struck down the statute in part: 1) In Part III of the Court's

⁴²²Ibid., pp. 233-235. ⁴²³Ibid., p. 232.

⁴²⁴Ibid.

⁴²⁵Ibid., p. 233.

opinion, Justice Harry D. Blackmun held that the funding of textbooks for loan to nonpublic school children was constitutional.⁴²⁶ Ruling that the system was strikingly similar to the loan programs approved previously, the Court found the system to have built in protection against abuse, and rejected the contention that the statute provision was so vague as to fail to insure against sectarian abuse.⁴²⁷

2) Basing its ruling on the legitimate state interest in insuring that all children of the state receive an adequate secular education, the Court upheld the statutory provisions providing funds for standardized testing and scoring of those tests for nonpublic school children.⁴²⁸ The Court also upheld funding for speech and hearing diagnostic services, as well as other diagnostic services, to be provided nonpublic school children.⁴²⁹ Although recognizing the slight danger that instructors of these services might engage in unrestricted conversation with pupils, providing an impermissible opportunity for the intrusion of religious influence, the Court relied on Lemon I, to hold these dangers so insubstantial as to not render the provision unconstitutional.⁴³⁰ 3) The Court upheld funding the therapeutic, guidance and remedial services to be provided at neutral sites or in public

⁴²⁶ Ibid., pp. 236-238.

⁴²⁷ Ibid.

⁴²⁸ Ibid., pp. 238-241,

⁴²⁹ Ibid., pp. 241-244, ⁴³⁰ Ibid.

schools.⁴³¹ The fact that all services were to be performed on public or neutral sites, apart from a sectarian environment, remedied the danger that religious influence may be exerted by the instructor due to pressures of the setting caused by a sectarian atmosphere.⁴³² 4) The Court found unconstitutional funding of purchases of instructional materials and equipment for loan to nonpublic schools.⁴³³ These materials were projectors, tape recorders, record players, maps and globes, science kits, and the like.⁴³⁴ Following its decision in Meek v. Pittenger, the Court ruled that even though the loan program ostensibly was limited to neutral and secular instructional material, it had the primary effect of providing a direct and substantial advancement of sectarian enterprises.⁴³⁵ 5) The Court found that providing field trip transportation to nonpublic schools was unconstitutional.⁴³⁶ In ruling this way, the Court drew a sharp contrast between the Ohio statute and a plan used in New Jersey which the Court had approved.⁴³⁷ The Everson plan provided for reimbursement to parents for transportation costs of sending children to and from school, be it public or parochial, by public carrier.⁴³⁸ The Court

⁴³¹ Ibid., pp. 244-248. ⁴³² Ibid., p. 247.

⁴³³ Ibid., pp. 248-251. ⁴³⁴ Ibid., p. 249.

⁴³⁵ Ibid., pp. 248-251. ⁴³⁶ Ibid., pp. 252-253.

⁴³⁷ ibid., p. 253. ⁴³⁸ ibid.

distinguished the Ohio Plan by noting that the field trips were controlled by the nonpublic school officials, both in timing and destination.⁴³⁹ Holding that schools, rather than the children were the true recipients of the service, the Court said this created an unacceptable risk of fostering religion.⁴⁴⁰

Discussion

The holdings of the Court with respect to the five categories of funding indicate a strict following of precedents designed in prior establishment cases. The Court utilized the now well-known tripartite test that a particular statute must pass in order to achieve constitutional muster. The three prongs are that the statute must 1) have a secular legislative purpose, 2) have a primary effect that neither advances nor inhibits religion, and 3) not foster an excessive government entanglement with religion.

The Court noted that the Ohio statute was enacted in an attempt to conform with previous Court action. As indicated, the Ohio legislature partially conformed to and partially violated the holding in previous cases. In drawing a line between the various categories of funding, the Court further defined the limits of what "advances or

⁴³⁹ Ibid.

⁴⁴⁰ Ibid., pp. 253-254.

inhibits a religion, and also further delineated what amounts to "excessive government entanglement." This delineation is factual, however, leaving future legislative drafters only the specific facts involved as guidelines. This lack of a precise rule as to what amounts to advancement or inhibition of a religion, or exactly what amounts to excessive government entanglement will undoubtedly continue, for as the Court noted;

"We have acknowledged before, and we do so again here, that the wall of separation that must be maintained between church and state is a blurred, indistinct and variable barrier depending on all the circumstances of a particular relationship."⁴⁴¹

Committee for Public Education and Religious Liberty et al. v. Regan
63 L.Ed. 2d 94 (1980)

Facts

This case is a legislative response to the Supreme Court's Levitt⁴⁴² decision in 1973 which struck down a New York statute appropriating public money to private and parochial schools for state-mandated testing and reporting services. The new statute sought to remove the flawed, unconstitutional provision. Thus, the new statute provided no general reimbursement for preparation.

⁴⁴¹Ibid., p. 236.

⁴⁴²Levitt v. Committee for Public Education, 93 S. Ct. 2814 (1973).

administration, or grading of teacher-prepared tests. The new statute provided only for actual cost in providing secular services. Moreover, the statute provided for auditing payments and verifying services. The 7th Federal District Court in New York initially declared the statute unconstitutional, and the United States Supreme Court on appeal remanded the case in light of Wolman,⁴⁴³ On remand the District Court, with Wolman's standardized "test and scoring services" mandate acknowledgment that state aid with "great" or "high degree" of certainty would be used for secular purposes and value, held the statute constitutional.

Decision

The United States Supreme Court with Justice Byron White writing the majority opinion (Justices Burger, Stewart, Powell, and Rehnquist joined to make the majority) insisted the statute arrangement did not violate the First Amendment Establishment Clause.⁴⁴⁴ The statute, said Justice White, was "purely secular" for the purpose of preparing New York citizens ". . . for the challenge of American life in the last decades of the twentieth

⁴⁴³Wolman v. Walter, 433 U.S. 229, 93 S. Ct. 2593 (1977).

⁴⁴⁴Committee for Public Education and Religious Liberty et al. v. Regan, 63 L.Ed. 2d 95 (1980).

century . . ."⁴⁴⁵ Moreover, there was no religious advancement or excessive government entanglement because 1) private and parochial schools had no control over test content and test outcome-- thus, there was no "substantial risk the test could advance religion;" 2) test reporting for which reimbursement was provided contained no religious purpose, thus no primary religious effect; and 3) the statute reimbursement and audit provisions provided ample safeguards against excessive government entanglement.

Justices Blackmun, Brennan, and Marshall dissented, insisting that while the statute had manifested a "clear secular purpose, it had a primary effect of advancing religion and also fostered excessive government entanglement with religion."⁴⁴⁶ Justice John Paul Stevens maintained the statute in every elementary violated the First Amendment Establishment Clause.⁴⁴⁷

Discussion

The central issue in this case is whether or not lump sum payments as provided by New York statute (Chapter 507, amended Chapter 508, Sections 1,3,7, and 9) can be made

⁴⁴⁵Ibid.

⁴⁴⁶Ibid.

⁴⁴⁷Ibid.

to private and parochial schools without violating the First Amendment advancement clause and excessive government entanglement provision of the Court's tripartite test. The answer was that New York may do so.

A sense of prophetic justice pervaded Justice White's majority opinion. He had waited nine years to write this decision. In the 1971 DiCenso⁴⁴⁸ case, Justice White was the lone dissenting Justice in a case that struck down Rhode Island's Salary Supplement Act as unconstitutional on the basis of First Amendment advancement of religion and excessive government entanglement. In DiCenso, Chief Justice Warren Burger said:

Obviously a direct money subsidy would be a relationship pregnant with involvement and, as with most government grant programs, could encompass sustained and detailed administrative relationship for enforcement of statutory or⁴⁴⁹ administrative standards . . .

So in DiCenso, direct money grants create excessive government entanglement. In historical retrospect how clear, simple, and innocent, the DiCenso case was— an 8-1 majority in the beginning of the seventies. But Justice White had insisted the decision was predicated on a false hypothesis— that nonpublic teachers (paid with public tax money) teaching secular subjects might insert religious dogma into the secular courses.

⁴⁴⁸DiCenso v. Robinson, 91 S. Ct. 2111 (1971).

⁴⁴⁹Ibid., p. 2119.

Justice White's second and more important criticism was that the Court had created "an insoluble paradox." Justice White reasoned that the Court had held, in effect, that if religion were taught, no tax could be used. The opposite logic would suggest that if religion were not taught, public taxes could be used. Yet, acknowledged Justice White, while the state expected a promise from the church-sponsored schools that no religion could be taught, and established auditing procedures to validate the promise, the state then became entangled in the "no entanglement" aspect of the Court's Establishment Clause jurisprudence.

In 1973, Justice White was still very much concerned about the "insoluble paradox" in Nyquist,⁴⁵⁰ Levitt,⁴⁵¹ and Lemon.⁴⁵² The Supreme Court's solid 6-3 majority held through Meek⁴⁵³ in 1975. However, in 1976 Roemer⁴⁵⁴ (higher education case) found Justice White with a majority—the insoluble paradox was a phantom in higher education cases.

⁴⁵⁰Committee for Public Education and Religious Liberty v. Nyquist, 37 L.Ed. 2d 939 (1973).

⁴⁵¹Levitt et al. v. Committee for Public Education and Religious Liberty, 413 U.S. 472 (1973).

⁴⁵²Sloan v. Lemon, 413 U.S. at 835 (1973).

⁴⁵³Meek v. Pittenger, 421 U.S. 349 (1975).

⁴⁵⁴Roemer v. Board of Education, 96 S. Ct. 2344 (1976).

That is, the insoluble paradox existed but could not be seen. The 1977 Wolman⁴⁵⁵ case found Justice White voting yes for all nine parts of the Ohio statute with a majority in seven parts. The insoluble paradox still applied to elementary and secondary school cases but the imperative of Lemon I, Lemon III, Meek, and other cases had given way to the marshmallow of Wolman. Thus, after almost a decade of dissenting, Justice White found himself with a majority and designated by Chief Justice Burger to write the majority opinion. The insoluble paradox of 1971 ceased to exist in 1980.

Justice White insisted the law "provided ample safeguards against excessive or misdirective reimbursement."⁴⁵⁶ Calling attention to the District Court's description of the audit procedure he held that 1) the private and/or parochial schools must maintain separate accounting for expenses incurred, and make application for reimbursement with the necessary reports and documents required by the State Commissioner of Education; 2) that the Commissioner must audit all reports, vouchers, and all other documents found; 3) moreover, the State Department of Audit shall inspect documents occasionally; and

⁴⁵⁵Wolman v. Walter, 45 U.S. F.W. 4861 (1977).

⁴⁵⁶Committee for Public Education and Religious Liberty et al., v. Regan, 63 L.Ed., 2d 103 (1980).

5) if schools are overpaid as determined by audits "'the excess must be returned to the state immediately'",⁴⁵⁷ Finally, in response to the political divisiveness issue, Justice White in the footnotes suggested there was "no merit whatsoever" in the plaintiffs' argument.

With the basic tripartite test issue settled, Justice White, turned to the Court's recent parochial record. The plaintiff had argued that Levitt could not be squared with Meek. Justice White pointed out that a majority (including Meek's author had upheld in Wolman provisions of a state statute which provided payment for preparation and in grading of tests in secular subjects. Thus, the Meek opinion was never an issue in Levitt II or else, said Justice White:

. . . the majority in Wolman was silently disavowing Meek, in whole or in part, that case was simply not understood by this court to stand for the broad proposition urged by appellants and espoused by the District Court in Levitt II.⁴⁵⁸

Finally, Justice White pointed out the difficulty in the "Establishment Clause" cases, lamenting they are "not easy; they stir deep feelings; and we're divided among ourselves, perhaps reflecting the different views on this

⁴⁵⁷Ibid., p. 106.

⁴⁵⁸Ibid., p. 107.

subject of the people of this country."⁴⁵⁹ Perhaps, Justice White should have examined footnote eight of the case in relation to this statement. Anyway, Justice White, while acknowledging that this decision was no "litmus-paper test," suggested the Court had never intended to establish "categorical imperatives and absolute approaches. . .,"⁴⁶⁰ And then Justice White presented us with a sentence which described the last five years of the nineteen seventies' church-state parochial decisions.

This course sacrifices clarity and predictability, but this promises to be the case until the continuing interaction between the courts and the states—the former charged with interpreting and upholding the Constitution and the latter seeking to provide education for their youth—produce a single, more encompassing construction of the Establishment Clause.⁴⁶¹

Perhaps Justice White is suggesting a new Supreme Court church-state standard such as Justice John Paul Stevens affirmed in Wolman. At any rate, footnote eight in the case must somehow be squared with the tripartite test, for the obvious political divisiveness along religious lines is becoming a major national issue.

Justice Blackmun (with whom Justice Brennan and Marshall joined) began the dissent:

⁴⁵⁹ Ibid.

⁴⁶⁰ Ibid., p. 108.

⁴⁶¹ Ibid.

The court. . .takes a long step backward in the inevitable controversy that emerges when a state legislature continues to insist on providing aid to parochial schools.⁴⁶²

Justice Blackmun then ran the litany of church-state parochial-aid cases insisting the issue had been clarified in Meek and Wolman, while acknowledging that ". . .the line wavering though it may be . . ." was nonetheless drawn. Continuing, Justice Blackmun discussed the line-up of Justices at the beginning of the decade of the seventies and the end.

Now, some of those who joined in Lemon, Levitt, Meek, and Wolman in invalidating, depart and validate. I am able to attribute this defection only to a concern about the continuing and emotional controversy and to a persuasion that a good-faith attempt on the part of a state legislature is worth a nod of approval.⁴⁶³

Justice Blackmun acknowledged that the New York statute passed the first part of the tripartite test, the secular purpose, but was flawed with respect to the second and third parts. By providing direct financial aid the statute thus advances religion in violation of the Establishment Clause.⁴⁶⁴ Moreover, the statute's auditing procedure—certifying secular expenditures only—is

⁴⁶²Ibid.

⁴⁶³Ibid., p. 109.

⁴⁶⁴Ibid., pp. 110-112.

"excessive entanglement that the Establishment Clause forbids."⁴⁶⁵

Justice John Paul Stevens filed an interesting dissenting opinion while agreeing with Justice Blackmun that the New York statute was constitutionally flawed. Justice Stevens once again called for a new standard, which as Justice Stevens had already suggested in Wolman, would abandon the effort to subsidize nonpublic schools and ". . . I would resurrect the 'high and impregnable' wall between the church and state constructed by the Framers of the First Amendment."⁴⁶⁶

⁴⁶⁵ Ibid., p. 113.

⁴⁶⁶ Ibid., p. 114.

CHAPTER VII
SUMMARY AND CONCLUSIONS

The decade of the nineteen seventies, comparatively speaking, represents a period of unprecedented judicial activity concerning church and state. The United States Supreme Court was tireless during the decade, deciding more cases concerning church-state relations than in all prior Court history. Each Court decision developed as concerned groups and some state legislatures generated efforts to establish funding for independent and parochial education.

Major church-state legal action developed from varied infringements of the First Amendment's establishment of religion clause. As long as the First Amendment remains any law that allows financial support for religious elementary and secondary schools must be considered to have only a secular purpose or be considered as a religion-establishing activity. Virtually all church-state issues are decided in the realm of the establishment clause and in the ever-present gray area of excessive governmental entanglement. It is important, however, to realize that this simple and clear interpretation has not diminished the number of attempts to secure funding and seemingly will not end the battle between public tax funding and parochial educational activities.

Summary

The First Amendment to the United States Constitution prohibits Congress from making laws which respect "an establishment of religion," or prohibit the "free exercise thereof." The Fourteenth Amendment extends the protection of the Constitution and all federal law to the citizens of the states.

Although the states do acknowledge the concepts of separation of church and state, twenty-five states invoke God's favor in their constitutions' preambles and forty states express gratitude to God in their constitutions. All states provide for separation of church and state in various ways. State prohibitions typically exist against one or more of the following: 1) required attendance at religious worship; 2) establishment of religion; 3) interference with freedom of worship or conscience; 4) religious tests as a qualification for holding a public office, being a witness in a court, or being admitted to a public school; 5) questions touching on matters of religious beliefs in any court; 6) sectarian instruction in public schools; and 7) required support for religious or sectarian institutions, or religious or sectarian schools.

Thirty-eight states have constitutional prohibitions against religious qualifications for holding a public office, being a witness, or being admitted to a public school.

Forty-six states prohibit interference with the free exercise of worship or conscience. Most states equate freedom of worship with liberty of conscience.

Nineteen states have clauses designed to ensure that freedom of religion does not allow for the destruction of the peace.

Twenty-nine states prohibit required church attendance. Thirty-six states have laws which eliminate the development of a state supported religion, denomination or form of worship.

Ten state constitutions prohibit the dispensation of sectarian instruction in the public schools.

Forty states now provide some assistance to parochial schools. Federal assistance, almost nil before 1965, totals millions of dollars in aid each year.

In 1970 six states had laws which allowed for purchase-of-secular-educational services within state guidelines as defined by state law. At the present, Louisiana is the only state which has a Purchase of Services Act.

Other state laws which appropriate direct aid to parochial schools include Connecticut's demonstration

scholarship program, Mississippi's student loan law, Vermont's law which pays for the tuition of private school children of elementary and secondary schools, and Pennsylvania's parental reimbursement for nonpublic education. Rhode Island and New York reimburse nonpublic schools for the actual costs incurred due to state-required record keeping. South Carolina provides tuition grants for children attending private schools other than those controlled by a religious institution.

Twenty-one states have laws which provide for shared time or provide driver education courses to parochial elementary and/or secondary schools.

Twenty-six states provide transportation or textbooks or both to elementary and/or secondary parochial schools.

Eleven states loan textbooks to nonpublic school students.

Thirteen states have legislation to equalize health services in public and nonpublic schools. Federal activity in this area of educational opportunity has developed new state legislative activity in recent years, which seeks to accommodate student needs, whether these schools are public or nonpublic. Six states have developed legislation since 1970 to accommodate this new mandate for services.

Twelve states (Alaska, Arizona, Florida, Maryland, Nevada, California, South Carolina, Connecticut, Michigan,

New Hampshire, New Jersey, and Ohio) have parochial-aid statutes that would not fit neatly into any preceding category.

1) Alaska has a statute exclusively oriented toward eighth grade pupils in private schools. This statute provides for the furnishing of final examination questions and granting of eighth grade diplomas in the same manner as in public schools.

2) Arizona has a statute exempting motor vehicles owned and operated by nonprofit schools and used exclusively for transportation of pupils from state weight fee.

3) California has a statute which enables visually handicapped students in nonpublic schools to have access to specialized books, equipment and materials without cost.

(4) Connecticut has a statute exclusively oriented toward aiding educationally deprived children in private schools. The Act provides for a range of services, including pre-kindergarten programs, remedial programs, drop-out programs, special library collections, funds for reducing class sizes, and various experimental programs.

5) Florida has a statute allowing nonpublic school pupils to use diagnostic and resource centers available to public school children for a fee.

6) Private and parochial schools in Maryland may connect facilities to a closed-circuit educational

television system maintained for the use of the public school system.

7) Michigan has an auxiliary services act which, in effect, requires local school districts to provide services to private schools as it does for public schools. Specifically mentioned in the bill are such services as street crossing guards, school diagnostician services for mentally handicapped children, teacher counselor services for physically handicapped children, and remedial reading programs.

8) California and Nevada have statutes which provide for procurement and distribution of federal surplus property to nonprofit schools and other eligible institutions.

9) New Hampshire has a permissive statute enabling school districts to provide private schools, at state expense, such child-benefits as educational testing, and school guidance and psychologist services.

10) A new Jersey statute provides for special classes and other facilities for all, including parochial and handicapped students.

11) Ohio statutes allow public boards of education to purchase from private agencies or from any private individual, services designed to promote vocational education or vocational rehabilitation.

12) South Carolina provides itinerant teachers to assist in all schools where there are visually handicapped students in attendance.

Only nine states make any reference to lunch assistance for nonpublic school students. In most cases these state laws only provide a means of acceptance of federal funds for feeding programs.

In the introductory material in Chapter One, some basic questions relating to the topic of this dissertation were proposed. Discussion developed around those six questions will provide insight concerning church-state litigation.

1. What are the major legal issues regarding public funding for parochial elementary and secondary schools?

The major legal issues regarding public funding for religious elementary and secondary schools are those questions raised by the tripartite constitutional muster developed in Lemon I. The issues are always measures of relationships of the following points: 1) does the act, statute, program, etc. exist for a purely secular purpose? 2) does the provision either foster or inhibit the establishment of religion? and 3) does the activity of the statute or act require excessive government involvement creating an entanglement? On occasion concerns for equal protection granted by the Fourteenth Amendment became considerations in Court evaluations of statutes which propose to fund nonpublic educational institutions.

It is evident that, although the issues questioned have remained consistent, Court evaluations of each case are considered individually.

Court cases are likely to include or have the potential to touch all points of constitutional muster as a legal decision is generated. Historically, cases have not been decided on the first prong on the three-part test. Usually, the purpose or intent of any act or program questioned can be rationalized to have a secular purpose; therefore, the question of secular comparativeness is of little consequence. The second or third prong of the tripartite test are invariably considerations in all decisions.

Herein lies the "insoluble paradox," the most controversial of constitutional relationships. The confusion arises when funds are provided for agencies that are religiously related; such an act is considered to violate the Establishment Clause of the First Amendment. Conversely, when it is possible to presume that a secular activity is the intention of funding, an entanglement may result from the supervision of the program activity, and this too becomes unconstitutional.

The legal issues are simple measures of constitutionality.

2. Which of these issues are likely to be included in court cases related to public funds for parochial elementary and secondary schools?

The three-part test of Lemon I has provided, until Regan, a measure of all constitutional issues which deserved evaluation during the decade of the seventies. It is reasonable to assume that the Wolman and Regan decisions will renew the Court's desire to develop a constitutional muster which expands the limits of the tripartite test. Wolman developed a polarizing effect among the Court. The Regan decision aligned the Justices in a five-four decision which represented very distinct and opposite opinions on the part of the Court members.

Considering the above, one can presume that questions of aid to parochial schools that reach the Supreme Court of the United States will be debated in a finite fashion to discover any possible breach of the "high and impregnable" wall of separation of church and state.

3) Which of the legal principles established by the landmark decisions regarding public aid for parochial elementary and secondary schools are applicable to the fifty state general constitutional statutory provisions?

Questions of church and state are answered as each relates to the First Amendment. The Fourteenth Amendment extends to citizens of the states all protections and rights of the Constitution and its amendments.

The basic questions of federal constitutional muster apply equally to state courts and legislators as statutes and legal issues are developed and litigated.

Itemized, the legal principles developed by the landmark cases are that an act must

- 1) have a secular purpose
- 2) neither inhibit nor advance a religion
- 3) not create excessive government entanglement
- 4) not create political divisiveness
- 5) not violate equal protection considerations of any group
- 6) "generally" benefit children
- 7) not involve indirect aid which can be converted to direct aid for a sectarian purpose
- 8) allow services which provide for the general welfare of the population in a secular fashion

4) Based on the results of recent court cases, what specific issues related to public tax funds for parochial elementary and secondary education are being litigated?

The Wolman case represents, along with Regan, a reasonably clear model for issues which will be litigated in the future. It is reasonable to assume by the nature of the educational process that the creativeness of legal questions has virtually been exhausted.

The most recent questions litigated are not new but represent attempts to redesign legislation which will satisfy constitutional muster.

The Wolman case involved textbook purchase, standardized testing and scoring, supplying to nonpublic school children needing specialized attention, therapeutic guidance, and remedial services, instructional materials and instructional equipment and field trip transportation.

Virtually the only question not considered in Wolman was that of a tax credit or reimbursement provision for parents of children in nonpublic schools.

The tax credit or cash reimbursement program question will invariably continue to be considered as a form of aid to nonpublic schools. Discussion of a voucher system being proposed from the federal government will stimulate activity for direct aid of the voucher reimbursement category.

5) Can any specific trends be determined from analysis of the court cases?

Analysis of United States Supreme Court decisions and other courts during the decade of the seventies establishes a pattern of behavior. The pattern is one of confusion, change, reversal and unpredictability.

With Lemon I the Court developed a benchmark test for considering church-state cases that relate to the Establishment Clause. The Lemon tripartite test seemed to provide, for the majority, a satisfactory measure for constitutional evaluation of each case heard. However, the "insoluble paradox" of establishment versus entanglement remained a point of tarnishment and concern which diminished the validity of the tripartite test. Even to this day the Supreme Court Justices do not agree in a unanimous fashion, that an adequate test for the First Amendment has been devised.

Herein lies the possibility of a trend being established which may provide insight for the future of church-state questions. The indecision of the Court as to how to handle establishment cases has created a clearly divided Court opinion.

Justices Burger, Stewart, Powell, White, and Rehnquist lean to the liberal side of "general welfare" in deciding establishment cases as shown in Regan. And Justices Stevens, Blackmun, Brennan, and Marshall move in the direction of the re-establishment of a "high and impregnable" wall separating church and state.

The Constitution of the United States requires that the general welfare of the population be an ever present concern of government, while at the same time an equally clear plan of separation of sectarian and secular activity is proposed. Simple as it may seem, it is not possible with a high degree of precision to predict the future of court decisions in church-state matters of separation. The confusion of Wolman and the split of Regan has established the lines of battle and it is evident a new test of establishment cases will be sought.

6) Based on the established legal precedents, what are the legally acceptable criteria for using public tax funds for parochial elementary and secondary schools?

Based on Supreme Court cases, in the 1970's, the legally acceptable criteria for using public tax funds for religious schools are still those measures established in the Lemon I tripartite test. It should be emphasized that the "wall of separation" is an indistinct, blurred wall and decisions of the future will become a measure of the clarity afforded this intangible fixture of legal muster.

Conclusions

The legality of using public tax funds for religious education has become a much litigated question in recent years. During the decade of the seventies the United States Supreme Court handed down more church-state decisions than in the entire one hundred ninety years' history prior to 1970. The level of legal action in this area of church-state separation is characteristic of the times and reflects the urgency of competing groups for financial aid for education.

The surge of legal activity during the seventies has developed the following concepts and ideals from which predictions concerning constitutional questions of church and state can be generated.

- 1) All indications lead one to believe that there will be continuous legal activity concerning church and state as various groups seek funding for nonpublic schools.

2) The tripartite test, designed in Lemon I, will continue to comprise a significant portion of the constitutional muster on which church-state cases will be evaluated.

3) Although the tripartite test will remain a measure of constitutionality, a changing standard which will add sophistication and refinement to the Lemon test will evolve.

4) The nature of the educational function does not lend itself to new areas of legal questioning; therefore, it is predictable that the "same" attempts to secure funding will surface occasionally.

5) Discussions and debate concerning a voucher system will lead to litigation to determine the constitutional acceptance of such a financing and reimbursing plan.

6) Until the infamous "insoluble paradox" between separation and entanglement is solved, the Court will not be able to act in a predictable fashion regarding church and state issues related to financial support for parochial schools.

7) Cases which come before the Court following Regan will be scrutinized in a fashion which represents a renewed desire for clarification of the "wall of separation" of church and state.

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APPENDIX A
STATE CONSTITUTIONAL AND STATUTORY PROVISIONS
RELATED TO THE PROHIBITION OF USING
PUBLIC FUNDS FOR RELIGIOUS SCHOOLS

ALABAMA

Preamble

We the people of the State of Alabama, in order to establish justice, insure domestic tranquility and secure the blessings of liberty to ourselves and our posterity, invoking the favor and guidance of Almighty God, do ordain and establish the following Constitution and form of government for the State of Alabama.

Article I

Declaration of Rights

3. That no religion shall be established by law; that no preference shall be given by law to any religious sect, society, denomination or mode of worship; that no one shall be compelled by law to attend any place of worship; nor to pay tithes, taxes or other rates for building or repairing any place of worship, or for maintaining any minister or ministry; that no religious test shall be required as a qualification to any office of public trust under this State; and that the civil rights, privileges and capacities of any citizen shall not be in any manner affected by his religious principles.

Article XIV

Education

263. No money raised for the support of the public schools shall be appropriated to or used for the support of any sectarian or denominational school.

ALASKA

Preamble

We the people of Alaska, grateful to God and to those who founded our nation and pioneered this great land, in order to secure and transmit to succeeding generations our heritage of political, civil, and religious liberty within the Union of States, do ordain and establish this constitution for the State of Alaska.

Article I

Declaration of Rights

Freedom of Religion:

Section 4. No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof.

Article VII

Health, Education, and Welfare

Public Education:

Section 1. The legislature shall by general law establish and maintain a system of public schools open to

all children of the State, and may provide for other public educational institutions. School and institutions so established shall be free from sectarian control. No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.

ARIZONA

Preamble

We, the people of the State of Arizona, grateful to Almighty God for our liberties, do ordain this Constitution.

Article II

Declaration of Rights

Section 12. The liberty of conscience secured by the provisions of this Constitution shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of the State. No public money or property shall be appropriated for or applied to any religious worship, exercise, or instruction, or to the support of any religious establishment. No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror in consequence of his opinion on matters of religion, nor be questioned touching

his religious belief in any court of justice to affect the weight of his testimony.

Article IX

Public Debt, Revenue, and Taxation

Section 10. No tax shall be laid or appropriation of public money made in aid of any church, or sectarian school, or any public service corporation.

Article XI

Education

Section 7. No sectarian instruction shall be imparted in any school or State educational institution that may be established under this Constitution, and no religious or political test or qualification shall ever be required as a condition of admission into any public educational institution of the State, as teacher, student, or pupil; but the liberty of conscience hereby secured shall not be so construed as to justify practices or conduct inconsistent with the good order, peace, morality, or safety of the State, or with the rights of others.

Article XX

Ordinance

The following ordinance shall be irrevocable without the consent of the United States and the people of this State:

First. Perfect toleration of religious sentiment shall be secured to every inhabitant of this State, and

no inhabitant of this State shall ever be molested in person or property on account of his or her mode of religious worship, or lack of the same.

Seventh. Provisions shall be made by law for the establishment and maintenance of a system of public schools which shall be open to all the children of the State and be free from sectarian control, and said schools shall always be conducted in English.

The State shall never enact any law restricting or abridging the right of suffrage on account of race, color, or previous condition of servitude.

ARKANSAS

Preamble

We, the people of the State of Arkansas, grateful to Almighty God for the privilege of choosing our own form of government, for our civil and religious liberty, and desiring to perpetuate its blessings and secure the same to ourselves and posterity, do ordain and establish this Constitution.

Article II

Declaration of Rights

Section 24. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; no man can, of right, be compelled

to attend, erect or support any place of worship; or to maintain any ministry against his consent. No human authority can, in any case or manner whatsoever, control or interfere with the right of conscience; and no preference shall ever be given, by law, to any religious establishment, denomination or mode of worship above any other.

Section 25. Religion, morality and knowledge being essential to good government, the General Assembly shall enact suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship.

Section 26. No religious test shall ever be required of any person as a qualification to vote or hold office, nor shall any person be rendered incompetent to be a witness on account of his religious belief; but nothing herein shall be construed to dispense with oaths or affirmations.

Article XIV

Education

Section 1. Free School System.--Intelligence and virtue being the safeguards of liberty and the bulwark of a free and good government, the State shall ever maintain a general, suitable and efficient system of free public

schools and shall adopt all suitable means to secure to the people the advantages and opportunities of education. The specific intention of this amendment is to authorize that in addition to existing constitutional or statutory provisions the General Assembly and/or public school districts may spend public funds for the education of persons over twenty-one (21) years of age and under six (6) years of age, as may be provided by law, and no other interpretation shall be given to it.

Section 2. No money or property belonging to public school fund, or to this State for the benefit of schools or universities, shall ever be used for any other than the respective purposes to which it belongs.

CALIFORNIA

Preamble

We, the People of the State of California, grateful to Almighty God for our freedom, in order to secure and perpetuate its blessings, do establish this Constitution.

Article I

Declaration of Rights

Freedom of Religion

Section 4. Free exercise and enjoyment of religion without discrimination or preference are guaranteed. This liberty of conscience does not excuse acts that are licentious

or inconsistent with the peace or safety of the State,
The Legislature shall make no law respecting an
establishment of religion.

Article XIII

Legislative Department

Public Aid for Sectarian Purposes Prohibited

Section 24. Neither the Legislature, nor any county, city and county, township, school district or other municipal corporation, shall ever make an appropriation, or pay from any public fund whatever, or grant anything to or in aid of any religious sect, church, creed, or sectarian purpose or help to support or sustain any school, college, university, hospital, or other institution controlled by any religious creed, church, or sectarian denomination whatever; nor shall any grant or donation of personal property or real estate ever be made by the State, or any city, city and county, town or other municipal corporation for any religious creed, church, or sectarian purpose whatever...

Article IX

Education

No Public Money for Sectarian Schools

Section 8. No public money shall ever be appropriated for the support of any sectarian or denominational school,

or any school not under the exclusive control of the officers of the public schools; nor shall any sectarian or deonominal doctrine be taught, or instruction thereon be permitted, directly or indirectly, in any of the common schools of this State.

COLORADO

Preamble

We, the people of Colorado, with profound reverence for the Supreme Ruler of the Universe, in order to form a more independent and perfect government; establish justice; insure tranquility; provide for the common defense; promote the general welfare and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this constitution for the "State of Colorado."

Article II

Bill of Rights

Section 4. Religious freedom.--That the free exercise and enjoyment of religious profession and worship, without discrimination, shall forever hereafter be guaranteed; and no person shall be denied any civil or political right, privilege or capacity, on account of his opinions concerning religion; but the liberty of conscience hereby secured shall not be construed to dispense with oaths or affirmations,

excuse acts of licentiousness or justify practices inconsistent with the good order, peace or safety of the state. No person shall be required to attend or support any ministry or place of worship, religious sect or denomination against his consent. Nor shall any preference be given by law to any religious denomination or mode of worship.

Article V

Legislative Department

Section 34. Appropriations to private institutions forbidden.--No appropriation shall be made for charitable, industrial, educational or benevolent purposes to any person, corporation or community not under the absolute control of the state, nor to any denominational or sectarian institution or association.

Article IX

Education

Section 7. Aid to private schools, churches, etc., forbidden.--Neither the general assembly, nor any county, city town, township, school district or other public corporation, shall ever make any appropriation, or pay from any public fund or moneys whatever, anything in aid of any church or sectarian society, or for any sectarian purpose, or to help support or sustain any school, academy, seminary, college, university or other literary or scientific

institution, controlled by any church or sectarian denomination whatsoever; nor shall any grant or donation of land, money or other personal property, ever be made by the state, or any such public corporation, to any church, or for any sectarian purpose.

Section 8. Religious test and race discrimination forbidden.--Sectarian tenets.--No religious test or qualification shall ever be required of any person as a condition of admission into any public educational institution of the state, either as a teacher or student; and no teacher or student of any such institution shall ever be required to attend or participate in any religious service whatever. No sectarian tenets or doctrines shall ever be taught in the public schools, nor shall any distinction or classification of pupils be made on account of race or color, nor shall any pupil be assigned or transported to any public educational institution for the purpose of achieving racial balance.

CONNECTICUT

Preamble

The People of Connecticut acknowledging with gratitude, the good providence of God, in having permitted them to enjoy a free government; do, in order more effectually to define, secure, and perpetuate the liberties, rights and privileges which they have derived from their ancestors; hereby, after

a careful consideration and revision, ordain and establish the following constitution and form of civil government.

Article First

Declaration of Rights

Section 3. The exercise and enjoyment of religious profession and worship, without discrimination, shall forever be free to all persons in the state; provided, that the right hereby declared and established, shall not be so construed as to excuse acts of licentiousness, or to justify practices inconsistent with the peace and safety of the state.

Article Seventh

Of Religion

It being the right of all men to worship the Supreme Being, the Great Creator and Preserver of the Universe, and to render that worship in a mode consistent with the dictates of their consciences, no person shall by law be compelled to join or support, nor be classed or associated with, any congregaetion, church or religious association. No preference shall be given by law to any religious society or denomination in state. Each shall have and enjoy the same and equal powers, rights and privileges, and may support and maintain the ministers

and teachers of its society or denomination, and may build and repair houses for public worship.

Article Eighth
of Education

Section 4. The fund, called the SCHOOL FUND, shall remain a perpetual fund, the interest of which shall be inviolably appropriated to the support and encouragement of the public schools throughout the state, and for the equal benefit of all the people thereof. The value and amount of said fund shall be ascertained in such manner as the general assembly may prescribe, published, and recorded in the comptroller's office; and no law shall ever be made, authorizing such fund to be diverted to any other use than the encouragement and support of public schools, among the several school societies, as justice and equity shall require.

DELAWARE

Preamble

Through Divine goodness, all men have by nature the rights of worshiping and serving their Creator according to the dictates of their consciences, of enjoying and defending life and liberty, of acquiring and protecting reputation and property, and in general of obtaining objects suitable to their condition, without injury by

one to another; and as these rights are essential to their welfare, for due exercise thereof, power is inherent in them; and therefore all just authority in the institutions of political society is derived from the people, and established with their consent, to advance their happiness; and they may for this end, as circumstances require, from time to time, alter their Constitution of government.

Article I

Bill of Rights

1. Freedom of religion

Section I. Although it is the duty of all men frequently to assemble together for the public worship of Almighty God; and piety and morality, on which the prosperity of communities depends are hereby promoted; yet no man shall or ought to be compelled to attend any religious worship, to contribute to the erection or support of any place of worship, or to the maintenance of any ministry, against his own free will and consent; and no power shall or ought to be vested in or assumed by any magistrate that shall in any case interfere with, or in any manner control the rights of conscience, in the free exercise or religious worship, nor a preference given by law to any religious societies, denominations, or modes of worship,

Article X

Education

3. Use of educational funds by religious schools; exemption of school property from taxation.

Section 3. No portion of any fund now existing, or which may hereafter be appropriated, or raised by tax, for educational purposes, shall be appropriated to, or used by, or in aid of any sectarian, church or denominational school; provided, that all real or personal property used for school purposes, where the tuition is free, shall be exempt from taxation and assessment for public purposes.

4. Use of Public School Fund

Section 4. No part of the principal or income of the Public School Fund, now or hereafter existing, shall be used for any other purpose than the support of free public schools.

5. Transportation of Nonpublic School Students

Section 5. The General Assembly, notwithstanding any other provision of this Constitution, may provide by an Act of the General Assembly, passed with the concurrence of a majority of all the members elected to each House, for the transportation of students of non-public Elementary and High Schools.

FLORIDA

Preamble

We, the people of the State of Florida, being grateful to Almighty God for our constitutional liberty, in order to secure its benefits, perfect our government, insure domestic tranquility, maintain public order, and guarantee equal civil and political rights to all, do ordain and establish this constitution.

Article I

Section 3. There shall be no law respecting the establishment of religion or prohibiting or penalizing the free exercise thereof. Religious freedom shall not justify practices inconsistent with public morals, peace or safety. No revenue of the state or any political subdivision or agency thereof shall ever be taken from the public treasury directly or indirectly in aid of any church, sect, or religious denomination or in aid of any sectarian institution.

Article IX

Section 6. The income derived from the state school fund shall, and the principal of the fund may, be appropriated, but only to the support and maintenance of free public schools.

GEORGIA

Preamble

To perpetuate the principles of free government, insure justice to all, preserve peace, promote the interest and happiness of the citizen, and transmit to posterity the enjoyment of liberty, we, the people of Georgia, relying upon the protection and guidance of Almighty God, do ordain and establish this Constitution.

Article I

Bill of Rights

Section I.

Section 2-102, Paragraph XII. Freedom of conscience. All men have the natural and inalienable right to worship God, each according to the dictates of his own conscience, and no human authority should, in any case, control or interfere with such right of conscience.

Section 2-103, Paragraph XIII. Religious opinions; liberty of conscience. No inhabitant of this State shall be molested in person or property, or prohibited from holding any public office, or trust, on account of his religious opinions; but the right of liberty of conscience shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of the State.

HAWAII

Preamble

We, the people of the State of Hawaii, grateful for Divine Guidance, and mindful of our Hawaiian heritage, reaffirm our belief in a government of the people, by the people and for the people, and with an understanding heart toward all the peoples of the earth, do hereby ordain and establish this constitution for the State of Hawaii.

Article I

Bill of Rights

Freedom of Religion, Speech, Press, Assembly and Petition

Section 3. No law shall be enacted respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press, or the right of the people peaceably to assemble and to petition the government for a redress of grievances.

Article VI

Taxation and Finance

Appropriations for Private Purposes Prohibited

Section 2. No tax shall be levied or appropriation of public money or property made, nor shall the public credit be used, directly or indirectly, except for a public purpose. No grant shall be made in violation of Section 3 of Article I of this constitution.

Article IX

Education

Public Education

Section 1. The State shall provide for the establishment, support and control of a statewide system of public schools free from sectarian control, a state university, public libraries and such other educational institutions as may be deemed desirable, including physical facilities therefor. There shall be no segregation in public educational institutions because of race, religion or ancestry; nor shall public funds be appropriated for the support or benefit of any sectarian or private educational institution.

IDAHO

Preamble

We, the people of the state of Idaho, grateful to Almighty God for our freedom, to secure its blessings and promote our common welfare do establish this Constitution.

Article IX

Education and School Lands

5. Sectarian appropriations prohibited.--Neither the legislature nor any county, city, town, township, school district, or other public corporation, shall ever make any appropriation, or pay from any public fund or moneys

whatever, anything in aid of any church or sectarian or religious society, or for any sectarian or religious purpose, or to help support or sustain any school, academy, seminary, college, university, or other literary or scientific institution, controlled by any church, sectarian or religious denomination whatsoever; nor shall any grant or donation of land, money or other personal property ever be made by the state, or any such public corporation, to any church or for any sectarian or religious purpose.

6. Religious test and teaching school prohibited.--

No religious test or qualification shall ever be required of any person as a condition of admission into any public educational institution of the state, either as teacher or student; and no teacher or student of any such institution shall ever be required to attend or participate in any religious service whatever. No sectarian or religious tenents or doctrines shall ever be taught in the public schools, nor shall any distinction or classification of pupils be made on account of race or color. No books, papers, tracts or documents of a political, sectarian or denominational character shall be used or introduced in any schools established under the provisions of this article, nor shall any teacher or any district receive any of the

public school moneys in which the schools have not been taught in accordance with the provisions of this article.

ILLINOIS

Preamble

We, the People of the State of Illinois grateful to Almighty God for the civil, political and religious liberty which He has permitted us to enjoy and seeking His blessing upon our endeavors, in order to provide for the health, safety and welfare of the people; maintain a representative and orderly government; eliminate poverty and inequality; assure legal, social and economic justice; provide opportunity for the fullest development of the individual; insure domestic tranquility; provide for the common defense; and secure the blessings of freedom and liberty to ourselves and our posterity, do ordain and establish this constitution for the State of Illinois.

Article I

Bill of Rights

Inherent and Inalienable Rights.

Religious Freedom.

Section 3, The free exercise and enjoyment of religious profession and worship, without discrimination,

shall forever be guaranteed; and no person shall be denied any civil or political right, privilege or capacity, on account of his religious opinions; but the liberty of the conscience hereby secured shall not be construed to dispense with oaths or affirmations, excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of the State. No person shall be required to attend or support any ministry or place of worship against his consent, nor shall any preference be given by law to any religious denomination or mode of worship.

Article X

Education

Goal - Free Schools

Section 1. A fundamental goal of the People of the State is the educational development of all persons to the limits of their capacities.

The State shall provide for an efficient system of high quality public educational institutions and services. Education in public schools through the secondary level shall be free. There may be such other free education as the General Assembly provides by law.

The State has the primary responsibility for financing the system of public education.

Public Funds for Sectarian Purposes Forbidden.

Section 3. Neither the General Assembly nor any county, city, town, township, school district, or other public corporation, shall ever make any appropriation or pay from any public fund whatever, anything in aid of any church or sectarian purpose, or to help support or sustain any school, academy, seminary, college, university, or other literary or scientific institution, controlled by any church or sectarian denomination whatever; nor shall any grant or donation of land, money, or other personal property ever be made by the State, or any such public corporation, to any church or for any sectarian purpose.

INDIANA

Preamble

To the end that justice be established, public order maintained, and liberty perpetuated: We, the people of the State of Indiana, grateful to Almighty God for the free exercise of the right to choose our own form of government, do ordain this Constitution.

Article I

Bill of Rights

Section 2. All men shall be secured in the natural right to worship Almighty God, according to the dictates of their own consciences.

Section 3. No law shall, in any case whatever, control the free exercise and enjoyment of religious opinions, or interfere with the rights of conscience.

Section 4. No preference shall be given, by law, to any creed, religious society, or mode of worship; and no man shall be compelled to attend, erect, or support, any place of worship, or to maintain any ministry, against his consent.

Section 5. No religious test shall be required, as a qualification for any office of trust or profit.

Section 6. No money shall be drawn from the treasury, for the benefit of any religious or theological institution.

Section 7. No person shall be rendered incompetent as a witness, in consequence of his opinions on matters of religion.

Article 8

Education

Section 3. The principal of the Common School fund shall remain a perpetual fund, which may be increased, but shall never be diminished; and the income thereof shall be inviolably appropriated to the support of Common Schools, and to no other purpose whatever,

IOWA

Preamble

WE, THE PEOPLE OF THE STATE OF IOWA, grateful to the Supreme Being for the blessings hitherto enjoyed, and

feeling our dependence on Him for a continuation of those blessings, do ordain and establish a free and independent government, by the name of the STATE OF IOWA, the boundaries whereof shall be as follows: . . .

Article I

Bill of Rights

Section 3. The General Assembly shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; nor shall any person be compelled to attend any place of worship, pay tithes, taxes, or other rates for building or repairing places of worship, or the maintenance of any minister, or ministry.

Section 4. No religious test shall be required as a qualification for any office or public trust, and no person shall be deprived of any of his rights, privileges, or capacities, or disqualified from the performance of any of his public or private duties, or rendered incompetent to give evidence in any court of law or equity, in consequence of his opinions on the subject of religion; and any part of any judicial proceedings shall have the right to use a witness, or take the testimony of any other person not disqualified on account of interest, who may be cognizant of any fact material to the case; and parties to suits may be witnesses, as provided by law.

KANSAS

Preamble

We, the people of Kansas, grateful to Almighty God for our civil and religious privileges, in order to insure the full enjoyment of our rights as American citizens, do ordain and establish this constitution of the State of Kansas, with the following boundaries, to wit: . . .

Bill of Rights

7. Religious liberty. The right to worship God according to the dictates of conscience shall never be infringed; nor shall any person be compelled to attend or support any form of worship; nor shall any control of or interference with the rights of conscience be permitted, nor any preference be given by law to any religious establishment or mode of worship. No religious test or property qualification shall be required for any office of public trust, nor for any vote at any election, nor shall any person be incompetent to testify on account of religious belief.

Article VI

Education

6. (c). No religious sect or sects shall control any part of the public educational funds.

KENTUCKY

Preamble

We, the people of the Commonwealth of Kentucky, grateful to Almighty God for the civil, political and religious liberties we enjoy, and invoking the continuance of these blessings, do ordain and establish this Constitution.

Bill of Rights

That the great and essential principles of liberty and free government may be recognized and established, we declare that:

Section 1. Rights of life, liberty, worship, pursuit of safety and happiness, free speech, acquiring and protecting property, peaceable assembly, redress of grievances, bearing arms. All men are, by nature, free and equal, and have certain inherent and inalienable rights, among which may be reckoned:

First: The right of enjoying and defending their lives and liberties.

Second: The right of worshipping Almighty God according to the dictates of their consciences.

Section 5. Right of religious freedom. No preference shall ever be given by law to any religious sect, society or denomination; nor to any particular creed, mode of worship or system of ecclesiastical polity;

nor shall any person be compelled to attend any place of worship, to contribute to the erection or maintenance of any such place, or to the salary or support of any minister of religion; nor shall any man be compelled to send his child to any school to which he may be conscientiously opposed; and the civil rights, privileges or capacities of no person shall be taken away, or in anywise diminished or enlarged, on account of his belief or disbelief of any religious tenet, dogma or teaching. No human authority shall in any case whatever, control or interfere with the rights of conscience.

Education

157.330 (2). The resources of the public school foundation program fund shall be paid into the State Treasury, and shall be drawn out or appropriated only in aid of public schools as provided by statute.

LOUISIANA

Preamble

We, the people of the State of Louisiana, grateful to Almighty God for the civil, political and religious liberties we enjoy, and desiring to secure the continuance of these blessings, do ordain and establish this Constitution.

Bill of Rights

4. Freedom of Religion

Section 4. Every person has the natural right to worship God according to the dictates of his own conscience.

No law shall be passed respecting an establishment of religion, nor prohibiting the free exercise thereof; nor shall any preference ever be given to, nor any discrimination be made against, any church, sect, or creed of religion, or any form of religious faith or worship.

Article IV

Section 8. Public funds; prohibited expenditure for sectarian, private, charitable or benevolent purposes; state charities; religious discrimination.

Section 8. No money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect or denomination of religion, or in aid of any priest, preacher, minister or teacher thereof, as such, and no preference shall ever be given to, nor any discrimination made against, any church, sect or creed of religion, or any form of religious faith or worship. No appropriation from the State treasury shall be made for private, charitable or benevolent purposes to any person or community; provided, this shall not apply to the State Asylums for the Insane, and State Schools for the Deaf and Dumb, and the Blind, and the Charity Hospitals, and public charitable institutions conducted under state authority.

Article XII

12. No appropriation of public funds for private or sectarian schools.

Section 13. No appropriation of public funds shall be made to any private or sectarian school. The Legislature may enact appropriate legislation to permit institutions of higher learning which receive all or part of their support from the State of Louisiana to engage in interstate and intrastate education agreements with other state governments, agencies of other state governments, institutions of higher learning of other state governments, and private institutions of higher learning within or outside state boundaries.

Article XIV

15. Civil service system; state; cities

Section 15 (A) (1). Appointments and promotions; examination; discriminations. (As amended Acts 1952, No. 18) ...No person in the "State" or "City Classified Service," having gained civil service status shall be discriminated against or subjected to any disciplinary action except for cause, and no person in the State or City Classified Service shall be discriminated against or subjected to any disciplinary action for political or religious reasons, and all such persons shall have the right of appeal from such action.

MAINE

Preamble

Objects of government.

We the people of Maine, in order to establish justice, insure tranquility, provide for our mutual defense, promote our common welfare, and secure to ourselves and our posterity the blessings of liberty, acknowledging with grateful hearts the goodness of the Sovereign Ruler of the Universe in affording us an opportunity, so favorable to the design; and imploring His aid and direction in its accomplishment do agree to form ourselves into a free and independent State, by the style and title of the State of Maine, and do ordain and establish the following Constitution for the government of the same.

Article I

Declaration of Rights

Religious freedom.

Section 3. All men have a natural and unalienable right to worship Almighty God according to the dictates of their own consciences, and no one shall be hurt, molested or restrained in his person, liberty or estate for worshipping God in the manner and season most agreeable to the dictates of his own conscience, nor for his religious professions or sentiments, provided he does not disturb

the public peace, nor obstruct others in their religious worship;--and all persons demeaning themselves peaceably, as good members of the state, shall be equally under the protection of the laws, and no subordination nor preference of any one sect or denomination to another shall ever be established by law, nor shall any religious test be required as a qualification for any office or trust, under this State; and all religious societies in this State, whether incorporate or unincorporate, shall at all times have the exclusive right of electing their public teachers, and contracting with them for their support and maintenance.

MARYLAND

Declaration of Rights

We the People of the State of Maryland, grateful to Almighty God for our civil and religious liberty, and taking into our serious consideration the best means of establishing a good Constitution in the State for the sure foundation and more permanent security thereof, declare:

Article 36. That as it is the duty of every man to worship God in such manner as he thinks most acceptable to Him, all persons are equally entitled to protection in their religious liberty; wherefore, no person ought by any

law to be molested in his person or estate, on account of his religious persuasion, or profession, or for his religious practice, unless, under the color of religion, he shall disturb the good order, peace or safety of the State, or shall infringe the laws of morality, or injure others in their natural, civil or religious rights; nor ought any person to be compelled to frequent, or maintain, or contribute, unless on contract, to maintain any place of worship, or any ministry; nor shall any person, otherwise competent, be deemed incompetent as a witness, or juror, on account of his religious belief; provided, he believes in the existence of God, and that under His dispensation such person will be held morally accountable for his acts, and be rewarded or punished therefor either in this world or in the world to come,

Nothing shall prohibit or require the making reference to belief in, reliance upon, or invoking the aid of God or a Supreme Being in any governmental or public document, proceeding, activity, ceremony, school institution, or place.

Nothing in this article shall constitute an establishment of religion.

Article 37. That religious test ought ever to be required as a qualification for any office of profit or trust in this State, other than a declaration of belief in the existence of God; nor shall the Legislature

prescribe any other oath of office than the oath prescribed by this Constitution.

Article 38. That every gift, sale or devise of land to any Minister, Public Teacher, or Preacher of the Gospel, as such, or to any Religious Sect, Order or Denomination, or to, or for the support, use or benefit of, or in trust for, any Minister, Public Teacher, or Preacher of the Gospel, as such, or any Religious Sect, Order or Denomination, without the prior or subsequent sanction of the Legislature, shall be void; except always, any sale, gift, lease or devise of any quantity of land, not exceeding five acres, for a church, meeting-house, or other house of worship, or parsonage, or for a burying ground, which shall be improved, enjoyed or used only for such purpose; or such sale, gift, lease or devise shall be void. Provided, however, that except in so far as the General Assembly shall hereafter by law otherwise enact, the consent of the Legislature shall not be required to any gift, grant, deed, or conveyance executed after the 2nd day of November, 1948, or to any devise or bequest contained in the will of any person dying after said 2nd day of November, 1948, for any of the purposes hereinabove in this Article mentioned.

Article VIII

Section 3. School Fund.

The School Fund of the State shall be kept inviolate and appropriated only to the purposes of education.

MASSACHUSETTS

Preamble

1. Object of Government; Body Politic, How Formed; Its Nature.

The end of the institution, maintenance, and administration of government is to secure the existence of the body politic, to protect it, and to furnish the individuals who compose it with the power of enjoying in safety and tranquility their natural rights, and the blessings of life; and whenever these great objects are not obtained, the people have a right to alter the government, and to take measures necessary for their safety, prosperity and happiness.

The body politic is formed by a voluntary association of individuals: it is a social compact, by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good. It is the duty of the people, therefore, in framing a constitution of government, to provide for an equitable mode of making laws, as well as

for an impartial interpretation, and a faithful execution of them; that every man may, at all times, find his security in them.

We, therefore, the people of Massachusetts, acknowledging with grateful hearts, the goodness of the great Legislator of the universe, in affording us, in the course of His providence, an opportunity, deliberately and peaceably, without fraud, violence or surprises, of entering into an original, explicit, and solemm compact with each other; and of forming a new constitution of civil government, for ourselves and posterity; and devoutly imploring His direction in so interesting a design, do agree upon, ordain and establish the following DECLARATION OF RIGHTS, AND FRAME OF GOVERNMENT, AS THE CONSTITUTION OF THE COMMONWEALTH OF MASSACHUSETTS.

Part of the First

A Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts

Right and duty of public religious worship. Protection therein.

II. It is the right as well as the Duty of all men in society, publicly, and at stated seasons to worship the SUPREME BEING, the great Creator and preserver of the Universe. And no Subject shall be hurt, molested, or restrained, in his person, Liberty, or Estate, for worshipping God in the manner and season most agreeable to the Dictates of his own conscience, or for his religious beliefs.

Religious Societies.

Article III. "Instead of the Third Article of the Bill of Rights, the following Modification and Amendment thereof is substituted,

As the public worship of GOD and instructions in piety, religion and morality, promote the happiness and prosperity of a people and the security of a Republican Government;--Therefore, the several religious societies of this Commonwealth, whether corporate or unincorporate, at any meeting legally warned and holden for that purpose, shall ever have the right to elect their pastors or religious teachers, to contract with them for their support to raise money for erecting and repairing houses for public worship, for the maintenance of religious instruction and for the payment of necessary expenses; And all persons belonging to any religious society shall be taken and held to be members, until they shall file with the Clerk of such society, a written notice, declaring the dissolution of their membership and thenceforth shall not be liable for any grant or contract, which may be thereafter made, or entered into by such society;--And all religious sects and denominations demeaning themselves peaceably and as good citizens of the Commonwealth, shall be equally under the protection of the law; and no subordination of any one sect or denomination to another shall ever be established by law."

Article XVIII

Religious Freedom; Expenditure of Public Money for
Certain Institution Prohibited, Exceptions.

Section 1. No law shall be passed prohibiting the free exercise of religion.

Section 2. No grant, appropriation of the use of public money or property or loan of credit shall be made or authorized by the Commonwealth or any political subdivision thereof for the purpose of founding, maintaining or aiding any infirmary, hospital, institution, primary or secondary school, or charitable or religious undertaking which is not publicly owned and under the exclusive control, order and supervision of public officers or public agents authorized by the Commonwealth or federal authority or both, except that appropriations may be made for the Soldiers' Home in Massachusetts and for free public libraries in any city or town and to carry out legal obligations, if any, already entered into; and no such grant, appropriation or use of public money or property or loan of public credit shall be made or authorized for the purpose of founding, maintaining or aiding any church, religious denomination or society. Nothing herein contained shall be construed to prevent the Commonwealth from making grants-in-aid to private higher educational institutions or to students or parents or guardians of students attending such institutions.

Section 3. Nothing herein contained shall be construed to prevent the commonwealth, or any political division thereof, from paying to privately controlled hospitals, infirmaries, or institutions for the deaf, dumb, or blind not more than the ordinary and reasonable compensation for the care or support actually rendered or furnished by such hospitals, infirmaries or institutions to such persons as may be in whole or in part unable to support or care for themselves.

Section 4. Nothing herein contained shall be construed to deprive any inmate of a publicly controlled reformatory, penal or charitable institution of the opportunity of religious exercises therein of his own faith; but no inmate of such institution shall be compelled to attend religious services or receive religious instruction against his will, or, if a minor, without the consent of his parent or guardian.

Section 5. This amendment shall not take effect until the October first next succeeding its ratification and adoption by the People.

MICHIGAN

Preamble

We, the people of the state of Michigan, grateful to Almighty God for the blessings of freedom, and earnestly

desiring to secure these blessings undiminished to ourselves and our posterity, do ordain and establish this constitution.

Article I

Declaration of Rights

Equal protection; discrimination.

Section 2. No person shall be denied the equal protection of the laws; nor shall any person be denied the enjoyment of his civil or political rights or be discriminated against in the exercise thereof because of religion, race, color or national origin. The legislature shall implement this section by appropriate legislation. Freedom of worship and religious belief; appropriations.

Section 4. Every person shall be at liberty to worship God according to the dictates of his own conscience. No person shall be compelled to attend, or, against his consent, to contribute to the erection or support of any place of religious worship, or to pay tithes, taxes or other rates for the support of any minister of the gospel or teacher of religion. No money shall be appropriated or drawn from the treasury for the benefit of any religious sect or society, theological or religious seminary; nor shall property belonging the state be appropriated for any such purpose. The civil and political rights, privileges and

capacities of no person shall be diminished or enlarged on account of his religious belief.

Article VIII

Education

Free public elementary and secondary schools; discrimination.

Section 2. The legislature shall maintain and support a system of free public elementary and secondary schools as defined by law. Every school district shall provide for the education of its pupils without discrimination as to religion, creed, race, color or national origin.

No public monies or property shall be appropriated or paid or any public credit utilized, by the legislature or any other political subdivision or agency of the state directly or indirectly to aid or maintain any private, denominational or other nonpublic, preelementary, elementary, or secondary school. No payment, credit, tax benefit, exemption or deductions, tuition voucher, subsidy, grant or loan of public monies or property shall be provided, directly or indirectly, to support the attendance of any student or the employment of any person at any such nonpublic school or at any location or institution where instruction is offered in whole or in part to such nonpublic school students. The legislature may provide for the transportation of students to and from any school,

Article IX

Finance and Taxation

State, school aid fund, source and distribution,

Section 11. There shall be established a state school aid fund which shall be used exclusively for aid to school districts, higher education and school employees' retirement systems, as provided by law. One-half of all taxes imposed on retailers on taxable sales at retail of tangible personal property, and other tax revenues provided by law, shall be dedicated to this fund. Payments from this fund shall be made in full on a scheduled basis, as provided by law.

MINNESOTA

Preamble

We, the people of the State of Minnesota, grateful to God for our civil and religious liberty, and desiring to perpetuate its blessings and secure the same to ourselves and our posterity, do ordain and establish this Constitution:

Article I

Bill of Rights

Freedom of conscience; no preference to be given to any religious establishment or mode of worship.

Section 16. The enumeration of rights in this constitution shall not be construed to deny or impair others retained by and inherent in the people. The right of every

man to worship God according to the dictates of his own conscience shall never be infringed, nor shall any man be compelled to attend, erect or support any place of worship, or to maintain any religious or ecclesiastical ministry, against his consent; nor shall any control of or interference with the rights of conscience be permitted or any preference be given by law to any religious establishment or mode of worship; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of the State, nor shall any money be drawn from the treasury for the benefit of any religious societies or religious or theological seminaries.

No religious test or property qualifications to be required.

Section 17. No religious test or amount of property shall ever be required as a qualification for any office of public trust under the State. No religious test or amount of property shall ever be required as a qualification of any voter at any election in this State; nor shall any person be rendered incompetent to give evidence in any court of law or equity in consequence of his opinion upon the subject of religion.

Article XIII

Miscellaneous Subjects

Uniform system of public schools

Section 1. "The stability of a republican form of government depending mainly upon the intelligence of the people, it is the duty of the legislature to establish a general and uniform system of public schools. The legislature shall make such provisions by taxation or otherwise as will secure a thorough and efficient system of public schools throughout the state."

Prohibition as to aiding sectarian school

Section 2. "In no case shall any public money or property be appropriated or used for the support of schools wherein the distinctive doctrines, creeds or tenets of any particular Christian or other religious sect are promulgated or taught."

MISSISSIPPI

Preamble

We, the people of Mississippi in convention assembled, grateful to Almighty God, and invoking his blessing on our work, do ordain and establish this constitution.

Article III

Section 18. No religious test as a qualification for office shall be required; and no preference shall be

given by law to any religious sect or mode or worship; but the free enjoyment of all religious sentiments and the different modes of worship shall be held sacred. The rights hereby secured shall not be construed to justify acts of licentiousness injurious to morals or dangerous to the peace and safety of the state, or to exclude the Holy Bible from use in any public school of this state.

Article VIII

Section 208. No religious or other sect or sects shall ever control any part of the school or other educational funds of this state; nor shall any funds be appropriated toward the support of any sectarian school, or to any school that at the time of receiving such appropriation is not conducted as a free school.

MISSOURI

Preamble

We, the people of Missouri, with profound reverence for the Supreme Ruler of the Universe, and grateful for His goodness, do establish this Constitution for the better government of the State.

Article I

Bill of Rights

Section 5. Religious freedom--liberty of conscience and belief--limitations.--That all men have a natural and

indefeasible right to worship Almighty God according to the dictates of their own consciences; that no human authority can control or interfere with the rights of conscience; that no person shall, on account of his religious persuasion or belief, be rendered ineligible to any public office or trust or profit in this state, be disqualified from testifying or serving as a juror, or be molested in his person or estate; but this section shall not be construed to excuse acts of licentiousness, nor to justify practices inconsistent with the good order, peace or safety of the state, or with the rights of others.

Section 6. Practice and support of religion not compulsory--contracts therefor enforceable.--That no person can be compelled to erect, support or attend any place or system of worship, or to maintain or support any priest, minister, preacher or teacher of any sect, church, creed or denomination of religion; but if any person shall voluntarily make a contract for any such object, he shall be held to the performance of the same.

Section 7. Public aid for religious purposes--preferences and discriminations on religious grounds.--That no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect or denomination of religion, or in aid of any priest, preacher, minister or teacher thereof, as such; and that no preference shall be

given to nor any discrimination made against any church, sect or creed of religion, or any form of religious faith or worship.

Article IX

Education

Section 8. Prohibition of public aid for religious purposes and institutions.--Neither the general assembly, nor any county, city, town, township, school district or other municipal corporation, shall ever make an appropriation or pay from any public fund whatever, anything in aid of any religious creed, church or sectarian purpose or to help to support or sustain any private or public school, academy, seminary, college, university, or other institution of learning controlled by any religious creed, church or sectarian denomination whatever; nor shall any grant of donation personal property or real estate ever be made by the state, or any county, city, town, or other municipal corporation, for any religious creed, church, or sectarian purpose whatever.

MONTANA

Preamble

We, the people of Montana grateful to God for the quiet beauty of our state, the grandeur of our mountains, the vastness of our rolling plains, and desiring to improve the quality of life, equality of opportunities and to secure the blessings of liberty for this and future generations, do ordain and establish this constitution.

Article I

Declaration of Rights

Section 5. Freedom of religion.--The state shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.

Article X

Education and Public Lands

Section 6. Aid prohibited to sectarian schools.

(1) The legislature, counties, cities, towns, school districts, and public corporations shall not make any direct or indirect appropriation or payment from any public fund or monies, or any grant of lands or other property for any sectarian purpose or to aid any church, school, academy, seminary, college, university, or other literary or scientific institution, controlled in whole or in part by any church, sect, or denomination.

(2) This section shall not apply to funds from federal sources provided to the state for the express purpose of distribution to non-public education.

Section 7. Non-discrimination in education. No religious or partisan test or qualification shall be required of any teacher or student as a condition of admission into any public educational institution. Attendance shall not be required at any religious service. No sectarian tenets shall be advocated in any public educational institution of the state. No person shall be refused

admission to any public educational institution on account of sex, race, creed, religion, political beliefs, or national origin.

NEBRASKA

Preamble

We, the people, grateful to Almighty God for our freedom, do ordain and establish the following declaration of rights and frame of government, as the Constitution of the State of Nebraska.

Article I

Bill of Rights

Section 4. All persons have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences. No person shall be compelled to attend, erect or support any place of worship against his consent, and no preference shall be given by law to any religious society, nor shall any interference with the rights of conscience be permitted. No religious test shall be required as a qualification for office, nor shall any person be incompetent to be witness on account of his religious beliefs; but nothing herein shall be construed to dispense with oaths and affirmations. Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the Legislature to pass suitable laws to protect every religious denomination in the

peaceable enjoyment of its own mode of public worship,
and to encourage schools and the means of instruction.

Article VII

Education

Section 11. Appropriation of public funds; handicapped children; sectarian instruction; religious test of teacher or student. Notwithstanding any other provision in the Constitution, appropriation of public funds shall not be made to any school or institution of learning now owned or exclusively controlled by the state or a political subdivision thereof; PROVIDED, that the Legislature may provide that the state or any political subdivision thereof may contract with institutions not wholly owned or controlled by the state or any political subdivision to provide for educational or other services for the benefit of children under the age of twenty-one years who are handicapped, as that term is from time to time defined by the Legislature, if such services are nonsectarian in nature.

All public schools shall be free of sectarian instruction.

A religious test or qualification shall not be required of any teacher or student for admission or continuance in any school or institution supported in whole or in part by public funds or taxation.

NEVADA

Preamble

We, the people of the State of Nevada, Grateful to Almighty God for our freedom in order to secure its blessings, insure domestic tranquility, and form a more perfect Government, do establish this CONSTITUTION,

Article I

Declaration of Rights

Section 4. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed this state; and no person shall be rendered incompetent to be a witness on account of his opinions on matters of his religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace, or safety of this state.

Article XI

Education

Section 2. The legislature shall provide for a uniform system of commonschools, by which school shall be established and maintained in each school district at least six months in every year, and any school district which shall allow instruction of a sectarian character therein may be deprived of its proportion of the interest

of the public school fund during such neglect or infraction, and the legislature may pass such laws as will tend to secure a general attendance of the children in each school district upon said public schools.

Section 9. No sectarian instruction shall be imparted or tolerated in any school or university that may be established under this constitution.

Section 10. No public funds of any kind or character whatever, state, county, or municipal, shall be used for sectarian purposes.

NEW HAMPSHIRE

Bill of Rights

5th. Every individual has a natural and unalienable right to worship God according to the dictates of his own conscience, and reason; and no subject shall be hurt, molested or restrained, in his person, liberty, or estate, for worshipping God in the manner and season most agreeable to the dictates of his own conscience, or for his religious profession, sentiments, or persuasion; provided he doth not disturb the public peace or disturb others in their religious worship.

6th. As morality and piety, rightly grounded on evangelical principles, will give the best and greatest security to government, and will lay, in the hearts of men,

the strongest obligations to due subjection; and as the knowledge of these is most likely to be propagated through a society, therefore, the several parishes, bodies corporate, or religious societies shall at all times have the right of electing their own teachers, and of contracting with them for their support or maintenance, or both. But no person shall ever be compelled to pay towards the support of the schools of any sect or denomination. And every person, denomination or sect shall be equally under the protection of the law and no subordination of any one sect, denomination or persuasion to another shall ever be established.

Article 83

Provided, nevertheless, that no money raised by taxation shall ever be granted or applied for the use of the schools or institutions of any religious sect or denomination.

NEW JERSEY

Preamble

We, the people of the State of New Jersey, grateful to Almighty God for the civil and religious liberty which He hath so long permitted us to enjoy, and looking to Him for a blessing upon our endeavors to secure and transmit the same unimpaired to succeeding generations, do ordain and establish this Constitution.

Article I

Rights and Privileges

3. No person shall be deprived of the inestimable privilege of worshipping Almighty God in a manner agreeable to the dictates of his own conscience; nor under any pretense whatever be compelled to attend any place or worship contrary to his faith and judgment; nor shall any person be obliged to pay tithes, taxes, or other rates for building or repairing any church or churches, place or places of worship, or for the maintenance of any minister or ministry, contrary to what he believes to be right or has deliberately and voluntarily engaged to perform.

4. There shall be no establishment of one religious sect in preference to another; no religious or racial test shall be required as a qualification for any office or public trust.

5. No person shall be denied the enjoyment of any civil or military right, nor be discriminated against in the exercise of any civil or military right, nor be segregated in the militia or in the public schools, because of religious principles, race, color, ancestry or national origin.

NEW MEXICO

Preamble

We, the people of New Mexico, grateful to Almighty God for the blessings of liberty, in order to secure the

advantages of a state government, do ordain and establish this constitution.

Article II

Bill of Rights

Section 11. Every man shall be free to worship God according to the dictates of his own conscience, and no person shall ever be molested or denied any civil or political right or privilege on account of his religious opinion or mode of religious worship. No person shall be required to attend any place of worship or support any religious sect or denomination; nor shall any preference be given by law to any religious denomination or mode of worship.

Article IV

Section 31. No appropriation shall be made for charitable, educational or other benevolent purposes to any person, corporation, association, institution or community, not under the absolute control of the state . . .

Article XII

Education

Section 3. The schools, colleges, universities and other educational institutions provided for by this Constitution shall forever remain under the exclusive control of the State, and no part of the proceeds arising

from the sale or disposal of any lands granted to the State by Congress, or any other funds appropriated, levied or collected for educational purposes, shall be used for the support of any sectarian, denominational or private school, college or university.

Section 9. No religious test shall ever be required as a condition of admission into the public schools or any educational institution of this State, either as a teacher or student and no teacher or students of such school or institution shall ever be required to attend or participate in any religious service whatsoever.

Article XXI

Compact With the United States

Section 1. Religious toleration--Polygamy.--Perfect toleration of religious sentiment shall be secured, and no inhabitant of this state shall ever be molested in person or property on account of his or her mode of religious worship. Polygamous or plural marriages and polygamous cohabitation are forever prohibited.

Section 4. Provision shall be made for the establishment and maintenance of a system of public schools which shall be open to all the children of the State and free from sectarian control, and said schools shall always be conducted in English.

NEW YORK

Preamble

We the People of the State of New York, grateful to Almighty God for our Freedom, in order to secure its blessings, DO ESTABLISH THIS CONSTITUTION.

Article I

Bill of Rights

(Freedom of worship; religious liberty.) Section 3. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this state to all mankind; and no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

Article VII

State Finances

(Gift or loan of state credit or money prohibited; exceptions for enumerated purposes.) Section 8.1. The money of the state shall not be given or loaned to or in aid of any private corporation or association, or private undertaking; nor shall the credit of the state be given or loaned to or in aid of any individual, or public or private

corporation or association, or private undertaking, but the foregoing provisions shall not apply to any fund or property now held or which may hereafter be held by the state for educational purposes.

Article XI

Education

(Use of public property or money in aid of denominational schools prohibited; transportation of children authorized.)

Section 3. Neither the state nor any subdivision thereof shall use its property or credit or any public money, or authorize or permit either to be used, directly or indirectly, in aid or maintenance, other than for examination or inspection, of any school or institution of learning wholly or in part under the control or direction of any religious denomination, or in which any denominational tenet or doctrine is taught, but the legislature may provide for the transportation of children to and from any school or institution of learning.

NORTH CAROLINA

Preamble

We, the people of the State of North Carolina,
grateful to Almighty God, the Sovereign Ruler of Nations,

for the preservation of the American Union and the existence of our civil, political and religious liberties, and acknowledging our dependence upon Him for the continuance of those blessings to us and our posterity, do, for the more certain security thereof, and for the better government of this State, ordain and establish this Constitution;

Article I

Declaration of Rights

Section 13. Religious liberty. All persons have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences, and no human authority should, in any case whatever, control or interfere with the rights on conscience.

Article IX

Education

Section 6. State School Fund. The proceeds of all lands that have been or hereafter may be granted by the United States to this State, and not otherwise appropriated by this State or the United States; all moneys, stocks, bonds, and other property belonging to the State for purposes of public education; the net proceeds of all sales of the swamp lands belonging to the State, and all other grants, gifts and devises that have been or hereafter

may be made to the State, and not otherwise appropriated by the State, or by the terms of the grant, gift, or devise, shall be paid into the State Treasury and, together with so much of the revenue of the State as may be set apart for that purpose, shall be faithfully appropriated and used exclusively for establishing and maintaining a uniform system of free public schools.

NORTH DAKOTA

Preamble

We, the people of North Dakota, grateful to Almighty God for the blessings of civil and religious liberty, do ordain and establish this constitution.

Article I

Declaration of Rights

Section 4. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall be forever guaranteed in this state, and no person shall be rendered incompetent to be a witness or juror on account of his opinion on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this state.

Article VIII

Education

Section 147. A high degree of intelligence, patriotism, integrity and morality on the part of every voter in a government by the people being necessary in order to insure the continuance of that government and the prosperity and happiness of the people, the legislative assembly shall make provision for the establishment and maintenance of a system of public schools which shall be open to all children of the state of North Dakota and free from sectarian control. This legislative requirement shall be irrevocable without the consent of the United States and the people of North Dakota.

Section 152. All colleges, universities, and other educational institutions, for the support of which lands have been granted to this state, or which are supported by a public tax, shall remain under the absolute and exclusive control of the state. No money raised for the support of the public school of the state shall be appropriated to or used for support of any sectarian school.

Article XVI

Compact with the United States

The following article shall be irrevocable without the consent of the United States and the people of this state;

Section 203. First. Perfect toleration of religious sentiment shall be secured, no inhabitant of this state shall ever be molested in person or property on account of his or her mode of religious worship.

OHIO

Article I

Bill of Rights

7. Rights of conscience; the necessity of religion and knowledge,

All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience. No person shall be compelled to attend, erect, or support any place of worship, or maintain any form of worship, against his consent; and no preference shall be given, by law, to any religious society; nor shall any interference with the rights of conscience be permitted. No religious test shall be required, as a qualification for office, nor shall any person be incompetent to be a witness on account of his religious belief; but nothing herein shall be construed to dispense with oaths and affirmations. Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the General Assembly to pass suitable laws, to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools and the means of instruction.

Article VI

Education

2. Common school fund to be raised; how controlled.

The General Assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the State; but, no religious or other sect, or sects, shall ever have any exclusive right to, or control of, any part of the school funds of this State.

OKLAHOMA

Preamble

Invoking the guidance of Almighty God, in order to secure and perpetuate the blessing of liberty; to secure just and rightful government; to promote our mutual welfare and happiness, we, the people of the State of Oklahoma, do ordain and establish this Constitution.

Article I

Federal Relations

2. Religious liberty--Polygamous or plural marriages.

Perfect toleration of religious sentiment shall be secured, and no inhabitant of the State shall ever be molested in person or property on account of his or her

mode of religious worship, and no religious test shall be required for the exercise of civil or political rights, Polygamous or plural marriages are forever prohibited.

5. Public schools--Separate Schools

Provisions shall be made for the establishment and maintenance of a system of public schools, which shall be open to all the children of the State and free from sectarian control; and said schools shall always be conducted in English: Provided, that nothing herein shall preclude the teaching of other languages in said public schools: And Provided, further, that this shall not be construed to prevent the establishment and maintenance of separate schools for white and colored children.

Article II

Bill of Rights

5. Public money or property--Use for sectarian purposes.

No public money or property shall ever be appropriated, applied, donated, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, or system of religion, or for the use, benefit or support of any priest, preacher, minister, or other religious teacher or dignitary, or sectarian institution as such.

OREGON

Article I

Section 2. Freedom of worship. All men shall be secure in the Natural right, to worship Almighty God according to the dictates of their own consciences.

Section 3. Freedom of religious opinion. No law shall in any case whatever control the free exercise, and enjoyment of religious (sic) opinions, or interfere with the rights of conscience.

Section 4. No religious qualification for office. No religious test shall be required as a qualification for any office of trust of profit.

Section 5. No money to be appropriated for religion. No money shall be drawn from the Treasury for the benefit of any religious, or theological institution, nor shall any money be appropriated for the payment of any religious services in either house of the Legislative Assembly.

Section 6. No religious test for witnesses or jurors. No person shall be rendered incompetent as a witness, or juror in consequence of his opinions on matters of religion; nor be questioned in any Court of Justice touching his religious belief to affect the weight of his testimony.

PENNSYLVANIA

Preamble

We, the people of the Commonwealth of Pennsylvania, grateful to Almighty God for the blessings of civil and religious liberty, and humbly invoking His guidance, do ordain and establish this Constitution.

Article I

Declaration of Rights

Religious Freedom

Section 3. All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; no man can of right be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent; no human authority can, in any case whatever, control or interfere with the rights of conscience, and no preference shall ever be given by law to any religious establishments or modes of worship.

Religion

Section 4. No person who acknowledges the being of a God and a future state of rewards and punishments shall, on account of his religious sentiments, be disqualified to hold any office or place of trust or profit under this Commonwealth.

Article III

Legislation

Section 15. Public school money not available to sectarian schools.

No money raised for the support of the public schools of the Commonwealth shall be appropriated to or used for the support of any sectarian school.

Appropriations for Public Assistance, Military Service
Scholarships

Section 29. No appropriation shall be made for charitable, educational and benevolent purposes to any person or community nor to any denominational and sectarian institution, corporation or association; Provided, that appropriations may be made for pensions or gratuities for military service and to blind person twenty-one years of age and upwards and for assistance to mothers having dependent children and to aged persons without adequate means of support and in the form of scholarship grants or loans for high educational purposes to residents of the Commonwealth enrolled in institutions of higher learning except that no scholarship, grants or loans for higher educational purposes shall be given to persons enrolled in a theological seminary or school of theology.

Section 30. Charitable and Educational Appropriations. No appropriation shall be made to any charitable or educational institution not under the absolute control of the Commonwealth, other than normal schools of the State, established by law for the professional training of teachers, except by a vote of two-thirds of all the members elected to each House.

RHODE ISLAND

Preamble

We, the people of the State of Rhode Island and Providence Plantations, grateful to Almighty God for the civil and religious liberty which He hath so long permitted us to enjoy, and looking to Him for a blessing upon our endeavors to secure and to transmit the same unimpaired to succeeding generations, do ordain and establish this constitution of government.

Article I

Declaration of Certain Constitutional Rights

And Principles

In order effectually to secure the religious and political freedom established by our venerated ancestors, and to preserve the same for our posterity, we do declare that the essential and unquestionable rights and principles hereinafter mentioned shall be established, maintained, and preserved, and shall be of paramount obligation in all legislative, judicial, and executive proceedings.

Section 3. Whereas Almighty God hath created the mind free; and all attempts to influence it by temporal punishments or burdens, or by civil incapacitations, tend to beget habits of hypocrisy and meanness; and whereas a principal object of our venerable ancestors, in

their migration to this country and their settlement of this state, was, as they expressed it, to hold forth a lively experiment, that a flourishing civil state may stand and be best maintained with full liberty in religious concernments: We, therefore, declare that no man shall be compelled to frequent or to support any religious worship, place, or ministry whatever, except in fulfillment of his own voluntary contract; nor enforced, restrained, molested, or burdened in his body or goods; nor disqualified from holding any office; nor otherwise suffer on account of his religious belief; and that every man shall be free to worship God according to the dictates of his own conscience, and to profess and by argument to maintain his opinion in matters of religion; and that the same shall in no wise diminish, enlarge, or affect his civil capacity.

Article XII

Of Education

Section 2. The money which now is or which may hereafter be appropriated by law for the establishment of a permanent fund for the support of public schools, shall be securely invested, and remain in perpetual fund for that purpose.

Section 4. The general assembly shall make all necessary provisions by law for carrying this article into

effect. They shall not divert said money or fund from the aforesaid uses, nor borrow, appropriate, or use the same, or any part thereof, for any other purpose, under any pretense whatsoever.

SOUTH CAROLINA

Constitution of the State of South Carolina

We, the people of the State of South Carolina, in Convention assembled, grateful to God for our liberties, do ordain and establish this Constitution for the preservation and perpetuation of the same.

Article I

Declaration of Rights

Section 2. Religious worship--freedom of speech--petition.--The General Assembly shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the Government or any department thereof for a redress of grievances.

Article XI

Public Education

Section 4. Direct aid to religious or other private educational institutions prohibited.

No money shall be paid from public funds nor shall the credit of the State or any of its political subdivisions be used for the direct benefit of any religious or other private educational institution,

Article XVII

Miscellaneous Matters

Section 4. Supreme Being.--No person who denies the existence of a Supreme Being shall hold any office under this Constitution.

SOUTH DAKOTA

Preamble

We, the people of South Dakota, grateful to Almighty God for our civil and religious liberties, in order to form a more perfect and independent government, establish justice, insure tranquility, provide for the common defense, promote the general welfare and preserve to ourselves and to our posterity the blessing of liberty, do ordain and establish this constitution for the state of South Dakota.

Article VI

Bill of Rights

Section 3. The right to worship God according to the dictates of conscience shall never be infringed. No person shall be denied any civil or political right,

privilege or position on account of his religion but the liberty of conscience hereby secured shall not be so construed as to excuse licentiousness, the invasion of the rights of others, or justify practices inconsistent with the peace or safety of the state.

No person shall be compelled to attend or support any ministry or place of worship against his consent nor shall any preference be given by law to any religious establishment or mode of worship. No money or property of the state shall be given or appropriated for the benefit of any sectarian or religious society or institution.

Article VIII

Education and School Lands

Section 16. No appropriation of lands, money or other property or credits to aid any sectarian school shall ever be made by the state, or any county or municipality within the state, nor shall the state or any county or municipality within the state accept any grant, conveyance, gift, or bequest, of lands, money or other property to be used for sectarian purposes, and no sectarian instruction shall be allowed in any school or institution aided or supported by the state.

Article XXII

Compact with the United States

Fourth. That provision shall be made for the establishment and maintenance of systems of public schools,

which shall be open for all the children of this state,
and free from sectarian control.

TENNESSEE

Preamble

We, the delegates and representatives of the people
of the State of Tennessee, duly elected, and in Convention
assembled, in pursuance of said Act of Assembly, have
ordained and established the following Constitution
and form of government for this State, which we
recommend to the people of Tennessee for their ratification:
That is to say--

Article I

Declaration of Rights

Section 3. Freedom of Worship.--That all men
have a natural and indefeasible right to worship
Almighty God according to the dictates of their own
conscience; that no man can of right be compelled to
attend, erect, or support any place of worship, or to
maintain any minister against his consent; that no
human authority can, in any case whatever control or
interfere with the rights of conscience; and that no
preference shall ever be given, by law to any religious
establishment or mode of worship.

Section 4. No religious or political test.--That
no political or religious test, other than an oath to

support the Constitution of the United States and of his State, shall ever be required as a qualification to any office or public trust under this state.

Article IX

Disqualifications

Section 2. No atheist shall hold a civil office.-- No person who denies the being of God, or a future state of rewards and punishments, shall hold any office in the civil department of the State.

Article XI

Miscellaneous Provisions

Section 12. Education's inherent value--Public Schools--Support of higher education. The State of Tennessee recognizes the inherent value of education and encourages its support. The General Assembly shall provide for the maintenance, support and eligibility standards of a system of free public schools. The General Assembly may establish and support such post-secondary educational institutions, including public institutions of higher learning, as it determines.

Section 15. Religious holidays.--No person shall in time of peace be required to perform any service to the public on any day set apart by his religion as a day of rest.

TEXAS

Preamble

Humbly invoking the blessings of Almighty God,
the people of the State of Texas do ordain and establish
this Constitution.

Article I

Bill of Rights

That the general, great and essential principles
of liberty and free government may be recognized and
established, we declare:

Section 4. There Shall Be No Religious Test for
Office.--No religious test shall ever be required as
a qualification to any office or public trust in this
State; nor shall anyone be excluded from holding office
on account of his religious sentiments, provided he
acknowledge the existence of a Supreme Being.

Section 5. How Oaths Shall Be Administered.--No
person shall be disqualified to give evidence in any
of the courts of this State on account of his religious
opinions, or for want of any religious belief, but
all oaths or affirmations shall be administered in the
mode most binding upon the conscience, and shall be
taken subject to the pains and penalties of perjury.

Section 6. Freedom in Religious Worship Guaranteed.--
All men have a natural and indefeasible right to worship

Almighty God according to the dictates of their own consciences. No man shall be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent. No human authority ought, in any case whatever, to control or interfere with the rights of conscience in matters of religion, and no preference shall ever be given by law to any religious society or mode of worship. But it shall be the duty of the Legislature to pass such laws as may be necessary to protect equally every religious denomination in the peaceable enjoyment of its own mode of public worship.

Section 7. No Appropriation for Sectarian Purposes.-- No money shall be appropriated or drawn from the Treasury for the benefit of any sect, or religious society, theological or religious seminary, nor shall property belonging to the State be appropriated for any such purposes.

Article VII

Education

The Public Free Schools

Section 5. The principal of all bonds and other funds, and the principal arising from the sale of the lands hereinbefore set apart to said school fund, shall be the permanent school fund, and all the interest derivable therefrom and the taxes herein authorized and

levied shall be the available school fund. The available school fund shall be applied annually to the support of the public free schools. And no law shall ever be enacted appropriating any part of the permanent or available school fund to any other purpose whatever; nor shall the same, or any part thereof ever be appropriated to or used for the support of any sectarian school; and the available school fund herein provided shall be distributed to the several counties according to their scholastic population and applied in such manner as may be provided by law.

Section 3 of Article VIII. Taxes to Be Collected for Public Purposes Only.--Taxes shall be levied and collected by general laws and for public purposes only.

UTAH

Preamble

Grateful to Almighty God for life and liberty, we, the people of Utah, in order to secure and perpetuate the Principles of free government, do ordain and establish this CONSTITUTION.

Article I

Declaration of Rights

Section 1. (Inherent and inalienable rights.)

All men have the inherent and inalienable right to enjoy and defend their lives and liberties; to acquire,

possess and protect property; to worship according to the dictates of their consciences; to assemble peaceably, protest against wrongs, and petition for redress of grievances; to communicate freely their thoughts and opinions, being responsible for the abuse of that right.

Section 4. (Religious liberty.)

The rights of conscience shall never be infringed. The State shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; no religious test shall be required as a qualification for any office of public trust or for any vote at any election; nor shall any person be incompetent as a witness or juror on account of religious belief or the absence thereof. There shall be no union of Church and State, nor shall any church dominate the State or interfere with its functions. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or for the support of any ecclesiastical establishment. No property qualification shall be required of any person to vote, or hold office, except as provided in this Constitution.

Article III

Ordinance

(Religious toleration. Polygamy forbidden.)

First:--Perfect toleration of religious sentiment is guaranteed. No inhabitant of this State shall ever

be molested in person or property on account of his or her mode of religious worship; but polygamous or plural marriages are forever prohibited.

(Free, nonsectarian schools)

Fourth:--The Legislature shall make laws for the establishment and maintenance of a system of public schools, which shall be open to all the children of the State and be free from sectarian control.

Article X

Education

Section 2. (Free nonsectarian schools.)

The Legislature shall provide for the establishment and maintenance of a uniform system of public schools, which shall be open to all children of the State, and be free from sectarian control.

Section 12. (No religious or partisan tests in schools.)

Neither religious nor partisan test or qualification shall be required of any person as a condition of admission, as teacher or student, into any public institution of the State.

Section 13. (Public aid to church schools forbidden.)

Neither the Legislature nor any county, city, town, school district or other public corporation, shall make any appropriation to aid in the support of any school, seminary, academy, college, university or other institution, controlled in whole, or in part, by any church sect or denomination whatever.

VERMONT

Chapter I

A Declaration of the Rights of the Inhabitants
Of the State Of Vermont

Religious freedom and worship

Article 3rd. That all men have a natural and unalienable right, to worship Almighty God, according to the dictates of their own consciences and understandings, as in their opinion shall be regulated by the word of God; and that no man ought to, or of right can be compelled to attend any religious worship, or erect or support any place of worship, or maintain any minister, contrary to the dictates of his conscience nor can any man be justly deprived or abridged of any civil right as a citizen, on account of his religious sentiments, or peculiar mode of religious worship; and that no authority can, or ought to be vested in, or assumed by, any power whatever, that shall in any case interfere with, or in any manner control the rights of conscience, in the free exercise of religious worship. Nevertheless, every sect or denomination of Christians ought to observe the sabbath or Lord's day, and keep up some sort of religious worship, which to them shall seem most agreeable to the revealed will of God.

Chapter II

(Section 68. Laws to encourage virtue and prevent vice; schools; religious societies)

Section 68. Laws for the encouragement of virtue and prevention of vice and immorality ought to be constantly kept in force, and duly executed; and a competent number of schools ought to be maintained in each town unless the general assembly permits other provisions for the convenient instruction of youth. All religious societies, or bodies of men that may be united or incorporated for the advancement of religion and learning, or for other pious and charitable purposes, shall be encouraged and protected in the enjoyment of the privileges, immunities, and estates, which they in justice ought to enjoy, under such regulations as the general assembly of this state shall direct.

VIRGINIA

Bill of Rights

A DECLARATION of rights by the good people of Virginia in the exercise of their sovereign powers, which rights do pertain to them and their posterity, as the basis and foundation of government.

Article I

Section 16. Free exercise of religion; no establishment of religion. That religion or the duty which we owe to our

Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and, therefore, all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity towards each other. No man shall be compelled to frequent or support any religious worship, place, or ministry whatsoever, nor shall be enforced, restrained, molested, or burthened in his body or goods, nor shall otherwise suffer on account of his religious opinions or belief; but all men shall be free to profess and by argument to maintain their opinions in matters of religion, and the same shall in nowise diminish, enlarge, or affect their civil capacities. And the General Assembly shall not prescribe any religious test whatever, or confer any peculiar privileges or advantages on any sect or denomination, or pass any law requiring or authorizing any religious society, or the people of any district within this Commonwealth, to levy on themselves or others, any tax for the erection or repair of any house of public worship, or for the support of any church or ministry; but it shall be left free to every person to select his religious instructor, and to make for his support such private contract as he shall please.

Article IV

Section 16. Appropriations to religious or charitable bodies. The General Assembly shall not make any appropriation of public funds, personal property, or real estate to any church or sectarian society, or any association or institution of any kind whatever which is entirely or partly, directly or indirectly, controlled by any church or sectarian society. Nor shall the General Assembly make any like appropriation to any charitable institution which is not owned or controlled by the Commonwealth; the General Assembly may, however, make appropriations to nonsectarian institutions for the reform of youthful criminals and may also authorize counties, cities, or towns to make such appropriations to any charitable institution or association.

Article VIII

Education and Public Instruction

Section 10. State appropriations prohibited to schools or institutions of learning not owned or exclusively controlled by the State or some subdivision thereof; exceptions to rule.

No appropriattion of public funds shall be made to any school or institution of learning not owned or exclusively controlled by the State of some political subdivision thereof; provided, first, that the General

Assembly may, and the governing bodies of the several counties, cities and towns may, subject to such limitations as may be imposed by the General Assembly, appropriate funds for educational purposes which may be expended in furtherance of elementary, secondary, collegiate or graduate education of Virginia students in public and nonsectarian private schools and institutions of learning, in addition to those owned or exclusively controlled by the State of any such county, city, or town; second, that the General Assembly may appropriate funds to an agency or to a school or institution of learning owned or controlled by an agency, created and established by two or more States under a joint agreement to which this State is a party for the purpose of providing educational facilities for the several States joining in such agreement; third, that counties, cities, towns and districts may make appropriations to nonsectarian schools of manual, industrial or technical training and also to any school or institution owned or exclusively controlled by such county, city, town, or school district.

WASHINGTON

Preamble

We, the people of the State of Washington, grateful to the Supreme Ruler of the Universe for our liberties, do ordain this constitution.

Declaration of Rights

Article I

Section 11. Religious Freedom. Absolute freedom of conscience in all matters of religious sentiment, belief and worship, shall be guaranteed to every individual, and no one shall be molested or disturbed in person or property on account of religion; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace and safety of the state. No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or the support of any religious establishment: Provided, however, That this article shall not be so construed as to forbid the employment by the state of a chaplain for such of the state custodial, correctional and mental institutions as in the discretion of the legislature may seem justified. No religious qualification shall be required for any public office or employment, nor shall any person be incompetent as a witness or juror, in consequence of his opinion on matters of religion, nor be questioned in any court of justice touching his religious belief to affect the weight of his testimony.

Article IX

Education

Section 2. Public School System. The legislature shall provide for a general and uniform system of public schools. The public school system shall include common schools, and such high schools, normal schools, and technical schools as may hereafter be established. But the entire revenue derived from the common school fund and the state tax for common schools shall be exclusively applied to the support of the common schools.

Section 4. Sectarian Control of Influence Prohibited. All schools maintained or supported wholly or in part by the public funds shall be forever free from sectarian control or influence.

Article XXVI

Compact with the United States

The following ordinance shall be irrevocable without the consent of the United States and the people of this state:

First: That perfect toleration of religious sentiment shall be secured and that no inhabitant of this State shall ever be molested in person or property on account of his or her mode of religious worship.

WEST VIRGINIA

Preamble

Since through Divine Providence we enjoy the blessings of civil, political and religious liberty, we, the people of West Virginia, in and through the provisions of this Constitution, reaffirm our faith in and constant reliance upon God and seek diligently to promote, preserve and perpetuate good government in the State of West Virginia for the common welfare, freedom and security of ourselves and our posterity.

Article III

Bill of Rights

Religious Freedom Guaranteed

15. No man shall be compelled to frequent or support any religious worship, place or ministry whatsoever; nor shall any man be enforced, restrained, or molested or burthened, in his body or goods, or otherwise suffer, on account of his religious opinions or belief, but all men shall be free to profess, and, by argument, to maintain their opinions in matters of religion; and the same shall, in no wise, affect, diminish or enlarge their civil capacities; and the Legislature shall not prescribe any religious test whatever, or confer any peculiar privileges or advantages on any sect or denomination, or pass any law requiring or authorizing any religious society, or the

people of any district within this State, to levy on themselves, or others, any tax for the erection or repair of any house of public worship, or for the support of any church or ministry, but it shall be left free for every person to select his religious instructor, and to make for his support such private contracts as he shall please.

WISCONSIN

Preamble

We, the people of Wisconsin, grateful to Almighty God for our freedom, in order to secure its blessings, form a more perfect government, insure domestic tranquility and promote the general welfare, do establish this constitution.

Article I

Bill of Rights

Freedom of worship; liberty of conscience; state religion; public funds.

Section 18. The right of every man to worship Almighty God according to the dictates of his own conscience shall never be infringed; nor shall any man be compelled to attend, erect or support any place of worship, or to maintain any ministry, against his consent; nor shall any control of, or interference with, the rights of conscience be permitted, or any preference be given by law

to any religious establishments or modes of worship; nor shall any money be drawn from the treasury for the benefit of religious or theological seminaries.

Religious tests prohibited.

Section 19. No religious tests shall ever be required as a qualification for any office of public trust under the state, and no person shall be rendered incompetent to give evidence in any court of law or equity in consequence of his opinions on the subject of religion.

Article X

Education

District schools; tuition; sectarian instruction.

Section 3. The legislature shall provide by law for the establishment of district schools, which shall be as nearly uniform as practicable; and such schools shall be free and without charge for tuition to all children between the ages of four and twenty years; and no sectarian instruction shall be allowed there; but the legislature by law may, for the purpose of religious instruction outside the district schools, authorize the release of students during regular school hours.

WYOMING

Preamble

We, the people of the state of Wyoming, grateful to God for our civil, political and religious liberties,

and desiring to secure them to ourselves and perpetuate them to our posterity, do ordain and establish this constitution.

Article I

Declaration of Rights

Section 18. Religious Liberty. The free exercise and enjoyment of religious profession and worship without discrimination or preference shall be forever guaranteed in this state, and no person shall be rendered incompetent to hold any office of trust or profit, or to serve as a witness or juror, because of his opinion on any matter of religious belief whatever; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness or justify practices inconsistent with the peace or safety of the state.

Section 19. Appropriations for religion prohibited. No money of the state shall ever be given or appropriated to any sectarian or religious society or institution.

Article III

Legislative Department

Section 36. Prohibited appropriations. No appropriation shall be made for charitable, industrial, educational or benevolent purposes to any person, corporation or community not under the absolute control of the state, nor to any denominational or sectarian institution or association

Article VII

Education

Section 8. Distribution of school funds. Provision shall be made by general law for the equitable allocation of such income among all the school districts in the state. But no appropriation shall be made from said fund to any district for the year in which a school has not been maintained for at least three (3) months; nor shall any portion of any public school fund ever be used to support or assist any private school, or any school, academy, seminary, college or other institution of learning controlled by any church or sectarian organization or religious denomination whatever.

Section 12. Sectarianism prohibited. No sectarian instruction, qualifications or tests shall be imparted, exacted, applied or in any manner tolerated in the schools of any grade or character controlled by the state, nor shall attendance be required at any religious service therein, nor shall any sectarian tenets or doctrines be taught or favored in any public school or institution that may be established under this constitution.

APPENDIX B
STATE ACTS PROVIDING ASSISTANCE TO ELEMENTARY
AND SECONDARY RELIGIOUS SCHOOLS

...ALABAMA...

...ALASKA...

Section 14.45.020. The commissioner may furnish final examination questions for the eighth grade pupils in private and denominational schools and grant eighth grade diplomas in the same manner as in the public schools.

Section 14.09.020. In those places in the state where the department or a school district provides transportation for children attending public schools, the department shall also provide transportation for children who, in compliance with the provisions of ch. 30 of this title, attend nonpublic schools which are administered in compliance with state law where the children, in order to reach the nonpublic schools, must travel distances comparable to, and over routes the same as, the distances and routes over which the children attending public school are transported. The commissioner shall administer this nonpublic school student transportation program, integrating it into existing systems as much as feasible, and the cost of the program

shall be paid from funds appropriated for that purpose by the legislature.

Section 14,07,020(B). In cooperation with Department of Health and Social Services, Department of Education shall exercise general supervision over private pre-elementary schools (3-5 yrs.).

...ARIZONA...

Exemption from payment of weight fees; religious institutions; nonprofit schools; disaster assistance organizations; government entities

Section 28-207.

A. Motor vehicles, trailers or semitrailers owned and operated by religious institutions and used exclusively for the transportation of property produced and distributed for charitable purposes without compensation are exempt from the weight fee provided by Section 28-206.

B. For the purposes of subsection A of this section, "religious institution" means a recognized organization having an established place of meeting for religious worship which holds regular meetings for that purpose at least once each week in not less than five cities or towns in the state.

C. Motor vehicles owned and operated by nonprofit schools, recognized as being tax exempt by the federal government and used exclusively for the transportation of pupils in connection with the school curriculum are exempt from the weight fee provided by Section 28-206.

D. Motor vehicles, trailers and semitrailers owned by any nonprofit organization in this state which presents to the motor vehicle division a form approved by the director of the division of emergency services pursuant to Section 26-318 are exempt from the weight fee provided by Section 28-206.

E. A vehicle owned and operated by a foreign government, a consul or other official representative of a foreign government, by the United States, by a state or political subdivision of a state or by an Indian tribal government is exempt from the weight fees provided by Section 28-206. As amended Laws 1980, Ch. 24, Section 2; Laws 1980, Ch. 100, Section 1.

Definitions

Section 36-899. In this chapter, unless the context otherwise requires:

1. "Department" means the department of health services.
2. "Director" means the director of the department of health services.
3. "Hearing evaluation services" means services which include the identification, testing, evaluation and initiation of follow-up services as defined in the rules and regulations of the department, as provided by Section 36-899.03.
4. "Hearing screening evaluation" means the evaluation of the ability to hear certain frequencies at a consistent loudness.

5. "Private education program" means all programs of private education offering courses of study for grades, kindergarten through the twelfth grade of high school.

6. "Public education program" means all kindergarten, primary and secondary programs of education within the public school system, including but not beyond the twelfth grade of common or high school.

Added Laws 1971, Ch. 76, Section 1. As amended Laws 1973, Ch. 158, Section 164.

Program for all school children; administration

Section 36-899.01.

A. A program of hearing evaluation services is established by the department. Such services shall be administered to all children as early as possible, but in no event later than the first year of attendance in any public or private education program, or residential facility for handicapped children, and thereafter as circumstances permit until the child has attained the age of sixteen years or is no longer enrolled in a public or private education program.

B. The program of hearing evaluation services for children in a public education program shall be administered by the department with the aid of the department of education.
Added Laws 1971, Ch. 76, Section 1.

Powers of the department; limitations

Section 36-899.02.

A. The department may, in administering the program of hearing evaluation services:

1. Provide consulting services, establish or supplement hearing evaluation services in local health department, public or private education programs or other community agencies.

2. Provide for the training of personnel to administer hearing screening evaluations.

3. Delegate powers and duties to other state agencies, county and local health departments, county and local boards of education or boards of trustees of private education programs or other community agencies to develop and maintain periodic hearing evaluation services.

4. Provide services by contractual arrangement for the development and maintenance of periodic hearing evaluation services.

5. Accept reports of hearing evaluation from qualified medical or other professional specialists employed by parents or guardians for hearing evaluation when such reports are submitted to the department.

B. The department shall not replace any qualified existing service.

Added Laws 1971, Ch. 76, Section 1.

...ARKANSAS...

...CALIFORNIA...

Transportation--Supplementary Services

Section 39808. Transportation of pupils attending other than public school. The governing board of any school district may allow pupils entitled to attend the school of the district, but in attendance at a school other than a public school, under the provisions of Section 48222, transportation upon the same terms and in the same manner and over the same routes of travel as is permitted pupils attending the district school.

The allowance of this section shall be restricted to actual transportation when furnished by the district to children attending the district school, and nothing in this section shall be construed to authorize or permit in lieu of transportation payments of money to parents or guardians of children attending private schools.

Section 60313. Central clearinghouse-depository and duplication center re specialized books, etc. The Superintendent of Public Instruction shall establish and maintain a central clearinghouse-depository and duplication center for specialized textbooks, reference books, recordings, study materials, tangible apparatus, equipment

and other similar items for the use of visually handicapped students enrolled in the public schools of California who may require their use as shall be determined by the state board.

Such instructional materials in specialized media shall be available to other handicapped minors enrolled in the public schools of California who are unable to benefit from the use of conventional print copies of textbooks, reference books, and other study materials in a manner determined by the state board.

The specialized textbooks, reference books, recordings, study materials, tangible apparatus, equipment and other similar items shall be available for use by visually handicapped students enrolled in the public community colleges, California State University and Colleges, and the University of California,

Enacted Stats 1976 Ch. 1010, Section 2, operative April 30, 1977.

Section 60314. Loan of specialized books, etc. to nonpublic school pupils. The Superintendent of Public Instruction shall loan to pupils entitled to attend the public schools of California, but in attendance at a school other than a public school under the provisions of Section 48222, the items specified in Section 60313, without cost to the pupils or to the nonpublic school which they attend.

Enacted Stats 1976, Ch. 1010, Section 2, operative April 30, 1977.

Section 60315. Loan of state-adopted instructional materials to nonpublic school pupils. The Superintendent of Public Instruction shall lend to pupils entitled to attend the public elementary schools of the district, but in attendance at a school other than a public school under the provisions of Section 48222, instructional materials adopted by the state board for use in the public elementary schools. No charge shall be made to any pupil for the use of such adopted materials.

Materials shall be loaned pursuant to this section only after, and to the same extent that, materials are made available to students in attendance in public elementary schools. However, no cash allotment may be made to any nonpublic school.

Materials shall be loaned for the use of nonpublic elementary school students after the nonpublic school student certifies to the State Superintendent of Public Instruction that student materials are desired and will be used in a nonpublic elementary school by the nonpublic elementary school student. Enacted Stats 1976, Ch. 1010, Section 2, operative April 30, 1977.

Section 41311. State child nutrition fund. There is hereby created in the State Treasury the State Child Nutrition Fund which is continuously appropriated to the Department of Education without regard to fiscal years to carry out the purposes of Article 10 (commencing with Section 49530) of Chapter 9 of Part 27 of Division 4 of this title and of Article 3.5 (commencing with Section 41350) of this chapter.

The State Child Nutrition Fund shall be administered by the State Department of Education under policies established by the State Board of Education. It is the intent of the Legislature that the fund shall provide permanent financial assistance to eligible school districts, county superintendents of schools, local agencies, private schools, parochial schools, and child development programs, for implementing the school meal program. The fund shall be used to reimburse the cafeteria account of school districts, county superintendents of schools, local agencies, private schools, parochial schools, and child development programs, based upon the number of qualifying meals served to students.

Driver Education--Allowances by Superintendent of Public Instruction

Section 41902. Allowances by the Superintendent of Public Instruction shall be made only for driver training classes

maintained in accordance with the rules and regulations as set forth by the State Board of Education.

Driver training shall be available without tuition to all eligible students commencing on July 1, 1969.

The governing board of a district may make driver training available during school hours, or at other times, or any combination thereof.

Lunches--Specific Provisions--Surplus Property

Section 12110. Designation. The State Department of Education is hereby designated as the California State Educational Agency for Surplus Property.

Section 12111. Cooperation with Federal Government. Said agency is authorized and directed to co-operate with the Federal Government and its agencies in securing the expeditious and equitable distribution of surplus property of the Federal Government to eligible institutions in California, to assist said institutions in securing such property and to do all things necessary to the execution of its powers and duties.

Section 12112. Acquisition and disposition of property from Federal Government. Whenever by the provisions of any act of Congress or any rule or regulation adopted

thereunder the agency is authorized to accept, receive, or purchase for resale from the Federal Government or any agency thereof, any property and to provide for its disposition or resale, it is authorized to do so and is vested with all necessary power and authority to accomplish such acceptance, purchase, receipt, disposition and resale. The agency is hereby exempted from the provisions of Article 2, Chapter 6, Part 5.5, Division 3, Title 2 of the Government Code.

...COLORADO...

Use of Federal Funds

Section 22-32-110 (cc). To provide, in the discretion of the local board, out of federal grants made available specifically for this purpose, special educational services and arrangements, such as dual enrollment, educational radio and television, and mobile educational services, for the benefit of educationally deprived children in the district who attend nonpublic schools, without the requirement of full time public school attendance, and without discrimination on the ground of race, color, religion, or national origin.

(dd). To provide, in the discretion of the local board, out of federal grants made available specifically for this purpose, library resources, which for the purposes of this title shall mean books, periodicals, documents, magnetic tapes, films, phonograph records, and other related library materials, and printed and published

instructional materials for the use and benefit of all children in the district, both in the public and nonpublic schools, without charge and without discrimination on the ground of race, color, religion, or national origin.

...CONNECTICUT...

Health and Sanitation

Section 10-215a. Nonpublic school participation in feeding programs. Nonpublic schools may participate in the school breakfast, lunch and other feeding programs provided in sections 10-215 to 10-215c under regulations promulgated by the state board of education in conformance with said sections and the federal laws governing said programs.

Education and Culture

Section 10-217a. Health and welfare services for children in nonprofit private schools. State aid.

(a) Each town which provides health and welfare services for children attending its public schools shall provide the same health and welfare services for children attending private schools therein, not conducted for profit, when a majority of the children attending such schools are from the state of Connecticut. Such health and welfare services shall include the services of a school physician, school nurse and dental hygienist, school psychologist, speech remedial services, school social worker's services,

special language teachers for non-English speaking students and such similar services as may be provided by said town to children in attendance at public schools.

(b) Any town providing such services for children attending such private schools shall be reimbursed by the state for the amount paid for such services. At the close of each school year any town which provides such services shall file an application for such reimbursement on a form to be provided by the state board of education. Payment shall be made as soon as possible after the close of each fiscal year.

(c) The pay of certificated personnel shall be subject to the rules and regulations providing for the state teacher's retirement fund by the board of education of such town applicable to certificated teaching personnel in the public schools of such town. This subsection (c) shall be retroactive to July 1, 1968.

Section 10-228a. Free textbook loans to pupils attending nonpublic schools. Each local and regional board of education may, at the request of any nonpublic elementary or secondary school pupil, including a kindergarten pupil, residing in and attending a nonpublic school in such district, or at the request of the parent or guardian of such pupil, arrange for a loan of textbooks currently in use in the public schools of such district to such

pupil, free of charge, provided the loan of any such textbook shall be requested for not less than one semester's use.

Section 10-239a. Demonstration scholarship program.

Short title. Legislative intent. Sections 10-239a to 10-239h, inclusive, shall be known and may be cited as the demonstration scholarship program authorization act of 1972. It is the intent of the legislature to enable up to six local or regional boards of education to participate in the demonstration program designed to develop and test the use of education scholarships for school children. The purpose of this demonstration scholarship program is to develop and test education scholarships as a way to improve the quality of education by making schools, both public and private, more responsive to the needs of children and parents, to provide greater parental choice, and to determine the extent to which the quality and delivery of educational services are affected by economic incentives. The demonstration scholarship program authorized by Sections 10-239a to 10-239h, inclusive, shall aid students and shall not be used to support or to benefit any particular schools.

Section 10-239b. Definitions. As used in section 10-239a to 10-239h, inclusive:

(1) "Demonstration area" means the area designated by the participating local or regional board of education for the purposes of a demonstration scholarship program defined in subsection (2) of this section, which area shall include a substantial number of needy or disadvantaged students.

(2) "Demonstration scholarship program" means a program for developing and testing the use of educational scholarships for all pupils eligible to attend public or private schools within the demonstration area, which scholarships shall be made available to the parents or legal guardians of a scholarship recipient in the form of a drawing right, negotiable certificate or other document which may not be redeemed except for educational purposes at schools fulfilling the requirements of subsection (a) of Section 10-239e.

(3) "Demonstration board" means a board established by the local or regional board of education to conduct the demonstration scholarship program.

(4) "Contract" means the agreement entered into by the local or regional board of education and a federal governmental agency for the purpose of conducting a demonstration scholarship program.

Section 10-239c. Contract with federal agency for funds.

The local or regional board of education may contract with

a federal governmental agency for funds to establish a demonstration scholarship program to exist for a period of up to five years, such board to receive such state and local aid for any of its students as would otherwise be provided by law regardless of whether or not such students participate in a demonstration scholarship program, which funds may be expended under the demonstration scholarship program as the demonstration contract shall provide and within the demonstration area.

Section 10-239d. Demonstration board and staff. Scholarships.

The local or regional board of education may establish a demonstration board and staff and may authorize it to administer the demonstration project authorized by Sections 10-239a to 10-239h, inclusive, provided the costs of such organization shall be borne by the contracting federal agency. The members of the demonstration board, if it is not the local or regional board of education itself, shall serve for the terms established by the appointing board.

(1) The demonstration board may: (a) Employ a staff for the demonstration board, (b) receive and expend funds to support the demonstration board and scholarships for children in the demonstration area, (c) contract with other government agencies and private persons or

organizations to provide or receive services, supplies, facilities and equipment, (d) determine rules and regulations for use of scholarships in the demonstration area, (e) adopt rules and regulations for its own government, (f) receive and expend funds from the federal governmental agency necessary to pay for the costs incurred in administering the program, (g) otherwise provide the specified programs, services and activities.

(2) The demonstration board shall award a scholarship to each school child residing in the demonstration area, subject only to such age and grade restrictions which it may establish. The scholarship funds shall be made available to the parents or legal guardian of a scholarship recipient in the form of a drawing right, certificate or other document which may not be redeemed except for educational purposes.

(3) The demonstration board shall establish the amount of the scholarship in a fair and impartial manner as follows: There shall be a basic scholarship equal in amount to every other basic scholarship for every eligible student in the demonstration area. In no case shall the amount of the basic scholarship fall below the level of average current expense per pupil for corresponding grade levels in the public schools in the demonstration area in the year immediately preceding the demonstration program.

(4) In addition to each base scholarship, compensatory scholarships shall be given to disadvantaged children. The amount of such compensatory scholarships and the manner by which children may qualify for them shall be established by the demonstration board.

(5) Adequate provision for the pro rata or incremental redemption of scholarships shall be made.

(6) The contract shall provide sufficient money to pay all actual and necessary transportation costs incurred by parents in sending their children to the school of their choice within the demonstration area, subject to distance limitations imposed by existing law.

(7) The contract shall specify that the contracting federal governmental agency shall hold harmless the participating board from any possible decreased economies of scale or increased costs per pupil caused by the transition to a demonstration program.

Section 10-239e. Use of scholarships. Eligibility of schools.

(a) The demonstration board shall authorize the parents or legal guardian of scholarship recipients to use the demonstration scholarships at any public or private school in which the scholarship recipient is enrolled provided such public or private school:

(1) Meets all educational, fiscal, health and safety standards required by law.

(2) does not discriminate against the admission of students and the hiring of teachers on the basis of race, color or economic status and has filed a certificate with the state board of education that the school is in compliance with Title VI of the Civil Rights Act of 1964,

(3) in no case levies or requires any tuition, fee or charge above the value of the education scholarship,

(4) is free from sectarian control or influence except as provided in subsection (b) of this section,

(5) provides public access to all financial and administrative records and provides to the parent or guardian of each eligible child in the demonstration area comprehensive information in written form, on the courses of study offered, curriculum, materials and textbooks, the qualifications of teachers, administrators and paraprofessionals, the minimum school day, the salary schedules, financial reports of money spent per pupil and such other information as may be required by the demonstration board,

(6) provides periodic reports to the parents on the average progress of the pupils enrolled,

(7) meets any additional requirements established for all participating schools by the demonstration board.

(b) In compliance with the constitutional guarantee of free exercise of religion, schools may be exempted from

subdivision (4) of subsection (a) of this section if they meet all other requirements for eligibility.

Section 10-239f. Collective bargaining by teachers. Nothing contained in Sections 10-239a to 10-239h, inclusive, shall be construed to interfere in any way with the rights of teachers of participating local or regional boards of education to organize and to bargain collectively regarding the terms and conditions of their employment. Teachers employed in the demonstration area shall be bound by the terms of such bargaining in the same way and to the same extent as if there were no demonstration area.

Section 10-266a. State grants for special programs for educationally deprived children. (a) Any town or regional school district, except a state operated school district, shall be eligible to receive grants as hereinafter provided to assist in furnishing special supplementary educational programs or services designed to improve or accelerate the education of children whose educational achievement has been or is being restricted by economic, social, linguistic or environmental disadvantages, provided not less than seventy-five percent of the children served by such programs in any town or regional school district shall be educationally deprived children, as

defined in accordance with low-income criteria pursuant to regulations which shall be adopted and enforced by the state board of education, and provided such programs shall be approved by the state board of education.

Section 10-266b. Amount of aid. Redistribution of funds.

(a) The total amount to which any town or regional school district is entitled for any fiscal year shall not exceed an amount to be determined by multiplying the total amount appropriated for such fiscal year for the purposes of Sections 10-266a to 10-266e, inclusive, and this section by the average of the percentage representing the ratio of the number of families in the community with incomes of less than four thousand dollars per annum to the total number of such families in the state and the percentage representing the ratio of the number of children in the community receiving aid to dependent children to the total number of such children in the state.

(b) The state board of education may redistribute funds appropriated for any fiscal year for which application by towns or regional school districts has not been made by January first of such year and said board may also redistribute funds if and to the extent any town or regional school district certifies to the board that funds granted under approved applications will not be expended. Funds shall be redistributed in such manner

as is prescribed by procedures established by the state board of education.

Section 10-277. Reimbursement for transportation of high school pupils from towns or regional school districts not maintaining high schools. Transportation to nonpublic schools. (a) For the purposes of this section, "high school" means any public high school or public junior high school approved by the state board of education.

(b) Any town or regional school district which does not maintain a high school shall pay the reasonable and necessary cost of transportation of any pupil under twenty-one years of age who resides with such pupil's parents or guardian in such school district and who, with the written consent of the board of education, attends any high school approved by the state board of education. The town or regional board of education may, upon request, enter into a written agreement with the parents of any high school pupil permitting such pupil to attend an approved public high school other than that to which transportation is furnished by the school district and each may pay such costs of transportation as may be agreed upon. Such necessary and reasonable cost of transportation shall be paid by the town treasurer or the regional school district treasurer upon order of the superintendent of schools, as authorized by the

by the board of education. The board of education may also, at its discretion, provide additional transportation for any pupil attending such high school to and from the point of embarkation in the town in which the pupil resides. Annually, before August first, the superintendent of schools of each school district so transporting pupils to high school shall certify under oath to the state board of education the names of the high schools to which such pupils were transported and the number of pupils so transported to each school together with the total cost to the town of such transportation. Upon application to the state board of education, any town or regional school district which so provides transportation for high school pupils enrolled in a school not maintained by such district pursuant to this section shall, annually, be reimbursed by the state for such transportation in accordance with the provisions of Sections 23 and 24 of Public Act 79-128.

(c) Any town or regional school district which is transporting students to a high school, shall have the authority, at its discretion, to furnish similar transportation to nonpublic high schools or junior high schools located within the same town to which the town or regional school district is transporting students in accordance with Subsection (b) of this section, or

to nonpublic high schools or junior high schools located in a town adjacent to the transporting town or regional school district, or to a town adjacent to the town in which is located the public high school or junior high school to which the students are transported. If such town or regional school district does provide such transportation, it shall be reimbursed in the same manner and amounts as provided in Subsection (b) of this section.

Section 10-280a. Transportation for pupils in nonprofit private schools outside school district. Any local or regional board of education may provide transportation to a student attending an elementary or secondary nonpublic school, not conducted for profit and approved by the state board of education, outside the school district wherein such student resides with a parent or guardian, provided that no grant shall be provided for any costs incurred by such board for transportation beyond a contiguous school district, and provided further that such elementary or secondary nonpublic school is located within the state of Connecticut. Upon application to the state board of education, any local or regional board of education which so provides such transportation shall annually be reimbursed by the state for such pupil transportation in accordance with the provisions of Sections 23 and 24

of public act 79-128,¹ provided the maximum amount appropriated by the state in any fiscal year, for the purposes of this section, shall not exceed one hundred fifty thousand dollars. If in any fiscal year applications for reimbursement pursuant to this section total in amount in excess of one hundred fifty thousand dollars, each local and regional board of education shall be reimbursed in an amount equal to its proportionate share of the funds appropriated for such fiscal year.

Section 10-218. Transportation for pupils in nonprofit private schools within school district. Any municipality or school district shall provide, for its children attending private schools therein, not conducted for profit, when a majority of the children attending such a school are from the state of Connecticut, the same kind of transportation services provided for its children attending public schools; provided, in no case shall a municipality or school district be required to expend for private school transportation, in any one school year, a per pupil transportation expenditure greater than an amount double the local per pupil expenditure for public school transportation during the last completed school year. Any such municipality or school district providing transportation under this section shall be

reimbursed for the cost of such transportation upon the same basis and in the same manner as such municipality or school district is reimbursed for transporting children attending its public schools. The parent or guardian of any student who is denied the kind of transportation services required to be provided by this section may seek a remedy in the same manner as is provided for parents of public school children in Section 10-186 and Section 10-187.

...DELAWARE...

Transportation of Students of Nonpublic, Nonprofit
Elementary and High Schools

Title 14. Section 2905. The State Board of Education shall make rules and regulations concerning the transportation of pupils in nonpublic, nonprofit elementary and secondary (high) schools in this State. Such rules and regulations shall provide for at least the following:

- (1) All rules and regulations relative to pupil transportation to nonpublic, nonprofit schools shall be the same as those applicable to public schools;
- (2) Such rules and regulations shall limit transportation of pupils in nonpublic, nonprofit schools to the elementary and secondary schools, except as provisions of the title may assign such transportation responsibility to the State Board of Education in behalf of pupils enrolled at other levels in a public school system;

(3) Pupils enrolled in nonpublic, nonprofit schools shall only be entitled to transportation within the described boundaries of a public school district and not beyond those boundaries.

Driver Education Instruction in Nonpublic High Schools

Title 14. Section 127. The State Board of Education shall make rules and regulations concerning instruction in Driver Education in nonpublic high schools. Such rules and regulations shall provide for at least the following:

(1) The qualification of teachers for Driver Education in nonpublic high schools shall be the same as the qualification for teachers in the public high schools.

(2) Unless modified by other statutes enacted after July 1, 1967, the ratio of teachers to pupils for assignment of Driver Education teachers in nonpublic high schools shall be based upon one teacher for each 140 tenth grade pupils enrolled in the nonpublic high school; or one-fifth of a teacher assignment for each full 28 tenth grade pupils.

(3) General supervision for the program of instruction in Driver Education in nonpublic high schools shall be under the jurisdiction of the State Board of Education or as this supervision may be assigned to a local public school district.

(4) Assignment of teachers to nonpublic high schools shall be by authority of the State Board of Education and the Board shall have the authority to require from the nonpublic high schools a statement of certified enrollment on such date and in such form as the Board may require for making the decision relative to assignment.

(5) Salary for teachers in nonpublic high schools, when paid from funds of the State of Delaware, shall be in accord with the regularly adopted salary schedule set forth in Chapter 13 of this Title.

(6) Any local salary supplement paid to Driver Education teachers assigned to nonpublic high schools may be paid by the public school district to which such teacher is assigned.

(7) For purposes of administration and supervision, the teachers of Driver Education in nonpublic high schools shall be assigned to the faculty of a public high school. The State Board of Education shall be responsible for designating such assignment. The assignment of a teacher to a public high school for purposes of driving instruction in a nonpublic high school shall be made as an assignment in addition to any assignment authorized to that public high school in accord with the unit program set forth in Chapter 17 or any other portion of this Title.

(8) Funds of the payment of the State portion of any salary due to teachers of Driver Education in nonpublic high schools shall be appropriated to a contingency fund to be administered by the Budget Director for the State of Delaware and to be paid in accord with appropriate fiscal documents presented by the public school district to which the teacher has been assigned.

(9) A teacher of Driver Education may be assigned to several nonpublic or nonpublic and public high schools in accord with the ratio for assignment as set forth in this section.

...FLORIDA...

Section 229.834. Services to other than public school students. Diagnostic and resource centers are authorized to provide testing and evaluation services to nonpublic school pupils or other children who are not enrolled in a public school. The Department of Education shall establish a uniform schedule of fees to be charged by the centers for their services to children not currently enrolled in public schools. All fees collected by the individual centers for such services shall be accounted for in accordance with Department of Education regulations. The fees collected by each center shall be used for the provision of testing and evaluation services.

...GEORGIA...

...HAWAII...

Driver Education

Section 299-1. Driver education. (a) The department of education may establish and administer a motor vehicle driver education and training program to be conducted at each public high school in the State after regular school hours, on Saturdays, and during the summer recess.

(b) The department shall, for the purpose of this section:

(1) Set the prerequisites and priorities for enrollment in the course of driver education and training which shall be open to every resident of the State who is fifteen years of age or older and under nineteen years of age;

(2) Establish the requirements for and employ necessary instructors, who are certified to have completed satisfactorily an approved instructor's course, to conduct the course in driver education and training;

(3) Issue a certificate of completion to every student upon satisfactory completion of the course in driver education and training;

(4) Purchase, rent, or acquire by gift materials and equipment necessary for the program established by this section; and

(5) Cooperate with the chief of police in each county in promoting traffic safety.

(c) The department may promulgate rules and regulations, in conformance with chapter 91 necessary for the purposes of this section and Section 299-2.

Vision Screening and Education

Section 321-101. Sight conservation and prevention of blindness. (a) The departments of health and education shall cooperate with each other and other public and private authorities as they may deem advisable for the education of children in the conservation of eyesight and the prevention of blindness, and may recommend for sight-saving classes, or for the state school for the blind, children certified by any reputable oculist or optometrist, as fit subjects for instruction therein. All such certifications shall be reviewed by a medical doctor designated by the department of health.

(b) They shall conduct or supervise such vision-testing activities in public and private schools as they deem advisable to determine which children have defective vision and shall make recommendations for the conservation or correction of their vision, and shall cooperate to secure proper lighting and in such other measures as they may deem advisable to remedy conditions which may be conclusive to or cause weakening of eyesight.

(c) They shall cause to be conducted classes and lectures in sight conservation and prevention of blindness for teachers and public health nurses and others engaged in like work, and cooperate with public and private organizations and societies in an effort to educate the public in the importance of sight conservation.

...IDAHO...

Driver Training Courses

Section 33-1703. Eligible pupils - Time courses offered. Reimbursable programs shall be open to all residents of the state, of the ages fourteen (14) through eighteen (18) years whether or not they are enrolled in a public, private or parochial school. Residents living within any school district operating, or participating in the operation of, an authorized driver training program, shall enroll, when possible, in the training program offered in the school district of residence.

No charge or enrollment fee, not required to be paid by public school pupils for driver training, shall be required to be paid by residents not then attending public schools.

Driver training programs herein authorized may, at the discretion of the board of trustees, be conducted after school hours, or on Saturdays, or during regular school vacations.

... ILLINOIS ...

Transportation--Pupils attending other than a public school

Chapter 122, Section 294. The school board of any school district that provides any school bus or conveyance for transporting pupils to and from the public schools shall afford transportation, without cost, for children who attend any school other than a public school, who reside at least $1\frac{1}{2}$ miles from the school attended, and who reside on or along the highway constituting the regular route of such public school bus or conveyance, such transportation to extend from some point on the regular route nearest or most easily accessible to their homes to and from the school attended, or to or from a point on such regular route which is nearest or most easily accessible to the school attended by such children. Nothing herein shall be construed to prevent high school districts from transporting public or non-public elementary school pupils on a regular route where deemed appropriate. The elementary district in which such pupils reside shall enter into a contractual agreement with the high school district providing the service, make payments accordingly, and make claims to the State in the amount of such contractual payments. The person in charge of any school other than a public school shall certify on a form to be provided by the

State Superintendent of Education, the names and addresses of pupils transported and when such pupils were in attendance at the school. If any such children reside within $1\frac{1}{2}$ miles from the school attended, the school board shall afford such transportation to such children on the same basis as it provides transportation for its own pupils residing within that distance from the school attended.

Nothing herein shall be construed to preclude a school district from operating separate regular bus routes, subject to the limitations of this Section, for the benefit of children who attend any school other than a public school where the operation of such routes is safer, more economical and more efficient than if such school district were precluded from operating separate regular bus routes.

If a school district is required by this Section to afford transportation without cost for any child who is not a resident of the district, the school district providing such transportation is entitled to reimbursement from the school district in which the child resides for the cost of furnishing that transportation, including a reasonable allowance for depreciation on each vehicle so used. The school district where the child resides shall reimburse the district providing the

transportation for such costs, by the 10th of each month or on such less frequent schedule as may be agreed to by the two school districts.

Community School Lunch Programs - Free Breakfast and Lunch Programs

Section 712.1. Definitions. For the purposes of this Act:

"School board" means school principal, directors, board of education and board of school inspectors of public and private schools.

"Welfare center" means an institution not otherwise receiving funds from any governmental agency, serving lunches to children of school age or under, in conformance with the authorized school lunch program.

"Free breakfast program" means those programs through which school boards may supply needy children in their respective districts with free school breakfasts.

"Free lunch program" means those programs through which school boards supply all of the needy children in their respective districts with free school lunches.

"School lunch program" means the program whereby certain types of lunches called balanced, nutritious lunches adopted as standard types and designated by the Superintendent of Public Instruction, are furnished to students.

"Comptroller" means Comptroller of the State of Illinois.

Section 712.2. Reimbursement of Sponsors. The Superintendent of Public Instruction is authorized to reimburse school boards, welfare centers, and other designated sponsors of school lunch programs for a portion of the costs of food served in balanced, nutritious lunches, and served to students in schools operated not for profit, in nonprofit public or parochial schools and nonprofit welfare centers. The Superintendent of Public Instruction shall reimburse the amount of actual cost not to exceed \$0.15 to School Boards for each free lunch and \$0.15 for each free breakfast supplied by them. This appropriation shall be in addition to any federal contributions for Free Lunch Programs.

Shared-time. Basis for Apportionment to Districts

Chapter 122, Section 18-8, 1. (a) Pupils regularly enrolled in a public school for only a part of the school day may be counted on the basis of 1/6 day for every class hour attended pursuant to such enrollment.

Driver Education Course

Chapter 122, Section 27-24.2. Any school district which maintains grades 9 through 12 shall offer a driver education course in any school which it operates. Both the classroom instruction part and the practice driving part of such driver education course shall be open to a resident or

nonresident pupil attending a non-public school in the district wherein the course is offered and to each resident of the district who acquires or holds a currently valid driver's license during the term of the course and who is at least 15 but has not reached 21 years of age without regard to whether any such person is enrolled in any other course offered in any school that the district operates. However, a student may be allowed to commence the classroom instruction part of such driver education course prior to reaching age 15 if such student then will be eligible to complete the entire course within 12 months after being allowed to commence such classroom instruction.

Such a driver education course may include classroom instruction on the safety rules and operation of motorcycles, or motor driven cycles.

Such a course may be commenced immediately after the completion of a prior course. Teachers of such courses shall meet the certification requirements of the Act and regulations of the Superintendent as to qualifications.

Chapter 122, Section 27-24.4. Making claim

The State shall reimburse each school district the per capita cost to the district, not to exceed the amount of \$50. for each pupil who finishes both the classroom

instruction part and the practice driving part of a driver education course that meets the minimum requirements of this Act; provided that if reimbursement has previously been made on account of any student who finished the classroom instruction part only of such course as hereinafter provided, then the reimbursement on account of such student shall be the per capita cost to the district of the practice driving part of such course, not to exceed the amount of \$40. The State shall reimburse each school district the per capita cost to the district, not to exceed the amount of \$10, for each pupil who finishes the classroom instruction part only of such driver education course. Such reimbursement is payable from the Drivers Education Fund in the State treasury. Should the sum appropriated from such fund be sufficient to pay all claims submitted each year the amount payable to each district shall be proportionately reduced. The school district which is the residence of a pupil who attends a nonpublic school in another district that has furnished the driver education course shall reimburse the district offering the course, the difference between the actual per capita cost of giving the course the previous school year and the amount reimbursed by the State. By April 1, the nonpublic school shall notify the district offering the

course of the names and district members of the non-resident students desiring to take such course the next school year. The district offering such course shall notify the district of residence of those students affected by April 15. The school district furnishing the course may claim the non-resident pupil for the purpose of making a claim for State reimbursement under this Act.

Section 22-10. Payments and grants in aid of church or sectarian purpose. No county, city, town, township, school district or other public corporation shall make any appropriation, or pay from any school fund anything in aid of any church or sectarian purpose or to support or sustain any school, academy, seminary, college, university or other literary or scientific institution controlled by any church or sectarian denomination; nor shall any grant or donation of money or other personal property be made by any such corporation to any church or for any sectarian purpose. Any officer or other person having under his charge or direction school funds or property who perverts the same in the manner forbidden in this Section shall be guilty of a Class A misdemeanor.

...INDIANA...

Transportation

Chapter 7, Section 20-9. 1-7-1. Where school children who are attending any parochial school in any school corporation of this state reside on or along the highway

constituting the regular route of a public school bus, the governing body of such school corporation shall afford transportation, without extra charge, by means of such school bus, for the children attending any such parochial school, from their homes, or from some point on the regular route nearest or most easily accessible to their homes, to such parochial school or to and from the point on such regular route which is nearest or most easily accessible to such parochial school.

...IOWA...

Sharing Instructors and Services

Section 257.26. 1. The state board, when necessary to realize the purposes of this chapter, shall approve the enrollment in public schools for specified courses of students who also are enrolled in private schools, when the courses in which they seek enrollment are not available to them in their private schools, provided such students have satisfactorily completed prerequisite courses, if any, or have otherwise shown equivalent competence through testing. Courses made available to students in this manner shall be considered as compliance by the private schools in which such students are enrolled with any standards or laws requiring such private schools to offer or teach such courses.

2. The provisions of this section shall not deprive the respective boards of public school districts of any of their legal powers, statutory or otherwise, and in accepting such specially enrolled students, each of said boards shall prescribe the terms of such special enrollment, including but not limited to scheduling of such courses and the length of class periods. In addition, the board of the affected public school district shall be given notice by the state board of its decision to permit such special enrollment not later than six months prior to the opening of the affected public school district's school year, except that the board of the public school district may, in its discretion, waive such notice requirement. School districts and area education agency boards, may when available, make public school services, which may include health services, special education services, services for remedial education programs, guidance services, and school testing services available to children attending nonpublic schools in the same manner and to the same extent that they are provided to public school students. However, services that are made available shall be provided on premises other than nonpublic school property, except health services which may be provided on nonpublic school premises.

School Lunch in Nonpublic Schools

Section 283A.10. The authorities in charge of nonpublic schools may operate or provide for the operation of school lunch programs in schools under their jurisdiction and may use funds appropriated to them by the general assembly, gifts, funds received from sale of school lunches under such programs, and any other funds available to the nonpublic school. However, school lunch programs shall not be required in nonpublic schools. The department of public instruction shall direct the disbursement of state funds to nonpublic schools for school lunch programs in the same manner as state funds are disbursed to public schools.

Transportation

Section 285.1. 14. Resident pupils attending a nonpublic school located either within or without the school district of the pupil's residence shall be entitled to transportation on the same basis as provided for resident public school pupils under this section. The public school district providing transportation to a nonpublic school pupil shall determine the days on which bus service is provided to public school pupils, and the public school district shall determine bus schedules and routes. In the case of nonpublic school pupils the term "school designated for attendance" means the nonpublic school which is designated for attendance by the parents of the nonpublic school pupil.

15. If the nonpublic school designated for attendance is located within the public school district in which the pupil is a resident, the pupil shall be transported to the nonpublic school designated for attendance as provided in this section.

16. If the nonpublic school designated for attendance of a pupil is located outside the boundary line of the school district of the pupil's residence, the pupil may be transported by the district of residence to a public school or other location within the district of the pupil's residence. A public school district in which a nonpublic school is located may establish school bus collection locations within its district from which nonresident nonpublic school pupils may be transported to and from a nonpublic school located in the district. If a pupil receives such transportation, the district of the pupil's residence shall be relieved of any requirement to provide transportation.

Textbooks

Section 301.1 Adoption - purchase and sale. The board of directors of each and every school district is hereby authorized and empowered to adopt textbooks for the teaching of all branches that are now or may hereafter be authorized to be taught in the public schools of the state, and to contract for and buy said books and any and all other necessary school supplies at said contract

prices, and to sell the same to the pupils of their respective districts at cost, loan such textbooks to such pupils free, or rent them to such pupils at such reasonable fee as the board shall fix, and said money so received shall be returned to the general fund. Textbooks adopted and purchased by a school district may, and shall to the extent funds are appropriated by the general assembly, be made available to pupils attending nonpublic schools upon request of the pupil or the pupil's parent under comparable terms as made available to pupils attending public schools.

Money for Sectarian Purposes

Section 343.8. Public money shall not be appropriated, given, or loaned by the corporate authorities of any county or township, to or in favor of any institution, school, association, or object which is under ecclesiastical or sectarian management or control.

...KANSAS...

Health Services Hearing Testing

Section 72-1204. Hearing testing programs; definitions. As used in this act: (a) "School board" means the board of education of any school district or the governing authority of any nonpublic accredited school,

(b) "School" means all elementary and secondary schools accredited by the state board of education.

(c) "Basic hearing screening" means a hearing testing program for each child conducted with a calibrated audiometer.

Section 72-1205. Same; free tests; who performs tests; reports to parents. Each school board shall provide basic hearing screening without charge to every pupil in its schools during the first year of admission and not less than once every three (3) years thereafter. All tests shall be performed by a person competent in the use of a calibrated audiometer and who has been designated by the school board. The results of the test and, if necessary, the desirability of examinations by a qualified physician shall be reported to the parents or guardians of such pupils.

...KENTUCKY...

Transportation

Section 158.115. Conduct of Schools. Supplementation of school bus transportation system by county out of general funds.--Each county may furnish transportation from its general funds, and not out of funds or taxes raised or levied for educational purposes or appropriated in aid of the common schools, to supplement the present school bus transportation system for the aid and benefit of all pupils of elementary grade attending school in compliance with the compulsory school attendance laws of

the Commonwealth of Kentucky who do not reside within reasonable walking distance of the school they attend and where there are no sidewalks along the highway they are compelled to travel; and any county may provide transportation from its general funds to supplement the present school bus transportation system for the aid of any pupil of any grade who does not live within reasonable walking distance of the school attended by him in compliance with the compulsory school attendance laws and where there are no sidewalks along the highway he is compelled to travel.

Section 159.030. Exemptions from compulsory attendance.

(1) The board of education of the district in which the child resides shall exempt from the requirement of attendance upon a regular public day school every child of compulsory school age:

(a) Who is a graduate from an accredited or an approved four-year high school; or

(b) Who is enrolled and in regular attendance in a private or parochial regular day school approved by the State Board of Education; or

(c) Whose physical or mental condition prevents or renders inadvisable attendance at school or application to study; or

(d) Who is deaf or blind to an extent that renders him incapable of receiving instruction in the regular elementary or secondary schools, but whose mental condition permits application to study.

(2) Before granting an exemption under paragraph (c) of subsection (1) of this section the board of education shall require satisfactory evidence, in the form of a signed statement of a licensed physician or public health officer, that the condition of the child prevents or renders inadvisable attendance at school or application to study. On the basis of such evidence the board may exclude any such child from school.

Conduct of Schools

Section 158.030. Common school defined - Who may attend. - A "common school" is an elementary or secondary school of the state supported in whole or in part by public taxation. No school shall be deemed a "common school" or receive support from public taxation unless the school is taught by a qualified teacher for a term of eight (8) or more months during the school year and every child residing in the district who satisfies the age requirements of this section has had the privilege of attending it. Provided, however, that any child who is six (6) years of age or who may become six (6) years of age by October 1, 1979, and any year thereafter, shall

attend public school as provided by KRS 157.315 or qualify for an exemption as provided by KRS 159.030. Any child who is five (5) years of age or who may become five (5) years of age by October 1, 1979, and any year thereafter, may enter a public school kindergarten. Any child who has successfully completed kindergarten and shall be six years of age by December 31, 1980, shall be eligible for enrollment in the first grade notwithstanding any other age requirements of this section, and any child who has attended nursery school and will be five (5) years of age on or before December 31, 1980, shall be eligible for enrollment in a public kindergarten program in the 1981-82 school year and in the first grade during the 1982-83 school year.

...LOUISIANA...

Purchase of Services

Laws of Louisiana. Providing for the purchase by the State of Louisiana of secular educational services from teachers employed by nonpublic schools and establishing procedures by which the State Superintendent of Public Education shall execute and regulate contracts for such purchases,

Section 1321. Short Title; This act may be referred to as the "Louisiana Secular Educational Services Act."

Section 1322. Findings of Fact, Declaration of Necessity, and Statement of Public Policy. It is hereby determined and declared as a matter of legislative finding;

(1) A clear and present crisis exists in the State of Louisiana with respect to the education of children in elementary and secondary schools.

(2) This crisis is the result of unprecedented rising costs in all areas of operation, and unprecedented demand for improvement in the quality and calibre of education and opportunities for education available for Louisiana children, including those who are being educated in nonpublic schools;

(3) Certain of the financial aspects of this crisis in education in nonpublic schools are the direct result of state and local government taxation to support pay increases for public school teachers, and to defray costs of improved public school facilities; nonpublic schools have been reduced to a noncompetitive position for the employment of qualified teachers of secular educational subjects;

(4) In some of its aspects the crisis in education is national in scope, e.g., the demand for excellence in all programs of instruction, for the creation and implementation (sic) of innovative methods and techniques

of teaching, and for improvement of teacher salary schedules to assure a high level of quality within the teacher corps itself;

(5) That the State of Louisiana recognizes the fact that its literacy rate is among the lowest in the nation and that only through continued concentrated efforts on the part of the Legislature and educators can the educational level be raised;

(6) That the elementary and secondary education of children is today recognized as a public welfare purpose; that nonpublic education, through providing instruction in secular subjects, makes an important contribution to the achieving of such public welfare purpose; that the governmental duty to support the achieving of public welfare purposes in education may in part be fulfilled through governmental contracts for secular educational services provided by teachers in nonpublic schools.

(7) Attendance of children at nonpublic schools constitutes compliance with the Louisiana Compulsory School Attendance law; and that nonpublic education in the State of Louisiana today, as during past years, bears the burden of educating 15 percent of all elementary and secondary school pupils in Louisiana, thus making a significant educational and economic contribution to education in the state;

(8) It is in the public interest that all Louisiana children receive the best education its citizens can provide; that the State of Louisiana has the right, the responsibility, the duty and the obligation, in order to accomplish the objective of quality education for Louisiana children, to provide financial assistance to qualified teachers of secular subjects in nonpublic schools, by the purchase of their secular educational services.

Section 1323. Definitions. The following terms, whenever used or referred to in this Act, shall have the following meaning and interpretation:

(1) "Nonpublic School Teacher" means any person employed by an approved nonpublic school, as defined herein, for the teaching of secular subjects in such school.

(2) "Approved Nonpublic School" means

(a) Any nonprofit elementary or secondary school within the State of Louisiana or which may hereafter be established within the state of Louisiana, offering education to the children of this State in any grades one through twelve, wherein a pupil may fulfill the requirements of the Compulsory School Attendance Law;

(b) which is supported predominately from funds or property derived from non-governmental sources; and

(c) No teacher shall be denied the benefits of this Act because of his or her race, creed, religion or national origin and no teacher shall be denied the benefits of this Act because of the race, creed, religion or national origin of the children he or she teaches.

(3) "Purchase of Secular Educational Services" means the purchase by the Department of Education, from a school teacher, of services in teaching secular subjects to children enrolled in approved nonpublic schools. Payments shall be made directly to the teacher and such payments shall not exceed the State scale paid to teachers in the public school system.

(4) "Secular Subject" means any course of study in the curricula of the public schools, and shall include, but not necessarily be limited to, the teaching of mathematics, language arts, general and physical sciences, physical education, art and music, crafts and trades, home economics, or any other course of study in the curricula of the public schools, other than those involving the teaching or religious beliefs or any form of worship of any sect or religion.

Section 1324. The State Superintendent of Public Education shall administer this Act and shall:

(1) Make contracts for the purchase of secular educational services directly with teachers of secular subjects;

(2) Establish appropriate rules and regulations for the approval of schools and school teachers hereunder, including such regulations as may be necessary for a determination that this Act is being lawfully and properly administered;

(3) Prescribe forms and establish procedures to enable nonpublic school teachers in the State of Louisiana to make application and contract for the sale of secular educational services.

Section 1325. There is hereby created the "Secular Educational Services Fund," which shall be administered by and under the control of the Superintendent of Public Education. All expenses and disbursements in connection with the administration and implementation of this Act shall be made exclusively from said fund. No state funds dedicated to the support of the public schools of Louisiana shall form a part of the "Secular Educational Services Fund" or in any way be used in the implementation of this Act.

In the event that, in any fiscal year, the total revenues paid into the "Secular Educational Services Fund" shall be insufficient to pay the total amount of approved teacher contracts under this Act, such contracts shall be paid in an amount equal to the proportion which the total amount of such contracts bears to the total amount of monies available in said Fund.

This part shall not be implemented by appropriation or otherwise until on and after the date on which the pay schedule for public school teachers under Act 397 or 1968 is implemented.

Textbooks

Section 351. Free school books and other materials of instruction. A. The State Board of Elementary and Secondary Education shall prescribe and adopt school books and other materials of instruction, which it shall supply without charge to the children of this state at the elementary and secondary levels out of funds appropriated therefor by the legislature in accordance with the requirements of Article VIII, Section 13(A) of the Constitution.

B. The board also shall prescribe and supply schoolbooks and other materials of instruction for use by students attending vocational-technical schools and programs under the jurisdiction of the board.

Transportation

Section 158. School buses for transportation of students; employment of bus operators; alternative means of transportation; improvement of school bus turnarounds.

A. Each parish and city school board shall provide transportation for any student attending a school of

suitable grade approved by the State Board of Elementary and Secondary Education if the student resides more than one mile from such school and the school is within the jurisdictional boundaries of the parish or school board. For that purpose, any parish or city school board may employ school bus operators as hereinafter defined in R.S. 17:491. However, nothing in this Section shall prohibit a parish or city school from entering into contracts or mutual agreements for providing school bus transportation.

B. If a parish or city school board determines transportation by school bus is impractical or is not available or that other existing conditions warrant it, the board may make arrangements for the use of common carriers in accordance with uniform standards established by the state superintendent of education and at a cost based upon the actual costs of such transportation.

C. If transportation is not provided by the parish or city school board by reason of economically justifiable reasons approved by the state superintendent of education and the Board of Elementary and Secondary Education, the Department of Education shall reimburse the parent or tutor, in accordance with the provisions of Subsection D hereof, of any student who resides more than one mile

from the school attended by the student at the rate of one hundred dollars per student but not to exceed two hundred dollars for any one family.

D. Claims for reimbursement shall be submitted to the superintendent of education by the parent or tutor of an eligible student not later than July 1 of each year for reimbursement claims for the previous school year. Each claim shall be in the form of an affidavit executed by the parent or tutor of the student, affirming the accuracy of the claim. The affidavit shall be in the form prescribed by the state superintendent of education and shall be furnished by him to each parish and city superintendent of education. The superintendent of education shall notify principals of public and nonpublic schools no later than April 1 of each year that claim forms for reimbursement are available at the local school board offices. Beginning with the 1979-80 academic school year, claims for reimbursement shall be in the form of a claim made by each parent or tutor affirming to the accuracy of such claim, which form shall contain a statement that any person who knowingly or willingly violates the provisions of this Section by filing a false claim or fraudulent claim shall be guilty of a misdemeanor and shall be imprisoned for not more than one (1) year or fined not more than \$500 or both, and that the filing of any false claim shall be and constitute a

violation of the criminal laws of the state of Louisiana and particularly shall constitute false swearing under the provisions of R.S. 14:125. This provision of law shall supercede and be in lieu of the filing of a notarized affidavit as heretofore required by this Section. Within sixty days after the beginning of the fiscal year the Department of Education shall begin issuing checks payable to parents or tutors of the students.

E. Any parish school board may provide gravel or contribute funds to the local governing authority for the gravelling of school bus turnarounds. However, nothing in this Section shall prohibit the local policy jury from gravelling school bus turnarounds at the request of the school board without the necessity of said school board furnishing any materials or funds for the work done.

F. The provisions of this Section shall apply to eligible public and nonpublic school students. However, these provisions shall not apply to any student or the parent or tutor of any student who attends a school which discriminates on the basis of race, creed, color, or national origin.

G. Any person who knowingly and willfully violates the provisions of this Section by filing a false or fraudulent claim shall be guilty of a misdemeanor and shall be imprisoned for not more than six months or fined not more than five hundred dollars, or both.

Free Lunches for School Children

Section 17-191. Terms defined. As used in this Sub-part:

(1) "School board" means any parish or city school board.

(2) "School" means any school wherein children between the ages of 5 and 17, both inclusive, are in attendance.

(3) "School lunch program" means a program under which lunches are served by any school in this state on a non-profit basis to children in attendance, including any such program under which a school receives assistance out of the funds appropriated by the Congress of the United States.

Section 17-195. Operation of lunch program; general powers of school boards; forbidden acts; penalties.

The school boards, in order to provide for the operation of school lunch programs in schools under their jurisdiction, may enter into contracts with respect to food, services, supplies equipment, and facilities for the operation of such programs and may use therefor funds disbursed to them under the provisions of the Sub-part any federal funds, commodities, gifts, and any other funds that may be received for school lunches under this program. Each parish school board and the principal of each school shall post in a prominent place the cost of the lunches and all persons partaking of such lunches

who are able to pay for the same shall pay directly to the sponsor the cost thus posted. No student shall be requested to pay more than the actual cost of the lunch, less the amount of reimbursement paid to the sponsor from state and federal funds. No discrimination against any child shall be made by the sponsor because of his inability to pay, nor shall the sponsor publish or permit to be published the names of any children unable to pay for the lunch. Whoever publishes or permits the publication of the name of any child unable to pay for such lunch shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than one hundred dollars, or imprisoned for not more than ninety days or both.

State funds reimbursed to school boards shall be used for the purchase of food only. Provided, that any surplus of funds, after the payment for food purchased, may be used for preparation or serving the school lunches. School boards shall be required to purchase food wholesale at the lowest prices quoted for good quality products or at prices no greater than the wholesale rate for the same item.

...MAINE...

Transportation

Title 30, Section 5104, Schools and Libraries. A municipality may raise or appropriate money:

1. Public schools. Providing for public schools and libraries.
2. Bands. Providing for school bands and other organized activities conducted under the supervision of the superintending school committee.
3. Physical education. Providing for physical fitness programs in the schools.
4. Maintenance. Providing for the construction, repairs and maintenance of buildings and equipment for educational institutions with which a municipality has a contract as provided in Title 20, section 1289.
5. Transportation. Providing for the transportation of school children to and from schools other than public schools, except such schools as are operated for profit in whole or in part. Historical note for 5.

A. Such sums shall not be considered in computing the net foundation program allowance on which state subsidy is computed under Title 20, Section 3722. This paragraph shall not apply to an administrative unit which transports children to a school pursuant to Title 20, Sections 1289 and 1291.

B. The superintendent of schools in each municipality that conveys such school children shall annually on or before April 1st make a return to the Commissioner of Education, showing the number of school children conveyed to and from schools other than public schools in such manner as the commissioner may require. Any municipality which fails to make the return shall be subject to Title 20, Section 854. The commissioner shall compute the school children transportation costs in the net foundation program by deducting from the total school children transportation cost that percentage that the number of school children being transported to schools other than public schools bears to the total number of school children being transported by the municipality.

C. This subsection shall not be effective in any city until a majority of the legal voters, present and voting, at any regular election so vote, and shall not be effective in any town until an article in a town warrant so providing shall have been adopted at an annual town meeting. The question in appropriate terms may be submitted to the voters at any regular city election by the municipal officers thereof and shall be so submitted upon petition of at least 20% of the number of voters voting for the gubernatorial candidates at the last state-wide election in that municipality.

Such petition shall be filed with the municipal officers at least 30 days before such regular election. When a municipality has voted in favor of adopting this subsection, said subsection shall remain in effect until repealed in the same manner as provided for its adoption.

Schools and Libraries

Section 5104. Textbooks. (6) Providing for the purchase of those secular textbooks which have been approved by the school committee or board of directors for use in public schools in the municipality or district and to loan those textbooks to pupils or to the parents of pupils attending nonpublic elementary and secondary schools. The loans shall be based upon individual requests submitted by the nonpublic school pupils or parents. The requests shall be submitted to the school committee or board of directors of the administrative district in which the student resides. The request for the loan of textbooks shall, for administrative convenience, be submitted by the nonpublic school student or parent to the nonpublic school which shall prepare and submit collective summaries of the individual requests to the school committee or board of directors. As used in this section, "textbook" means any book or book substitute which a pupil uses as a text or text substitute in a particular class or program in the school he regularly attends:

7. Physician, nursing, dental and optometric services. Providing physician, nursing, dental and optometric services to pupils attending nonpublic elementary and secondary schools within a district or municipality. These services may be provided in the school attended by the nonpublic school pupil receiving the services;

8. Tests and scoring services. Providing for the use by pupils attending nonpublic elementary and secondary schools within the municipality or a district the standardized tests and scoring services which are in use in the public schools serving that municipality or district; and

9. Advisory organizations. For obtaining the services of educational advisory organizations. The Legislature recognizes the Maine School Management Association and the Maine School Boards Association as such non-profit advisory organizations, and declares these associations to be instrumentalities of their member school administrative units, municipal and quasi-municipal corporations, with their assets upon their dissolution to be delivered to the Secretary of State to be held in custody for the municipalities of the State. Such educational advisory organizations may receive federal grants or contributions for their activities with respect to the solution of local problems.

No municipality shall provide health or remedial services to nonpublic school pupils as authorized by this section, unless those services are available to pupils attending the public school serving the municipality. Health and remedial services and instructional materials and equipment provided for the benefit of nonpublic school pupils pursuant to this section, and the admission of pupils to the nonpublic schools shall be provided without distinction as to race, creed, color, the national origin of the pupils or of their teachers. No instructional materials or instructional equipment shall be loaned to pupils in nonpublic schools or their parents unless similar instructional material or instructional equipment is available for pupils in a public school served by a municipality.

No municipality shall provide services, materials or equipment for use in religious courses, devotional exercises, religious training or any other religious activity.

...MARYLAND...

Transportation

Thirteen of the 24 school systems in Maryland have enabling legislation which allows local governments to make some public money available for the transportation of parochial school children.

Anne Arundel County, Laws of Maryland 1963, Chapter 854.

All children who attend any parochial schools in the county, which schools do not receive state aid, and who reside on or along or near to the public highways of the county, on which there is now or hereafter operated a public school bus or conveyance provided by the board of education of the county for transporting children to and from the public schools of the county, shall be entitled to transportation on such buses or conveyances as now are or may be hereafter established, operated or provided by the board of education of the county for transporting children to and from the public schools of the county; and the same shall be provided for them by the board of education of the county, subject to the conditions hereinafter set forth, from a point on the public highways nearest to or most accessible to their respective homes to a point on the public highways nearest or most accessible to their respective schools, without changing the routes of the buses or conveyances now or hereafter established by the board of education of the county for transporting children to and from the public schools and such transportation shall be provided by the board of education, as aforesaid, for all the children attending schools described herein, upon the same terms and conditions as now are or as may be hereafter established by the

board of education of the county for children now attending public schools. Whenever there are children attending schools, which schools do not receive state aid, except such schools as are operated for profit in whole or in part, the board of education of the county shall make rules and contracts for the transportation of such children to and from such schools; provided, however, that the transportation benefits accorded children under this section shall be governed by the same rules and standards applicable to and shall be neither more nor less than the transportation benefits accorded public school students by the board of education of the county.

Enabling legislation for the other 12 counties use essentially the same language as the law for Anne Arundel County. The other counties and their codes follow:

Allegany County--Laws of Maryland 1933, Chapter 399

Baltimore County--Laws of Maryland 1961, Chapter 525

Calvert County--Laws of Maryland, extra session 1948,
Chapter 11

Cecil County--Laws of Maryland 1957, Chapter 70

Charles County--Laws of Maryland 1947, Chapter 918,
Section 241A

Harford County--Laws of Maryland 1955, Chapter 112

Howard County--Laws of Maryland 1943, Chapter 648,
Section 291A

Montgomery County--1945 Laws of Maryland, Chapter 977

Prince George's County--Laws of Maryland 1947,
Chapter 910

St. Mary's County--Laws of Maryland 1941, Chapter 609
Section 202

Talbot County--Laws of Maryland 1955, Chapter 403

Washington County--Laws of Maryland 1970, Article 77,
Section 146A

Materials of Instruction

Section 7-107. Connection with closed-circuit educational television system by private and parochial schools. On application and at no expense to the county or state, each county board may allow any private or parochial school to connect its facilities to a closed-circuit educational television system that is maintained for the use of the public school system for any program presented by way of the system.

Section 7-403. Hearing and vision screening tests.

(a) County boards or health departments to provide tests. - (1) Each county board or county health department shall provide hearing and vision screening tests for all students in the public schools.

(2) Each county health department shall provide and fund hearing and vision tests for all students;

(i) In any private school that has received a certificate of approval under Section 2-206 of this article; and

(ii) In any nonpublic educational facility in this State approved as a special education facility by the Department.

(b) When administered - (1) Unless evidence is presented that a student has been tested within the past year, the tests required under subsection (1) of this section shall be given in the year a student enters a school system and when he enters the ninth grade.

(2) Further testing shall be done in accordance with the bylaws adopted by the State Board.

(c) Records. - The results of the hearing and vision tests required by this section shall be:

(1) Made a part of the permanent record file of each student; and

(2) Given to the parents of any student who fails the tests.

(d) Adoption of standards, rules, and regulations. - In cooperation with the Department of Health and Mental Hygiene, the Department of Education shall adopt standards, rules, and regulations to carry out the provisions of this section.

(e) Students excepted - A student whose parent or guardian objects in writing to hearing and vision testing on the ground that it conflicts with the tenets and practice of a recognized church or religious denomination

of which he is an adherent or member may not be required to take these tests.

...MASSACHUSETTS...

Transportation

Chapter 76, Section 1. School attendance regulated.-- Pupils who, in the fulfillment of the compulsory attendance requirements of this section, attend private schools of elementary and high school grades so approved shall be entitled to the same rights and privileges as to transportation to and from school as are provided by law for pupils of public schools and shall not be denied such transportation because their attendance is in a school which is conducted under religious auspices or includes religious instruction in its curriculum, nor because pupils of the public schools in a particular city or town are not actually receiving such transportation.

...MICHIGAN...

Supportive Personal Health Services

Section 14.15(9101). Elementary and secondary school health services plan development; contents; school nurse employment; exempt pupils.

Section 9101. (1) The department shall establish a plan for health services for pupils in the elementary and secondary schools of this state. The plan shall include

a definition of school health services and standards for the implementation of the plan. The department shall cooperate with the department of education and the state health planning and development agency in developing the plan to ensure coordination among those agencies.

(2) The plan may include the provision of health services by and through intermediate and local school districts.

(3) The plan shall be consistent with the program of school nursing services adopted pursuant to Section 1252 of Act No. 451 of the Public Acts of 1976, being Section 380.1252 of the Michigan Compiled Laws, and shall encourage employment of individuals certified by the department of education as school nurses pursuant to that section.

(4) The plan shall not require health instructions for a pupil whose parent or guardian objects in writing and specifically requests that the pupil be excused. The plan shall not require a pupil to attend a class for which the pupil is excused pursuant to Act No. 451 of the Public Acts of 1976, as amended, being sections 380.1 to 380.1853 of the Michigan Compiled Laws.

Section 14.15(9105). Pupil examination. Sec. 9105. Examinations or health services provided to school children in attendance in the elementary and secondary

grades shall be provided on an equal basis to school children in attendance in both public and nonpublic schools.

Section 15.41217. Sectarian schools, restriction on application of moneys; transportation of nonpublic school pupils. Sec. 1217. A board of a school district shall not apply moneys received by it from any source for the support and maintenance of a school sectarian in character. This section does not prohibit the transportation to school and from school of pupils attending nonpublic schools under Sections 1321 and 1322.

Section 15.41321. Transportation for pupils; provision; non-public schools, pupils at; provision without charge. Sec. 1321. (1) A board of a school district providing transportation for its resident pupils, except handicapped pupils transported under article 3, shall provide transportation for each resident pupil in the elementary and secondary grades for whom the school district is eligible to receive state school aid for transportation. These pupils shall be attending either the public or the nearest state approved nonpublic school in the school district to which the pupil is eligible to be admitted. Transportation shall be without charge to the resident pupil, the parent, guardian, or person standing in loco parentis to the pupil.

Distances and routes; nonpublic school pupils.

(2) A school district shall not be required to transport or pay for transportation of a resident pupil living within $1\frac{1}{2}$ miles, by the nearest traveled route, to the public or state approved nonpublic school in which the pupil is enrolled. A school district shall not be required to transport or pay for the transportation of a resident pupil attending a nonpublic school who lives in an area less than $1\frac{1}{2}$ miles from a public school in which public school pupils are not transported, except that the school district shall be required to transport or pay for the transportation of the resident pupil from the public school within the area to the nonpublic school the pupil attends.

Nonpublic schools outside district. (3) A school district shall not be required to transport or pay for the transportation of resident pupils to state approved nonpublic schools located outside the district unless the school district transports some of its resident pupils, other than handicapped pupils under article 3, to public schools located outside the district, in which case the school district shall transport or pay for the transportation of resident pupils attending a state approved nonpublic school at least to the distance

of the public schools located outside the district to which the district transports resident pupils and in the same general direction.

Section 15.41322. Routes; rules; nonpublic school pupils, limitations on transportation. Sec. 1322. (1) A pupil attending public school or the nearest state approved nonpublic school available, to which nonpublic school the pupil may be admitted, shall be transported along the regular routes as determined by the board to public and state approved nonpublic schools. Transportation to public and the nearest state approved nonpublic school located within or outside the district to which nonpublic school the pupil is eligible to be admitted shall be provided under the rules promulgated by the state board. Rules shall not require the transportation or payment for transportation for nonpublic school pupils on days when public school pupils are not transported.

Construction of Section. (2) This section shall not be construed to require or permit transportation of pupils to a state approved nonpublic school attending in the elementary grades when transportation is furnished by the school district for secondary pupils only, nor to require or permit the transportation of pupils to a state approved nonpublic school attending the secondary

grades when transportation is furnished by the district for elementary pupils only.

Vehicles; adequacy; capacity. (3) Vehicles used for the transportation of pupils shall be adequate and of ample capacity.

Section 15.41324. Contracting for transportation. Sec. 1324. The board of a school district may enter into a contract with the board of another district or with private persons to furnish transportation for nonresident pupils attending public and state approved nonpublic schools located within the district or in other districts. The price paid for the transportation shall not be less than the actual cost thereof to the district furnishing transportation.

Section 15.41296. Auxiliary services for nonpublic school pupils; state funds, use; rules of state board. Sec. 1296. The board of a school district that provides auxiliary services specified in this section to its resident pupils in the elementary and secondary grades shall provide the same auxiliary services on an equal basis to pupils in the elementary and secondary grades at nonpublic schools. The board may use state school aid to pay for the auxiliary services. The auxiliary services

shall include health and nursing services and examinations; street crossing guards services; national defense education act testing services; teacher of speech and language services; school social work services; school psychological services; teacher consultant services for handicapped pupils and other ancillary services for the handicapped; remedial reading; and other services determined by the legislature. Auxiliary services shall be provided under rules promulgated by the state board.

Driver's Education

Section 9.2511. (c) From the moneys credited to the driver education fund, the legislature shall annually appropriate the sum of \$100,000.00 to the department of education for state administration of the program. In addition there shall be distributed to local public school districts from the driver education fund the amount of \$30.00 per student, but not to exceed the actual costs for each student completing an approved driver education course. (The) courses shall be conducted by the local public school district, and enrollment in driver education courses shall be open to children enrolled in the high school grades of public, parochial, and private schools as well as resident out-of-school youth. Reimbursement to local school districts shall be made on the basis of an application made by the local

school district superintendent to the department of education,

(e) The department of education (may promulgate) rules, including instructional standards, teacher qualifications, reimbursement procedures, and other requirements which will further implement this legislation.

Section 15.1927. Act construed as to distribution of primary school fund.

Sec. 7. Nothing in this act contained shall be construed so as to permit any parochial, denominational, or private school to participate in the distribution of the primary school fund.

...MINNESOTA...

Transportation of School Children

Section 123.76. Policy.

In districts where the state provides aids for transportation it is in the public interest to provide equality of treatment in transporting school children of the state who are required to attend elementary and secondary schools pursuant to Minnesota Statutes, Chapter 120, so that the health, welfare and safety of such children, while using the public highways of the state, shall be protected.

School children attending any schools, complying with Minnesota Statutes, Section 120.10, Subdivision 2, are therefore entitled to the same rights and privileges relating to transportation.

Section 123.77. Definitions

Subdivision 1. The following words and terms in Sections 123.76 to 123.79 shall have the following meanings ascribed to them.

Subdivision 2. "District" means any school district or unorganized territory as defined in Minnesota Statutes, Section 120.02.

Subdivision 3. "School" means any school as defined in Minnesota Statutes, Section 120.10, Subdivision 2.

Subdivision 4. "School board" means the governing body of any school district or unorganized territory.

Subdivision 5. "School children" means any student or child attending or required to attend any school as provided in the Education Code, Minnesota Statutes, Chapters 120-129.

Section 123.73. Equal treatment.

Subdivision 1. The school board of any district which is now or hereafter eligible to receive state aid for transportation under Minnesota Statutes, Chapters 123 and 124, shall provide equal transportation within the district for all school children to any school when transportation is deemed necessary by any board by

reason of distance or traffic condition in like manner and form as provided in Minnesota Statutes, Sections 123.16, Subdivisions 3 and 4; 123.18; 123.39; 124.22; and 124.51, Subdivision 5, when applicable.

Subdivision 1a. (a) The school board of any local district shall provide school bus transportation to the district boundary for school children residing in the district at least the same distance from a nonpublic school actually attended in another district as public school pupils are transported in the transporting district, whether or not there is another nonpublic school within the transporting district, if the transportation is to schools maintaining grades or departments not maintained in the district or if the attendance of such children at school can more safely, economically, or conveniently be provided for by such means. (b) The school board of any local district may provide school bus transportation to a nonpublic school in another district for school children residing in the district and attending that school, whether or not there is another nonpublic school within the transporting district, if the transportation is to schools maintaining grades or departments not maintained in the district or if the attendance of such children at school can more safely, economically, or conveniently be provided for by such means. If the board transports children to a nonpublic

school located in another district, the nonpublic school shall pay the cost of such transportation provided outside the district boundaries.

Subdivision 2. When transportation is provided, the scheduling of routes, manner and method of transportation, control and discipline of school children and any other matter relating thereto shall be within the sole discretion, control and management of the school board.

Section 123.79. Funds and aids.

Subdivision 1. Such state aids as may become available or appropriated shall be governed by Minnesota Statutes, Section 124.225, be paid to the school district entitled thereto for the equal benefit of all school children, and disbursed in such manner as determined by the board.

Subdivision 2. The board of any district may expend any monies in its treasury, whether received from state or any other source for the purpose of providing equal transportation treatment of all school children attending school.

Section 24.17. Definition of pupil units.

Subdivision 1. Pupil units for each resident pupil in average daily membership shall be counted as follows:

(1) In an elementary school;

(a) For each handicapped pre-kindergarten pupil and each handicapped kindergarten pupil, as defined in section 120.03, enrolled in a program approved by the commissioner, a number of pupil units equal to the ratio of the number of hours of education services required in the school year by the pupil's individual education program plan, developed pursuant to the rules of the state board, to 875, but not more than one pupil unit;

(b) For kindergarten pupils, other than those in clause (a), enrolled in one-half day sessions throughout the school year or the equivalent thereof, one-half pupil unit; and

(c) For other elementary pupils one pupil unit.

(2) In secondary schools, one and four-tenths pupil units. Pupils enrolled in the seventh and eighth grades of any school shall be counted as secondary pupils.

(4) To meet the problems of educational overburden caused by broken homes, poverty and low income, each pupil in clauses (1) and (2) from families receiving aid to families with dependent children or its successor program who is enrolled in the school district on October 1 shall be counted as an additional five-tenths pupil unit. By March 1 of each year the department of public welfare shall certify to the department of education, and to each school district to the extent the information pertains

to it, that information concerning children from families with dependent children who were enrolled in the school district on the preceeding October 1 which is necessary to calculate pupil units. Additional aids to a district for such pupils may be distributed on an delayed basis until the department of education publicly certifies that the information needed for paying such aids is available on such a timely basis that such aids may be paid concurrently with other foundation aids.

(5) In every district where the number of pupils from families receiving aid to families with dependent children or its successor program exceeds five percent of the total actual pupil units in the district for the same year, as computed in clauses (1) and (2), each such pupil shall be counted as an additional one-tenth of a pupil unit for each percent of concentration over five percent of such pupils in the district. The percent of concentration shall be rounded down to the nearest whole percent for purposes of this clause, provided that in districts where the percent of concentration is less than six, no additional pupil units shall be counted under this clause for pupils from families receiving aid to dependent children or its successor program and provided further that no such pupil shall be counted as more than one-tenth additional pupil units pursuant to clauses (4) and (5).

Such weighting shall be in addition to the weighting provided in clauses (1), (2) and (4). School districts are encouraged to allocate a major portion of the aids that they receive on account of clauses (4) and (5) to primary grade programs and services, particularly to programs and services that involve participation of parents.

(6) Where the total pupil units of a district are used as a multiplier in determining foundation aids and spending and levy limitations and where the actual number of pupil units has decreased from the prior year, the number of pupil units shall equal the greater of (a) the quotient obtained when the sum of the numbers of actual pupil units in the district for the three prior years and the current year, is divided by four or (b) the number of actual pupil units for the current year increased by .6 times the difference between the actual pupil units for the prior year and the current year. Only pupil units as computed in clauses (1) and (2) shall be included for purposes of computations made pursuant to this clause. This clause shall expire June 30, 1980.

(7) In districts maintaining classified secondary schools where the actual number of pupil units has increased from the prior year, the additional pupil units over the prior year, as computed in clauses (1) and (2), shall be multiplied times one-tenth for each percent

of increase over the prior year and a number of pupil units equal to the product shall be added to the other units for the district. The percent of increase shall be rounded up to the next whole percent for purposes of this clause; provided that the number of pupil units of increase over the prior year shall under no circumstances be multiplied by more than five-tenths. This clause shall expire June 30, 1980.

(8) Only pupil units in clauses (1) and (2) shall be used in computing adjusted maintenance cost per pupil unit.

Driver Education

Section 171.04. Persons not eligible for driver's licenses.

The department shall not issue a driver's license hereunder:

(1) To any person who is under the age of 16 years; to any person under 18 years unless such person shall have successfully completed a course in driver education, including both classroom and behind-the-wheel instruction, approved by the department of public safety or, in the case of a course offered by a private, commercial driver education school or institute employing driver education instructors, by the department of public

safety, except when such person has completed a course of driver education in another state or has a previously issued valid license from another state or country; nor to any person under 18 years unless the application of license is approved by either parent when both reside in the same household as the minor applicant, otherwise the parent having custody or with whom the minor is living in the event there is no court order for custody, or guardian having the custody of such minor, or in the event a person under the age of 18 has no living father, mother or guardian, the license shall not be issued to such person unless his application therefor is approved by his employer. Behind-the-wheel driver education courses offered in any public school shall be open for enrollment to persons between the ages of 15 and 18 years residing in the school district or attending school therein. Any public school offering behind-the-wheel driver education courses may charge an enrollment fee for the behind-the-wheel driver education course which shall not exceed the actual cost thereof to the public school and the school district. The approval required herein shall contain a certification of the age of the applicant;

(2) To any person whose license has been suspended during the period of suspension except that a suspended license may be reinstated during the period of suspension

upon the licensee furnishing proof of financial responsibility in the same manner as provided in the safety responsibility act;

(3) To any person whose license has been revoked except upon furnishing proof of financial responsibility in the same manner as provided in the safety responsibility act and if otherwise qualified;

(4) To any person who is an habitual drunkard as determined by competent authority or is addicted to the use of narcotic drugs;

(5) To any person who has been adjudged legally incompetent by reason of mental illness, mental deficiency, or inebriation, and has not been restored to capacity, unless the department is satisfied that such person is competent to operate a motor vehicle with safety to persons or property;

(6) To any person who is required by this chapter to take an examination, unless such person shall have successfully passed such examination;

(7) To any person who is required under the provisions of the safety responsibility laws of this state to deposit proof of financial responsibility and who has not deposited such proof;

(8) To any person when the commissioner has good cause to believe that the operation of a motor vehicle

on the highways by such person would be inimical to public safety or welfare;

(9) To any person when, in the opinion of the commissioner, such person is afflicted with or suffering from such physical or mental disability or disease as will affect such person in a manner to prevent him from exercising reasonable and ordinary control over a motor vehicle while operating the same upon the highways; nor to a person who is unable to read and understand official signs regulating, warning, and directing traffic.

...MISSISSIPPI...

Student Loans

Section 37-51-1. Legislative Declaration. It is hereby determined and declared that the state reaffirms its commitment and dedication to public school education; that nothing contained in this chapter shall be administered in any manner whatever to be an abandonment or impairment or public school education in this state; that the state calls upon all public school trustees, administrators, teachers, parents, and the public at large to continue full support of the public school system of this state; and that, especially during these difficult times, all school officials, administrators, teachers and others with primary responsibility for the public school system

merit and need continued support and encouragement in their efforts.

Section 37-51-3. State educational finance commission shall administer chapter. The terms and provisions of this chapter shall be administered and executed by the state educational finance commission. For the purpose of this chapter, the term "commission" shall mean "state educational finance commission" except where the context clearly indicates otherwise.

Section 37-51-5. State educational loan fund created. There shall be, and there is hereby, created in the state treasury, a special fund to be known as the "state educational loan fund." The said fund shall consist of such amounts as may be paid into said fund by appropriation and also such amounts as may be returned to said fund as repayments, both principal and interest, from loans provided for in this chapter.

Section 37-51-7. Duties and authority of the commission. It shall be the duty of the commission to receive and pass upon, allow or disallow, all applications for loans made by students who desire to receive a secular education in any of the grades one through twelve in any school in this state constituting a bona fide school as defined in a general regulation of commission, other than in the

free public school system of this state, and who are acceptable for enrollment in any approved nonfree school system. The commission may make such investigation into the financial status of the parents of such students who apply for loans as it deems advisable, to determine the extent of the need for said loan. The commission may prescribe such rules and regulations as it may deem necessary and proper to carry out the purposes of this chapter.

The commission shall have the authority to grant loans from the "state educational loan fund" to such applicants as are qualified to receive them and on such terms as may be prescribed by regulation of the commission and by this chapter.

Section 37-51-9. "Secular education of children" defined. The "secular education of children" as used in this chapter shall mean the education of children in those subjects, and only those subjects, which are required to be taught by state law to the same extent as those subjects are taught in the public schools of the state or which are provided in public schools throughout the state; it shall not include the education of children in any course in religion or any course expressing religious teaching or the morals or forms of worship of any sect.

Section 37-51-11. Eligibility of applicants. In addition to the requirements set out in section 37-51-7, to be eligible for a loan an applicant must:

(a) Be a bona fide actual resident of the State of Mississippi; and

(b) Attend any bona fide approved nonfree elementary or secondary school.

Section 37-51-13. Applications for loans; transfers.

An applicant shall not have to submit but one initial application for a loan; thereafter, he or she shall file a request for each additional year's loan amount up to the maximum amount allowed. Accompanying each said request shall be a certification from the school which applicant is attending certifying that the applicant is in attendance and in good standing.

Each application by or on behalf of said student shall be signed by and made also in the name of the parent or legal guardian of said student if he or she be a minor. However, the parent or legal guardian shall not be considered the applicant for the purposes of the limitations in section 37-51-15.

In the event that the applicant transfers to another approved school within the state, he shall cause the certification to immediately go forth to the commission,

setting out the school from which and to which he has transferred.

Section 37-51-15. Limitations on amounts of loans. Applicants who are granted loans may receive a loan in any amount, not exceeding two thousand four hundred dollars (\$2,400.00) to any one applicant. Said amount is to be paid in annual, semiannual or quarterly installments not exceeding two hundred dollars (\$200.00) per school year, and shall be used to defray part of the applicant's tuition and other costs of attending said schools. The loans herein provided shall not exceed the limitations set out above, but they may be for any such lesser amounts as may be required.

Section 37-51-17. Contract agreeing to terms and conditions of loan; suits thereon. Each applicant, if an adult, or his parent or legal guardian in his behalf, if a minor, before being granted a loan shall enter into a contract with the State of Mississippi agreeing to the terms and conditions upon which the loan shall be made. Said contract shall include such terms and conditions as are necessary to carry out the full purpose and intent of this chapter. The form of said contract shall be prepared and approved by the attorney general of this state, and said contract shall be signed by the executive secretary of the commission.

The commission is hereby vested with full and complete authority to sue in its own name any applicant for any balance due the state on any such contract. Such suit shall be filed and conducted by the attorney general of the State of Mississippi, or by private counsel, which the commission is hereby authorized to employ for such purpose.

Section 37-51-19. Repayment of Loans. Any loans made or granted to any applicant shall be made and based upon the following conditions of repayment:

(a) Repayment in full of the principal of the loan may be made at any time prior to three years after graduation from or termination of attendance in an approved school, plus simple interest at the rate of three percent per annum from the date of each payment made to applicant.

(b) Repayment of the principal of the loan after three years from the date of graduation from or termination of attendance in an approved school shall be with interest at the rate of four percent per annum from the date of each payment made to applicant. From and after the fourth year following graduation or termination of attendance in an approved school, the rate of interest to be paid on the remaining unpaid balance, after such fourth year, shall increase at the rate of one-half percent per annum to a maximum of eight percent.

(c) No applicant shall be entitled to more than twelve years after said graduation or termination of attendance in an approved school within which to repay said loan.

Section 37-51-21. Credits on loans. The amount of any loan made or granted to any applicant shall be reduced by a credit at the rate of one hundred dollars (\$100.00) per annum for each year from and after five years from the initial date of the granting of said loan that applicant continues to reside in the State of Mississippi.

In addition, the amount of said loan shall be reduced by a credit at the rate of one hundred dollars (\$100.00) per annum for each year that applicant continues his education at any junior college, college or university within the State of Mississippi after his graduation or termination from secondary school.

In addition, the amount of said loan shall be reduced by a credit at the rate of two hundred dollars (\$200.00) per annum for each year that applicant resides within the state and teaches in any school system therein, beginning from the date of his certification or licensing by the state department of education to teach in any such system.

Driver Education and Training

Section 37-25-3. Establishing and maintaining driver education and training program. The school board of any school district maintaining a secondary school which includes any of the grades nine through twelve inclusive, may, in its discretion, establish and maintain driver education and training programs for pupils enrolled in the day secondary schools in that district.

Section 37-25-7. Pupil eligibility; temporary permits. Each school district providing driver training and education shall prescribe regulations determining who can best profit by and who shall receive instruction under this program. It is provided, however, that any student receiving instruction under this chapter shall be:

- (a) Fourteen years of age or above;
- (b) A regularly enrolled student in the ninth, tenth, eleventh or twelfth grades; and
- (c) A full-time student in the respective secondary school.

A temporary permit issued by the Mississippi Highway Safety Patrol shall be issued and valid only while such a student is actually enrolled in an approved course of driver education which consists of thirty hours of classroom and six hours of dual driving instruction. Said temporary permit shall expire at the end of the driver training course.

Textbooks

Section 37-43-51. Reports required from non-public schools receiving free textbooks. The management of all private, parochial or denominational schools wherein the board is furnishing to the students thereof free school textbooks and said free school textbooks are used by the students in said school, shall file annually with the county superintendent of education wherein said school is located on or before July 1 of each year a report showing the number of students receiving instruction, the number of students in regular attendance, the number of teachers employed and any other facts required by the state board of education as will show the grade, character and amount of educational work actually done in said school.

Any person required by this section to do so who shall refuse, neglect or fail to file the report herein required shall be guilty of a misdemeanor.

Financial Assistance

Section 37-23-63. Eligibility to receive state financial assistance. Every child who is a resident citizen of the State of Mississippi of educable or trainable mind, under twenty-one years of age, who has not finished or graduated from high school, and who is in attendance in

a private or parochial school, shall be eligible and entitled to receive state financial assistance in the amount set forth in Section 37-23-69,

...MISSOURI...

School lunch program--funds--duties of state board

Section 167-201. 1. The provisions of the National School Lunch Act, as amended (60 U.S. Stat. at Large 230; 42 U.S.C.A. 1751 to 1760), are accepted, and the funds provided thereby shall be accepted for disbursement.

2. All funds under the provisions of the act shall be deposited in the state treasury to the credit of the fund to be known as the "School Lunch Fund" which is hereby established.

3. The state board of education is designated as the state educational agency, as provided in the act, and is charged with the duty and responsibility of cooperating with the Secretary of Agriculture in the administration of the act and is delegated all power necessary to such cooperation.

...MONTANA...

Transportation

Section 20-10-123. Attending other than public school.-- Any child attending other than a public school may secure

from the clerk of the school district a permit to ride on a public school bus, provided, that, for such service the parents or guardian of the child shall pay their proportionate share of the cost of such transportation.

...NEBRASKA...

...NEVADA...

Section 333.490. Procurement, distribution of federal surplus property to eligible institutions, organizations.

1. The chief is authorized and directed to do all things necessary to secure, warehouse and distribute throughout the state federal donable surplus property to tax-supported or nonprofit schools and other health and educational institutions, to civil defense organizations, to volunteer fire departments, and to such other institutions or activities as may not be or hereafter become eligible under federal law to acquire such property. The chief is authorized to make such certifications, take such action and enter into such contracts and undertakings for and in the name of the state as may be authorized or required by federal law or regulations in connection with the receipt, warehousing and distribution of federal donable surplus property received by him. He is further authorized to adopt, amend or rescind such rules and regulations, prescribe such requirements, and

take such action as he may deem necessary to assure maximum utilization by and benefit to eligible institutions and organizations from such federal donable surplus property. He shall make a charge to the schools and institutions receiving donable surplus property secured through the purchasing division, such charge to be a percentage of the acquisition cost or of the fair value of the item requested sufficient to repay in portion of in entirety the transportation and other costs incurred in acquisition of the property in question.

2. The chief is authorized to discontinue temporarily or terminate entirely such donable surplus property operation at any time when there is not sufficient flow of such property to make continued employment of personnel for this purpose beneficial to the state.

...NEW HAMPSHIRE...

Transportation

Section 189.9. Pupils in private schools, --Pupils attending approved private schools, up to and including the ninth grade, shall be entitled to the same transportation privileges within any town or district as are provided for pupils in public schools.

Shared-time

Section 198.21. Dual Enrollment Grants

I. Any school district which has in operation an approved dual enrollment agreement under the provisions

of RSA 193:1-a shall be granted for the first school year that such agreement is in operation the full operational costs of implementing such agreement, exclusive of any part of the cost and carrying charges of any capital improvements; and for the next succeeding school year, if such operation is then continued, one half of such costs.

II. Application for any such grant shall be submitted by a district to the state board of education no later than the July first preceding the start of the school year for which it shall be applicable, provided that the board may, for good cause shown, accept any such application up to but no later than the start of the applicable school year.

III. The board shall determine what costs shall be allowed in computing the amount of any grant, and shall make payments of such grants from the funds appropriated therefor.

IV. In the event that for any year insufficient sums are available to pay grants in full as provided by this section to all qualified applying school districts the state board of education shall prorate such grants so that all such districts receive the same proportion.

V. No pupil counted by any school district for the purpose of calculating the amount of a grant to be paid pursuant to this section shall for the same school year

by the same district be included in average daily membership for the purposes of foundation aid or counted for the purposes of grants pursuant to RSA 198:22.

Driver Education

Section 252:1-a, Traffic Safety Fund. The proceeds from original license fees as provided in RSA 262:11 and the special fees for initial number plates collected in accordance with RSA 260:10-a, and number plates for citizens' band operators in accordance with RSA 260:11-b, after costs of such plates or designation of effective periods thereof and issuance of same have been appropriated and deducted, shall be expended solely for courses of instruction and training in safe motor vehicle driving conducted in or under the supervision of secondary schools. No portion of such funds shall lapse nor be used for any other purpose nor be transferred to any other appropriation. After all costs of administration of the program each year of the biennium have been reserved, the remaining balance shall be paid to the state treasurer by June 30 of each year. Such balance shall be kept in a separate fund which shall be paid out on or before September 15 of each year to participating schools prorated on a per-pupil basis for those who have completed

the driver education program. Subject to final approval by the governor and council, the commissioner of safety jointly with the commissioner of education shall promulgate and public rules and regulations governing the courses of instruction and training and determining eligibility of secondary schools to receive monies from the fund established by this section.

Health and Other Services

Section 189:49. Child Benefit Services. Optional Services. The school board of any school district may provide the following child benefit services for pupils in each public and nonpublic school in the district:

- I. School physician services under the provisions of RSA 200:26-41.
- II. School nurse services.
- III. School health services.
- IV. School guidance and psychologist services.
- V. Educational testing services.

Section 198:22. Child Benefit Services Grants

I. Any school district which is providing any child benefit service pursuant to the authority of RSA 189:49 and 50 shall be granted the following proportion of the costs, exclusive of any part of the cost and carrying charges of any capital improvements, of providing

such service to any student who regularly attends a nonpublic school within the district for more than one half each school day:

(a) Not more than seventy percent of such cost of any such service.

II. Application for any grant provided for in paragraph I shall be submitted by a district to the state board of education no later than the July first preceding the end of the school year for which it shall be applicable, provided that the board may, for good cause shown, accept any such application up to but no later than the start of the applicable school year. Payment of said grant shall be made upon submission of certified expenses prior to the end of the applicable fiscal year.

III. The board shall determine what costs shall be allowed in computing and the amount of any grant, and shall make payments of such grants from the funds appropriated therefor.

IV. In the event that for any year insufficient sums are available to pay grants in full as provided by this section to all qualified applying school districts the state board of education shall prorate such grants so that all such districts receive the same proportion thereof.

...NEW JERSEY...

Transportation to and from Schools

Section 18A:39-1. Transportation of pupils remote from schools.

Whenever in any district there are pupils residing remote from any schoolhouse, the board of education of the district may make rules and contracts for the transportation of school pupils to and from school other than a public school, except such school as is operated for profit in whole or in part.

When any school district provides any transportation for public school pupils to and from school pursuant to this section, transportation shall be supplied to school pupils residing in such school district in going to and from any remote school other than a public school, not operated for profit in whole or in part, located within the State not more than 20 miles from the residence of the pupil provided the per pupil cost of the lowest bid received does not exceed \$250.00 and if such bid shall exceed said cost then the parent, guardian or other person having legal custody of the pupil shall be eligible to receive said amount toward the cost of his transportation to a qualified school other than a public school, regardless of whether such transportation is

along established public school routes. It shall be the obligation of the parent, guardian or other person having legal custody of the pupil attending a remote school, other than a public school, not operating for profit in whole or in part, to register said pupil with the office of the secretary of the board of education at the time and in the manner specified by rules and regulations of the State board in order to be eligible for the transportation provided by this section. If the registration of any such pupil is not completed by September 1 of the school year and if it is necessary for the board of education to enter into a contract establishing a new route in order to provide such transportation then the board shall not be required to provide it, but in lieu thereof the parent, guardian or other person having legal custody of the pupil shall be eligible to receive \$250.00 or an amount computed by multiplying \$1.388 times the number of school days remaining in the school year at the time of registration, whichever is the smaller amount. Whenever any regional school district provides any transportation for pupils attending schools other than public schools pursuant to this section, said regional district shall assume responsibility for the transportation of all such pupils, and the cost of such transportation for pupils below the grade level for

which the regional district was organized, shall be prorated by the regional district among the constituent districts on a per pupil basis after approval of such cost by the county superintendent. This section shall not require school districts to provide any transportation to pupils attending a school other than a public school where the only transportation presently provided by said district is for school children transported (sic) pursuant to chapter 46 of this Title or for pupils transported to a vocational, technical or other public school offering a specialized program. Any transportation to a school, other than a public school, shall be pursuant to the same rules and regulations promulgated by the State Board as governs transportation to any public school.

Nothing in this section shall be so construed as to prohibit a board of education from making contracts for the transportation of pupils to a school in an adjoining district when such pupils are transferred to the district by order of the county superintendent, or when any pupils shall attend school in a district other than that in which they shall reside by virtue of an agreement made by the respective boards of education.

Nothing herein contained shall limit or diminish in any way any of the provisions for transportation for children pursuant to chapter 46 of this Title.

Aid to the Handicapped

Section 18A:46-13. Facilities to be furnished.

It shall be the duty of each board of education to provide suitable facilities and programs of education for all the children who are classified as handicapped under this chapter except those so mentally retarded as to be eligible for day training pursuant to NJ5 18A:46-9. The absence or unavailability of a special class facility in any district shall not be construed as relieving a board of education of the responsibility for providing education for any child who qualifies under this chapter.

...NEW MEXICO...

...NEW YORK...

Health and welfare services to all children

Section 912. The voters and/or trustees or board of education of every school district shall, upon request of the authorities of a school other than public, provide resident children who attend such school with any or all of the health and welfare services and facilities which are made available by such voters and/or trustees or board of education to or for children attending the public schools of the district. Such services may include, but are not limited to all services performed by a physician, dentist, dental hygienist, nurse, school

psychologist, school social worker, or school speech correctionist, and may also include dental prophylaxis, vision and hearing tests, the taking of medical histories and the administration of health screening tests, the maintenance of cumulative health records and the administration of emergency care programs for ill or injured pupils. Any such services or facilities shall be so provided notwithstanding any provision of any charter or other provision of law inconsistent herewith. Where children residing in one school district attend a school other than public located in another school district, the school authorities of the district of residence shall contract with the school authorities of the district where such nonpublic school is located, for the provision of such health and welfare services and facilities to such children by the school district where such nonpublic school is located, for a consideration to be agreed upon between the school authorities of such districts, subject to the approval of the qualified voters of the district of residence when required under the provisions of this chapter. Every such contract shall be in writing and in the form prescribed by the commissioner of education, and before such contract is executed the same shall be submitted for approval to the superintendent of schools having jurisdiction over such district of residence and such contract shall not become effective until approved by such superintendent.

Transportation

Section 3635, Transportation, 1. Sufficient transportation facilities (including the operation and maintenance of motor vehicles) shall be provided by the school district for all the children residing within the school district to and from the school they legally attend, who are in need of such transportation because of the remoteness of the school to the child or for the promotion of the best interest of such children. Such transportation shall be provided for all children attending grades kindergarten through eight who live more than two miles from the school which they legally attend and for all children attending grades nine through twelve who live more than three miles from the school which they legally attend and shall be provided for each such child up to a distance of fifteen miles, the distances in each case being measured by the nearest available route from home to school. The cost of providing such transportation between two or three miles, and as the case may be, and fifteen miles shall be considered for the purposes of this chapter to be a charge upon the district and an ordinary contingent expense of the district. Transportation for a lesser distance than two miles in the case of children attending grades kindergarten through eight or three miles in the case of children attending grades nine through twelve and for a greater distance than fifteen miles may be provided by the district, and, if provided, shall be

offered equally to all children in like circumstances residing in the district. The foregoing provisions of this subdivision shall not require transportation to be provided for children residing with a city school district, but if provided by such district pursuant to other provisions of this chapter, such transportation shall be offered equally to all such children in like circumstances. City school districts with a population of more than two hundred twenty-five thousand and less than three hundred thousand which elect to provide transportation shall do so in accord with the grade and distance provisions of this subdivision including transportation outside the city limits. Nothing contained in this subdivision, however, shall be deemed to require a school district to furnish transportation to a child directly to or from his home.

2. A parent or guardian of a child residing in any school district, or any representative authorized by such parent or guardian, who desires for a child during the next school year any transportation authorized or directed by this chapter shall submit a written request therefor to the school trustees or board of education of such district not later than the first day of April preceding the next school year, provided, however, that a parent or guardian of a child not residing in the district on such date shall submit a written request within thirty days after establishing residence in the district. No late request of a parent or guardian

for transportation shall be denied where a reasonable explanation is provided for the delay. If the voters, school trustees, or board of education fail to provide the transportation authorized or directed by this chapter after receiving such a request, such parent, guardian or representative, or any taxpayer residing in the district, may appeal to the commissioner of education, as provided in section three hundred ten of this chapter. Except as hereinbefore provided, the commissioner of education shall not require that such parent, guardian or representative present a request for such transportation to any meeting of the voters, school trustees or board of education in order to appeal. Upon such appeal, the commissioner of education shall make such order as is required to effect compliance with the provisions of this chapter and this section.

Textbooks

Section 701. Purchase and loan of textbooks.

(3) In the several cities and school districts of the state, boards of education, trustees or such body of officers as perform the function of such boards shall have the power and duty to purchase and to loan upon individual request, to all children residing in such district who are enrolled in grades kindergarten to twelve of a public or private school which complies with

the compulsory education law, textbooks. Textbooks loaned to children enrolled in grades kindergarten to twelve of said private schools shall be textbooks which are designated for use in any public, elementary or secondary schools of the state or are approved by any boards of education, trustees or other school authorities. Such textbooks are to be loaned free to such children subject to such rules and regulations as are or may be prescribed by the board of regents and such boards of education, trustees or other school authorities.

(4) No school district shall be required to purchase or otherwise acquire textbooks, the cost of which shall exceed an amount equal to ten dollars plus a minimum lottery grant determined pursuant to subdivision four of section ninety-two-e of the state finance law multiplied by the number of children residing in such district and so enrolled on the first day of October of any school year; and no school district shall be required to loan textbooks in excess of the textbooks owned or acquired by such district; provided, however that all textbooks owned or acquired by such district shall be loaned to children residing in the district and so enrolled in grades kindergarten through twelve in public and private schools on an equitable basis.

Section 3601. Secular Educational Services - 1974.

Section 1. Legislative findings. The legislature hereby finds and declares that:

"The state has the responsibility to provide educational opportunity of a quality which will prepare its citizens for the challenges of American life in the last decades of the twentieth century.

"To fulfill this responsibility, the State has the duty and authority to evaluate, through a system of uniform state testing and reporting procedures, the quality and effectiveness of instruction to assure that those who are attending instruction, as required by law, are being adequately educated within their individual capabilities.

"In public schools these fundamental objectives are accomplished in part through state financial assistance to local school districts.

"More than seven hundred thousand pupils in the state comply with the compulsory education law by attending nonpublic schools. It is a matter of state duty and concern that such nonpublic schools be reimbursed for the actual costs which they incur in providing services to the state which they are required by law to render in connection with the state's responsibility for reporting, testing and evaluating.

"Section 2. Definitions.

"1. "Commissioner" shall mean the state commissioner of education.

"2. "Qualifying school" shall mean a nonprofit school in the state, other than a public school, which provides instruction in accordance with section thirty-two hundred four of the education law.

"Section 3. Apportionment. The commissioner shall annually apportion to each qualifying school, for school years beginning on and after July first, nineteen hundred seventy-four, an amount equal to the actual cost incurred by each such school during the preceding school year for providing services required by law to be rendered to the state in compliance with the requirements of the state's pupil evaluation program, the basic educational data system, regents examinations, the statewide evaluation plan, the uniform procedure for pupil attendance reporting, and other similar state prepared examinations and reporting procedures.

"Section 4. Application. Each school which seeks an apportionment pursuant to this act shall submit to the commissioner an application therefor, together with such additional reports and documents as the commissioner may require, at such times, in such form and containing

such information as the commissioner may prescribe by regulation in order to carry out the purposes of this act.

"Section 5. Maintenance of records. Each school which seeks an apportionment pursuant to this act shall maintain a separate account or system of accounts for the expenses incurred in rendering the services required by the state to be performed in connection with the reporting, testing and evaluation programs enumerated in section three of this act. Such records and accounts shall contain such information and be maintained in accordance with regulations issued by the commissioner, but for expenditures made in the school year nineteen hundred seventy-three-seventy-four, the application for reimbursement made in nineteen hundred seventy-four pursuant to section four of this act shall be supported by such reports and documents as the commissioner shall require. In promulgating such record and account regulations and in requiring supportive documents with respect to expenditures incurred in the school year nineteen hundred seventy-three - seventy-four, the commissioner shall facilitate the audit procedures described in section seven of this act. The records and accounts for each school year shall be preserved at the school until the completion of such audit procedures.

"Section 6. Payment. No payment to a qualifying school shall be made until the commissioner has approved the application submitted pursuant to section four of this act.

"Section 7. Audit. No application for financial assistance under this act shall be approved except upon audit of vouchers or other documents by the commissioner as are necessary to insure that such payment is lawful and proper.

"The state department of audit and control shall from time to time examine any and all necessary accounts and records of a qualifying school to which an apportionment has been made pursuant to this act for the purpose of determining the cost to such school of rendering the services referred to in section three of this act. If after such audit it is determined that any qualifying school has received funds in excess of the actual cost of providing the services enumerated in section three of this act, such school shall immediately reimburse the state in such excess amount.

"Section 8. Noncorporate entities. Apportionments made for the benefit of any school which is not a corporate entity shall be paid, on behalf of such school, to such corporate entity as may be designated for such purpose of receiving apportionments made for the benefit of such school pursuant to this act.

"Section 9. In enacting this chapter (adding this note) it is the intention of the legislature that if section seven or any other provision of this act or any rules or regulations promulgated thereunder shall be held by any court to be invalid in whole or in part or inapplicable to any person or situation, all remaining provisions or parts thereof or remaining rules and regulations or parts thereof not so invalidated shall nevertheless remain fully effective as if the invalidated portion had not been enacted or promulgated, and the application of any such invalidated portion to other persons not similarly situated or other situations shall not be affected thereby.

"Section 10. This act shall take effect July first, nineteen hundred seventy-four."

...NORTH CAROLINA...

Use of Federal Funds for Private Schools

Section 115-11 (17). Power to Provide Library Resources, Textbooks and Other Instructional Materials to Private Schools.--The State Board of Education or any other State agency designated by the Governor shall have the power and authority to provide library resources, textbooks, and other instructional materials purchased from Federal funds appropriated for the funding of the Elementary and Secondary Education Act of 1965 (Public Law 89-10, 89th Congress, HR 2362, effective April 11, 1965)

or other acts of Congress for the use of children and teachers in private elementary and secondary schools in the State as required by acts of Congress and rules and regulations promulgated thereunder.

...NORTH DAKOTA...

Transportation of nonpublic elementary and high school students--Conditions.

Section 15-34.2-16. When authorized by the school board of a public school district providing transportation for public elementary and high school students, elementary and high school students attending nonpublic schools may be transported on public school buses to and from the point of points on established public school bus routes on such days and during the times that the public school buses normally operate. The school board of a public school district may authorize and agree to the transportation of such students only when there is passenger room available on such buses, according to the legal passenger capacity for such buses, when such buses are scheduled according to the provisions of this section; provided, however, no payments shall be made from the county or state equalization funds for any mileage costs for any deviation from the established public routes which may be caused by any agreement entered into pursuant to this section.

...OHIO...

Transportation of Pupils

Section 3327.01. In all city, exempted village, and local school districts where resident elementary school pupils live more than two miles from the school for which the state board of education prescribes minimum standards pursuant to division (d) of section 3301.07 of the Revised Code and to which they are assigned by the board of education of the district of residence or to and from the non-public school which they attend the board of education shall provide transportation for such pupils to and from such school except when, in the judgment of such board, confirmed by the state board of education, such transportation is unnecessary or unreasonable.

In all city, exempted village, and local school districts the board may provide transportation for resident high school pupils to and from the high school to which they are assigned by the board of education of the district of residence or to and from the nonpublic high school which they attend for which the state board of education prescribes minimum standards pursuant to division (d) of section 3301.07 of the Revised Code.

In determining the necessity for transportation, availability of facilities and distance to the school shall be considered.

A board of education shall not be required to transport elementary or high school pupils to and from a nonpublic school where such transportation would require more than thirty minutes of direct travel time as measured by school bus from the collection point as designated by the coordinator of school transportation, appointed under section 3327.011 (33 27.01.1) of the Revised Code, for the attendance area of the district of residence.

Where it is impractical to transport a pupil by school conveyance, a board of education may, in lieu of providing such transportation, pay a parent, guardian, or other person in charge of such child, an amount per pupil which shall in no event exceed the average transportation cost per pupil, such average cost to be based on the cost of transportation of children by all boards of education in this state during the next preceding year.

In all city, exempted village, and local school districts the board shall provide transportation for all children who are so crippled that they are unable to walk to and from the school for which the state board of education prescribes minimum standards pursuant to division (d) of section 3301.07 of the Revised Code and which they attend. In case of dispute whether the

child is able to walk to and from the school, the health commissioner shall be the judge of such ability.

When transportation of pupils is provided the conveyance shall be run on a time schedule that shall be adopted and put in force by the board not later than ten days after the beginning of the school term.

A district receiving a payment pursuant to division (b) of section 3317.02 of the Revised Code is not eligible for reimbursement of transportation operating costs or eligible for school bus purchase subsidy payment pursuant to section 3317.06 of the Revised Code, except for transporting children who are crippled and for transporting pupils attending nonpublic schools.

The cost of any transportation service authorized by this section shall be paid first out of federal funds, if any, available for the purpose of pupil transportation, and secondly out of state appropriations, in accordance with regulations adopted by the state board of education.

No transportation of elementary or high school pupils shall be provided by any board of education to or from any school which in the selection of pupils, faculty members, or employees, practices discrimination against any person on the grounds of race, color, religion or national origin.

Purchase of vocational education from private source

Section 3313.91. Any public board of education may contract with any public agency, board, or bureau, or with any private individual or firm for the purchase of any vocational education or vocational rehabilitation service for any resident of the district under the age of twenty-one years and may pay for such services with public funds. Any such vocational education or vocational rehabilitation (sic) service shall meet the same requirements, including those for teachers, facilities, and equipment, as those required of the public schools and be approved by the state department of education.

The state board of education may assign school districts to joint vocational districts and shall require districts to enter into contractual agreements pursuant to section 3313.90 of the Revised Code so that special education students as well as others may receive suitable vocational services.

Purchase of services

Section 3317.06. Distribution of payments for special programs.

Moneys paid to school districts under division (P) of sections 3317.024 (3317.02.4) of the Revised Code shall be used for the following independent and fully severable purposes:

(A) To purchase such secular textbooks as have been approved by the superintendent of public instruction for use in public schools in the state and to loan such textbooks to pupils attending nonpublic schools within the district or to their parents and to hire clerical personnel to administer such lending program. Such loans shall be based upon individual requests submitted by such nonpublic school pupils or parents. Such requests shall be submitted to the local public school district in which the nonpublic school is located. Such individual requests for the loan of textbooks shall, for administrative convenience, be submitted by the nonpublic school pupil or his parent to the nonpublic school which shall prepare and submit collective summaries of the individual requests to the local public school district. As used in this section, "textbook" means any book or book substitute which a pupil uses as a text or text substitute in a particular class or program in the school he regularly attends.

(b) To purchase and to loan to pupils attending nonpublic schools within the district or to their parents upon individual request, such secular, neutral and nonideological instructional materials as are in use in the public schools within the district and which are incapable of diversion to religious use and to hire clerical personnel to administer such lending program.

(C) To purchase and to loan to pupils attending nonpublic schools within the district or to their parents, upon individual request such secular, neutral and nonideological instructional equipment as is in use in the public school within the district and which is incapable of diversion to religious use and to hire clerical personnel to administer such lending program.

(D) To provide speech and hearing diagnostic services to pupils attending nonpublic schools within the district. Such service shall be provided in the nonpublic school attended by the pupil receiving the service.

(E) To provide physician, nursing, dental, and optometric services to pupils attending nonpublic schools within the district. Such services shall be provided in the school attended by the nonpublic school pupil receiving the service.

(F) To provide diagnostic psychological services to pupils attending nonpublic schools within the district. Such services shall be provided in the school attended by the pupil receiving the service.

(G) To provide therapeutic psychological and speech and hearing services to pupils attending nonpublic schools within the district. Such services shall be provided in the public school, in public centers, or in mobile units

located off of the nonpublic premises as determined by the State department of education. If such services are provided in the public school or in public centers, transportation to and from such facilities shall be provided by the public school district in which the nonpublic school is located.

(H) To provide guidance and counseling services to pupils attending nonpublic schools within the district. Such services shall be provided in the public school, in public centers, or in mobile units located off of the nonpublic premises as determined by the state department of education. If such services are provided in the public school or in public centers, transportation to and from such facilities shall be provided by the public school district in which the nonpublic school is located.

(I) To provide remedial services to pupils attending nonpublic schools within the district. Such services shall be provided in the public school, in public centers, or in mobile units located off of the nonpublic premises as determined by the state department of education. If such services are provided in the public school or in public centers, transportation to and from such facilities shall be provided by the public school district in which the nonpublic school is located.

(J) To supply for use by pupils attending nonpublic schools within the district such standardized tests and scoring services as are in use in the public schools of the state.

(K) To provide programs for the deaf, blind, emotionally disturbed, crippled, and physically handicapped children attending nonpublic schools within the district. Such services shall be provided in the public school, in public centers, or in mobile units located off of the nonpublic premises as determined by the state department of education. If such services are provided in the public school, or in public centers, transportation to and from such facilities shall be provided by the public school district in which the nonpublic school is located.

(L) To hire clerical personnel to assist in the administration of programs pursuant to divisions (D), (E), (F), (G), (H), (I), and (K) of this section and to hire supervisory personnel to supervise the providing of services and textbooks pursuant to this section.

Clerical and supervisory personnel hired pursuant to division (L) of this section shall perform their services in the public schools, in public centers, or mobile units where the services are provided to the nonpublic school pupil except that such personnel may accompany pupils to and from neutral service sites when necessary to ensure the safety of the children receiving the services.

Health services provided pursuant to divisions (D), (E), (F), and (G) of this section may be provided under contract with the state department of public health, city, or general health districts or other private agencies whose personnel are properly licensed by an appropriate state board or agency.

Transportation of pupils provided pursuant to divisions (G), (H), (I), and (K) of this section shall be provided by the public school district from its general funds and not from moneys paid to it under division (P) of section 3317.024 (3317.02.4) of the Revised Code unless a special transportation request is submitted by the parent of the child receiving service pursuant to such divisions. If such an application is presented to the local public school district, it may pay for the transportation from moneys paid to it under division (P) of section 3317.024 (3317.02.4) of the Revised Code.

The duties of clerical personnel, hired pursuant to divisions (B) and (C) of this section, shall include distribution of loan request forms, receipt and cataloging of loan requests, inventory of instructional materials and instructional equipment, distribution of instructional materials and instructional equipment to pupils or their parents, retrieval of such instructional materials and instructional equipment, and maintaining custody and

storage of these items. The instructional material and instructional equipment authorized to be loaned pursuant to divisions (B) and (C) of this section may be stored on the premises of the nonpublic school of attendance and the clerical personnel hired for administration of the lending program may perform their services upon the premises of the nonpublic school when in the determination of the state department of education it is necessary and appropriate for efficient implementation of the lending program.

No school district shall provide health or remedial services to nonpublic school pupils as authorized by this section unless such services are available to pupils attending the public schools within the district.

Health and remedial services and instructional materials and equipment provided for the benefit of nonpublic school pupils pursuant to this section and the admission of pupils to such nonpublic schools shall be provided without distinction as to race, creed, color, or national origin of such pupils or of their teachers. No instructional materials or instructional equipment shall be loaned to pupils in nonpublic schools or their parents unless similar instructional materials or instructional equipment are available for pupils in the public schools of the school district.

assembly to implement this section may be transferred to the auxiliary services personnel unemployment compensation fund established pursuant to section 4141.47 of the Revised Code. Within thirty days after the end of each biennium, each board of education shall remit to the department all moneys paid to it under division (P) of section 3317.024 (3317.02,4) of the Revised Code that are not required to pay expenses incurred under this section during the biennium for which the money was appropriated.

Funds distributed pursuant to this section shall not exceed specific appropriations made therefore by the general assembly, unless expressly approved by the emergency board of the controlling board.

...OKLAHOMA...

...OREGON...

Transportation

Section 332.415. Transportation of children attending private or parochial schools.--Whenever any district school board lawfully provides for transportation for pupils attending public schools, all children attending any private or parochial school under the compulsory school attendance laws shall, where the private or parochial school is along or near the route designated

No school district shall provide services, materials, or equipment for use in religious courses, devotional exercises, religious training or any other religious activity.

As used in this section, "parent" includes a person standing in loco parentis to a child.

Notwithstanding section 3317.01 of the Revised Code, payments shall be made under this section to any city, local, or exempted village school district within which is located one or more nonpublic elementary or high schools.

The allocation of payments for textbooks, instructional materials, instructional equipment, health services, and remedial services to city, local, and exempted village school districts shall be on the basis of the state board of education's estimated annual average daily membership in nonpublic elementary and high schools located in the district.

Payments made to city, local, and exempted village school districts under this section shall be equal to specific appropriations made for the purpose.

The department of education shall adopt guidelines and procedures under which such programs and services shall be provided, under which districts shall be reimbursed for administrative costs incurred in providing such programs and services, and under which any unexpended balance of the amounts appropriated by the general

by said board, be entitled equally to the same rights, benefits and privileges as to transportation so provided for.

School Lunch Funds

Section 327.520. Acceptance and distribution of donated commodities. The Superintendent of Public Instruction may accept and distribute donated commodities available for either public or private nonprofit educational institutions, subject to state or federal law or regulation relating to such acceptance and distribution. He shall make a charge sufficient to cover but not exceed all costs of distribution to the individual schools. The charge may include administrative expenses, freight, warehousing, storing, processing and transshipment to the end that all participating schools shall receive such donated commodities at the same unit cost irrespective of location of the school with respect to the original point of delivery within the state.

Driver Education

Section 343.730. State reimbursement. (1) Each public school or facility offering a course in automobile driver instruction shall keep accurate records of the cost thereof in the manner required by the Superintendent of Public Instruction. Each public school or facility

shall be reimbursed on the basis of the number of pupils completing the course, including any private school pupils completing the course in the public school, to the extent of the lesser of the following schedules:

(a) 90 percent of the cost of conducting the course, or if tuition is charged, 90 percent of the cost after deducting tuition; or

(b) \$50 per pupil completing the course, including any private school pupil completing the course in a public school.

(2) If funds available to the Motor Vehicles Division for the Student Driver Training Fund are not adequate to pay all approved claims in full, public schools and facilities shall receive a pro rata reimbursement based upon the ratio that the total amount of funds available bears to the total amount of funds required for maximum allowable reimbursement.

...PENNSYLVANIA...

Parent Reimbursement for Nonpublic Education

Section 5701. Short title. This act shall be known and may be cited as the "Parent Reimbursement Act for Nonpublic Education."

Section 5702. Legislative finding; Declaration of policy. It is hereby determined and declared as a matter of legislative finding:

(1) That parents who send their children to nonpublic schools assist the State in reducing the rising costs of public education.

(2) The welfare of the Commonwealth requires that this and future generations of school age children be assured ample opportunity to develop to the fullest their intellectual capacities. To further this objective the Commonwealth has had in force for many years a compulsory school attendance law.

(3) In the exercise of their constitutional right to choose nonpublic education for their children, parents who support such education make a major contribution to the public welfare. However, the immense impact of inflation, plus sharply rising costs of education, now combine to place in jeopardy the ability of such parents fully to carry this burden.

(4) Should parents of children now enrolled in nonpublic schools be forced by economic circumstances to transfer any substantial number of their children to public schools, an enormous added financial, educational and administrative burden would be placed upon the public schools and upon the taxpayers of the State. Without allowance for inflationary increase, the annual operating cost of educating in public schools, the five hundred thousand students now enrolled in Pennsylvania's

nonpublic schools would be an additional four hundred million dollars (\$400,000,000). Necessarily added capital costs to construct new facilities or acquire existing facilities would be in excess of one billion dollars (\$1,000,000,000). Any substantial portion of these operating and capital costs would be an intolerable public burden and present standards of public education would be seriously jeopardized. Therefore, parents who maintain students in nonpublic schools provide a vital service to the Commonwealth.

Wherefore, it is declared to be the public policy of the Commonwealth:

That, in order to reimburse parents partially for this service so vitally needed by the Commonwealth, and in order to foster educational opportunity for all children, a program of Parent Reimbursement for Nonpublic Education is hereby established.

Section 5703. Definitions. The following terms, whenever used or referred to in this act, shall have the following meanings, except in those instances where the context clearly indicates otherwise;

(1) "Parent" means a resident of the Commonwealth of Pennsylvania who is a parent of a child enrolled in a nonpublic school or a person standing in loco parentis to such child.

(2) "Nonpublic school" means any school, other than a public school, within the Commonwealth of Pennsylvania, wherein a resident of the Commonwealth may legally fulfill the compulsory school attendance requirements of law and which meets the requirements of Title VI of the Civil Rights Act of 1964 (Public Law Section - 352).

(3) "Student" means a resident of the Commonwealth of Pennsylvania who is enrolled in a nonpublic school.

(4) "Parent Reimbursement Fund" means the fund created by this act.

Section 5704. Pennsylvania Assistance Authority. There is hereby created a body corporate and politic to be known as the Pennsylvania Parent Assistance Authority, which shall consist of five members appointed by the Governor and which shall have responsibility for the administration of the program created by this act. All members shall be of full age, citizens of the United States, and residents of the Commonwealth and shall be appointed for terms of five years each. The members of the authority shall select from among themselves a chairman and a vice-chairman. The authority may employ a secretary and such other employees as it may require. Three members of the authority shall constitute a quorum for its meetings. Members shall receive no compensation for their services but shall be reimbursed

for their expenses actually and necessarily incurred by them in the performance of their duties under this act. The authority shall have power to make and promulgate rules and regulations for the administration of this act; Provided, the policy determinations, personnel, curriculum, program of instruction or any other aspect of the administration or operation of any nonpublic school or schools.

The authority shall have no power, at any time or in any manner to pledge the credit or taxing power of the Commonwealth, nor shall any of its obligations or debts be deemed to the obligations of the Commonwealth, and all contracts between the authority and parents or other persons in loco parentis shall be satisfied solely from funds provided under this act.

Section 5705. Parent Reimbursement Fund. There is hereby created for the special purpose of this act, a Parent Reimbursement Fund. Beginning July 1, 1971, twenty-three per cent, and beginning July 1, 1971, ten per cent, of the tax revenue collected by the Department of Revenue, pursuant to the act of July 22, 1970 (P.L. 513), known as the "Pennsylvania Cigarette Tax Act," shall be paid into the State Treasury to the credit of the Parent Reimbursement Fund.

Moneys in the Parent Reimbursement Fund are hereby appropriated to the Pennsylvania Parent Assistance Authority, to be used solely for the purposes of this act.

All expenses incurred in connection with the administration of this act shall be paid solely out of the Parent Reimbursement Fund.

Section 5706. Eligibility. In order to be eligible for tuition reimbursement hereunder, the parent of a student shall, at the completion of the school year but not later than July fifteenth, file with the Parent Assistance Authority a verified statement that the student has completed the school year in a nonpublic school or schools and, in addition, the following information: (i) the name and address of the parent; (ii) the name, address and birth date of the student; (iii) the name and address of the nonpublic school or schools in which the student completed the school year and (iv) a receipted tuition bill or copy of the executed contract under which the student attended the nonpublic school or schools.

Section 5707. Tuition reimbursement payments to parents. Upon the filing by a parent of the verified as required by section 6., the Parent Assistance Authority shall make a tuition reimbursement payment to such parent in the amount of (i) seventy-five dollars (\$75) for each elementary school student to whom the parent bears a Parental relationship and one hundred fifty dollars

(\$150) for each secondary student to whom the parent bears a parental relationship, or (ii) the actual amount of tuition paid or contracted to be paid by a parent, whichever is lesser.

Reimbursement payments to parents hereunder shall be made not later than September fifteenth in the school year following the school year for which tuition reimbursement payments are being made.

Section 5708. Penalties. The Parent Assistance Authority shall have power to employ means reasonably necessary to determine the accuracy of all statements submitted by parents in connection with reimbursement payments hereunder. Any person who, by means of a willfully false statement, secures or attempts to secure or aids or abets any person in securing reimbursement payment hereunder, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to pay a fine of not exceeding one thousand dollars (\$1,000.00), or to undergo imprisonment not exceeding one year, or both, and shall also be sentenced to make restitution of any moneys he has received by reason of any false statement.

Section 5709. Insufficient moneys in fund. In the event that, in any fiscal year, the total amount of moneys

which were actually paid into the Parent Reimbursement Fund shall be insufficient to pay the total number of claims submitted by parents to the Parent Assistance Authority, the reimbursement payments provided for in section 7 shall be proportionate in amount to the percent which the total amount of moneys in the Parent Reimbursement Fund bears to the total amount of claims.

Section 5710. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid, in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Shared-time

Section 5-502. Additional schools and departments. In addition to the elementary public schools, the board of school directors in any school district may establish, equip, furnish, and maintain the following additional schools or departments for the education and recreation of persons residing in said district, and for the proper operation of its schools, namely:--

High schools,	Museums,
Vocational schools,	Reading-rooms,
Trade schools,	Gymnasiums,
Technical schools	Playgrounds,
Cafeterias,	Schools for physically and
Agricultural schools,	mentally handicapped,
Evening schools,	Truant schools,

Kindergartens,
Libraries

Parental schools,
Schools for adults,
Public lectures,

Such other schools or educational departments as the directors, in their wisdom, may see proper to establish.

Said additional schools or departments, when established, shall be an integral part of the public school system in such school district and shall be so administered.

No pupil shall be refused admission to the courses in these additional schools or departments, by reason of the fact that his elementary or academic education is being or has been received in a school other than a public school.

Standardized driver-education program

Section 15-1519.1. Standardized driver-education program.

(a) The Department of Public Instruction shall establish, for operation in the public school system of the Commonwealth, a standardized driver-education program in the safe operation of motor vehicles available to all public high school pupils and all high school pupils attending nonpublic high schools.

(b) The Department of Public Instruction shall assist school districts throughout the Commonwealth in the functioning of such program by -

(1) Preparation, publication and free distribution of driver-education instructional material to insure a more complete understanding of the duties of motor vehicle operators;

(2) Making such rules and regulations as may be necessary to carry out such program.

(c) Annual expenditures of the Department of Public Instruction from the Motor License Fund for (1) salaries and expenses of employees of the Department of Public Instruction essential to the program; (2) purchase of visual training aids and psychophysical testing equipment; and (3) costs of preparation, publication and distribution of driver-education instructional material, for assistance to their driver-education programs, shall not exceed three (3) percentum of the annual total amount paid by the Commonwealth to all school districts, or joint school organizations, on account of standardized driver-education programs.

Nonprofit school lunch program

Section 13-1337. (a) Definitions.--For the purpose of this section--"school food program" means a program under which food is served by any school on a nonprofit basis to children in attendance, including any such program under which a school receives assistance out of funds appropriated by the Congress of the United States.

(b) Expenditure of Federal Fund.--The Department of Education is hereby authorized to accept and direct the disbursement of funds appropriated by any act of Congress, and apportioned to the State, for use in connection with school food programs. The Department of Education shall deposit all such funds received from the Federal Government in a special account with the Treasurer of the State who shall make disbursements therefrom upon the direction of the Department of Education.

(c) Administration of Program.--The Department of Education may enter into such agreements with any agency of the Federal Government, with any board of school directors, or with any other agency or person prescribe such regulations, employ such personnel, and take such other action as it may deem necessary to provide for the establishment, maintenance, operation and expansion of any school food program, and to direct the disbursement of Federal and State funds in accordance with any applicable provisions of Federal or State law. The Department of Public Instruction may give technical advice and assistance to any board of school directors in connection with the establishment and operation of any school food program, and may assist in training personnel engaged in the operation of such program. The

Department of Public Instruction, and any board of school directors, may accept any gift for use in connection with any school food program.

Transportation

Section 13-1361. When provided. (1) The board of school directors in any school district may, out of the funds of the district, provide for the free transportation of any resident pupil to and from the kindergarten, elementary school, or secondary school in which he is lawfully enrolled, provided that such school is not operated for profit and is located within the district boundaries or outside the district boundaries at a distance not exceeding ten miles by the nearest public highway, except that such ten-mile limit shall not apply to area vocational technical schools which regularly serve eligible district pupils or to special schools and classes approved by the Department of Education, and to and from any points within or without the Commonwealth in order to provide field trips for any purpose connected with the educational pursuits of the pupils. When provision is made by a board of school directors for the transportation of public school pupils to and from such schools or to and from any points within or without the Commonwealth in order to provide field trips as herein provided, the board of school directors shall also make

identical provision for the free transportation of pupils who regularly attend nonpublic kindergarten, elementary and high schools not operated for profit to and from such schools or to and from any points within or without the Commonwealth in order to provide field trips as herein provided. Such transportation of pupils attending nonpublic schools shall be provided during regular school hours on such dates and periods that the nonpublic school not operated for profit is in regular session, according to the school calendar officially adopted by the directors of the same in accordance with provisions of law. The board of school directors shall provide such transportation whenever so required by any of the provisions of this act or of any other act of Assembly.

(2) The board of school directors in any school district may, if the board deems it to the best interest of the school district, for the purposes of transporting pupils as required or authorized by any of the provisions of this act or of any other act of the Assembly, appropriate funds for urban common carrier mass transportation purposes from current revenues to urban common carrier mass transportation authorities to assist the authorities to meet costs of operation, maintenance, capital improvements, and debt service. Said contributions shall not be subject to reimbursement by the Commonwealth of Pennsylvania.

(3) The State Board of Education shall adopt regulations, including qualifications of school bus drivers, to govern the transportation of school pupils.

Section 9-971A. Nonpublic school children; speech and hearing defects; diagnosis and correction.

(1) Defects in speech and hearing are health-related. They are also the frequent cause of emotional instability in children and are vitally connected to behavior and to learning ability. Services to remedy these defects can best be conducted upon the premises of the school which the child regularly attends, and forcing children to go to other premises in order to have such needed services is found by the General Assembly of the Commonwealth of Pennsylvania to be both inadequate and harmful. The General Assembly now to make these available, on a general and evenhanded basis to all school children in the Commonwealth.

(2) Definitions. As used in this act;

"Nonpublic school" means any nonprofit school, other than a public school within the Commonwealth of Pennsylvania, wherein a resident of the Commonwealth may legally fulfill the compulsory school attendance requirements and which meets the requirements of Title VI of the Civil Rights Act of 1964.

(3) Provision of services. The Secretary of Education directly, or through the intermediate units out of their

allocation under section 922.1-A of the act of March 10, 1949, known as the "Public School Code of 1949," shall have the power and duty to furnish free to nonpublic school students, upon the premises of the nonpublic schools which they regularly attend, services adequate for the diagnosis and correction of speech and hearing defects provided that such services are also afforded to public school students by the public school district in which such nonpublic school is located.

Auxiliary Services

Section 9-972.1. (a) Legislative Finding: Declaration of Policy. The welfare of the Commonwealth requires that the present and future generation of school age children be assured ample opportunity to develop to the fullest, their intellectual capacities. It is the intent of the General Assembly by this enactment to ensure that the intermediate units in the Commonwealth shall furnish on an equal basis auxiliary services to all pupils in the Commonwealth in both public and nonprofit nonpublic schools.

(b) Definitions. The following terms, whenever used or referred to in this section, shall have the following meanings, except in those circumstances where the context clearly indicates otherwise:

"Auxiliary services" means guidance, counseling and testing services; psychological services; services for exceptional children; remedial services; speech and hearing services; services for the improvement of the educationally disadvantaged (such as, but not limited to, the teaching of English as a second language), and such other secular, neutral, nonideological services as are of benefit to all school children and are presently or hereafter provided for public school children of the Commonwealth.

"Nonpublic school" means nonprofit school, other than a public school within the Commonwealth of Pennsylvania, wherein a resident of the Commonwealth may legally fulfill the compulsory school attendance requirements of this act and which meet the requirements of Title VI of the Civil Rights Act of 1964.

(c) Program of Auxiliary Services. Students attending nonpublic schools shall be furnished a program of auxiliary services which are provided to public school students in the school district in which their nonpublic school is located. The program of auxiliary services shall be provided by the intermediate unit in which the nonpublic school is located, in accordance with standards of the Secretary of Education. Such services shall be provided directly to the nonpublic school students by the intermediate

unit except that such services shall not be provided in a church or in any facility under the control of a sectarian school.

Such auxiliary services shall be provided directly by the intermediate units and no auxiliary services presently provided to public school students by the intermediate units and/or school districts by means of State or local revenues, during the school year 1974-1975, shall be eliminated. No school districts shall be required, pursuant to any section of this act, to offer auxiliary services provided by any other school districts within such intermediate units.

(d) Allocations. In July of 1977 and annually thereafter in July, the Secretary of Education shall allocate to each intermediate unit an amount equal to the number of nonpublic school students as of October 1 of the preceding school year who are enrolled in nonpublic schools within the intermediate unit times seventy-two dollars (\$72). The Secretary of Education shall increase this figure on a proportionate basis whenever there is an increase in the median actual instruction expense per WADM as defined in clause (12.1) of section 2501 of the act. The Commonwealth shall pay to each intermediate unit fifteen per centum (15%) of its allocation on August 1, seventy-five per centum (75%) on October 1,

and the remaining ten per centum (10%) on the first day of February.

(e) Limitations. The intermediate unit shall not use more than six per centum (6%) of the funds it receives for administration or eighteen per centum (18%) for rental of facilities. The Department of Education shall not use more than one per centum (1%) of the funds it allocates under this section for administrative expenses. If all funds allocated by the intermediate units to administration, or rental facilities are not expended for those purposes, such funds may be used for the program costs.

(f) Interest. There shall be no adjustment in the allocation as provided in subsection (d) because of interest earned on the allocations by the intermediate units. Interest so earned shall be used for the purpose of this section but shall not be subject to the limitations of subsection (e).

(g) Preliminary Budget. Annually, each intermediate unit shall submit to the secretary a preliminary budget on or before January 31 and a final budget on or before June 15, for the succeeding year; and shall file a final financial report on or before October 31 for the preceding year.

Section 9-973. Loan of textbooks, instructional materials and equipment, nonpublic school children. (a) Legislative

Findings; Declaration of Policy. The welfare of the Commonwealth requires that the present and future generations of school age children be assured ample opportunity to develop to the fullest their intellectual capacities. To further this objective, the Commonwealth provides, through tax funds of the Commonwealth, textbooks and instructional materials free of charge to children attending public schools within the Commonwealth.

Approximately one quarter of all children in the Commonwealth, in compliance with the compulsory attendance provisions of this act, attend nonpublic schools.

Although their parents are taxpayers of the Commonwealth, these children do not receive textbooks or instructional materials from the Commonwealth. It is the intent of the General Assembly by this enactment to assure such a distribution of such educational aids that every school child in the Commonwealth will equitably share in the benefits thereof.

(b) Definitions. The following terms, whenever used or referred to in this section, shall have the following meanings, except in those circumstances where the context clearly indicates otherwise;

"Instructional equipment" means instructional equipment, other than fixtures annexed to and forming part of the real estate, which is suitable for and to be used by children and/or teachers. The term includes but

is not limited to projection equipment, recording equipment, laboratory equipment, and any other educational secular, neutral, non-ideological equipment as may be of benefit to the instruction of non-public school children and are presently or hereafter provided for public school children of the Commonwealth.

"Instructional Materials" means pre-prepared learning materials which are secular, neutral and nonideological in character and are of benefit to the instruction of school children on an individual basis and are presently or hereafter provided for public school children of the Commonwealth.

"Nonpublic school" means any school, other than a public school within the Commonwealth of Pennsylvania, wherein a resident of the Commonwealth may legally fulfill the compulsory school attendance requirements of this act and which meet the requirements of Title VI of the Civil Rights Act of 1964.

"Textbooks" means books, workbooks, including reusable and non-reusable workbooks, and manuals, whether bound or in looseleaf form intended for use as a principal source of study material for a given class or group of students, a copy of which is expected to be available for the individual use of each pupil in such class or group. Such textbooks shall be textbooks

which are acceptable for use in any public, elementary, or secondary school of the Commonwealth.

(c) Loan of textbooks and instructional materials.

The Secretary of Education directly, or through the intermediate units, shall have the power and duty to purchase textbooks and instructional materials and, upon individual request, to loan them to all children residing in the Commonwealth who are enrolled in grades kindergarten through twelve of a nonpublic school. Such textbooks and instructional materials shall be loaned free to such children subject to such rules and regulations as may be prescribed by the Secretary of Education, due regard being had to the feasibility of making loans of particular instructional materials on an individual basis.

(d) Purchase of Textbooks and Instructional Materials. The secretary shall not be required to purchase or otherwise acquire textbooks, pursuant to this section, the total cost of which, in any school year, shall exceed an amount equal to twelve dollars (\$12) for the school year 1973-1974, fifteen dollars (\$15) for the school year beginning July 1, 1974, and twenty dollars (\$20) for each school year thereafter for instructional materials, the total cost of which, in any school year, shall exceed an amount equal to

ten dollars (\$10), multiplied by the number of children residing in the Commonwealth who on the first day of October of the school year immediately preceding are enrolled in grades kindergarten through twelve of a nonpublic school.

(e) Deleted.

Section 673.1. Psychological Services. (a) Legislative Finding: Declaration of Policy. It is today recognized that diagnostic and evaluative psychological services to children are closely related to their physical, mental and emotional health. Such services can best be rendered upon the premises of the school which the child regularly attends, and forcing children to go to other premises in order to have such needed services is found by the General Assembly to be both inadequate and harmful. The General Assembly expressly finds and declares diagnostic and evaluative psychological services for children to be health services, and it is the intention of the General Assembly now to make these available, on a general and even-handed basis, to all school children in the Commonwealth.

(b) Definitions. - The following terms, whenever used or referred to in this section, shall have the following meanings, except in those circumstances where the context clearly indicates otherwise;

"Nonpublic school" means any nonprofit school, other than a public school within the Commonwealth of Pennsylvania, wherein a resident of the Commonwealth may legally fulfill the compulsory school attendance requirements and which meets the requirements of Title VI of the Civil Rights Act of 1964.

"Psychological services" means diagnostic and evaluative psychological services for children.

(c) Provision of Services. - The Secretary of Education directly, or through the intermediate units out of their allocation under section 922.1-A of this act shall have the power and duty to furnish free to nonpublic school students, upon the premises of the nonpublic schools which they regularly attend, psychological services provided that such services are also afforded to public school students by the public school district in which such nonpublic school is located.

...RHODE ISLAND...

Section 16-51-9. Liberal construction of act required.-- This chapter shall be construed liberally in aid of its declared purposes.

Transportation

Section 16-21.1. Transportation of public and private school pupils. The school committee of any town shall provide suitable transportation to and from school for

pupils attending public and private schools of elementary and high school grades, except such private schools as are operated for profit, who reside so far from the public or private school which the pupil attends as to make the pupil's regular attendance at school impractical and for any pupil whose regular attendance would otherwise be impracticable on account of physical disability or infirmity.

Loan of Textbooks

Section 16-23-2. The school committee of every community as the same is defined in section 16-7-16 shall furnish upon request at the expense of such community, textbooks in the fields of mathematics, science and modern foreign languages appearing on the published list of textbooks recommended by the commissioner of education as provided in section 16-23-3 of the general laws, as herein amended, to all pupils of elementary and secondary school grades resident in such community, said textbooks to be loaned to such pupils free of charge, subject to such rules and regulations as to care and custody as the school committee may prescribe.

Every such school committee shall also furnish at the expense of such community all other textbooks and school supplies used in the public schools of said

community, said other textbooks and supplies to be loaned to the pupils of said public schools free of charge, subject to such rules and regulations as to care and custody as the school committee may prescribe, School books removed from school use may be distributed to pupils, and any textbook may become the property of a pupil who has completed the use of it in school, subject to rules and regulations prescribed by the school committee.

Lunches

Section 16-8-7. School lunch programs--Definition of terms.--For the purposes of sections 16-8-7 to 16-8-13, inclusive:

The term "school board" shall include city or town school committees or any person or group responsible for the operation of a private or a parochial school.

The term "school" shall be construed to mean any educational institution operated on a nonprofit basis, having a graded course of instruction with prescribed standards for the completion of each grade, with compulsory class attendance, and records of class work regularly maintained.

Section 16-8-8. Acceptance and use of federal school lunch funds.--The state department of education is hereby authorized to accept and direct the disbursement of

funds appropriated by any act of congress and apportioned to the state in connection with the establishment and maintenance of school lunch programs. The state department of education shall deposit all such funds received from the federal government with the general treasurer, to be placed in a special account, and drawn upon only on receipt of properly authenticated vouchers signed by the department of education.

Section 16-8-9. Administration of school lunch program.-- The state department of education may enter into such agreements, with any agency of the federal government, with any school board, or with any other agency or person, may prescribe such regulations, employ such personnel, and take such action, as it may deem necessary to provide for the establishment, maintenance, operation and expansion of any school lunch program, and to direct the disbursement of federal and state funds in accordance with existing provisions of the federal and state laws. The state department of education may give technical advice and assistance to any school board in connection with the establishment and operation of any school lunch program and may assist in training personnel engaged in the operation of such programs. The state department of education may accept any gift for use in connection with any school lunch program.

Section 16-8-10. Mandatory school lunch programs. -- Commencing September 1, 1972, or commencing September 1, 1973, for any city or town whose fiscal year began prior to March 1, 1972, those schools identified by school boards to the department of education as needy schools for Title I ESEA purposes, and commencing September 1, 1973, all public elementary and secondary schools, shall be required to make type A lunches available to students attending those schools in accordance with such rules and regulations as are adopted from time to time by the department of education. To the extent that federal, state and other funds are available, free and reduced price type A lunches shall be provided to all students from families which meet the current specific criteria established by federal and state regulations. The requirement that type A lunches be provided shall apply to locally managed school lunch programs, and school lunch programs administered directly by the department of education or by any other public agency whether using school facilities or a commercial catering service. The department of education is further authorized to expand the school lunch program to the extent that federal, state and/or local funds are available by the utilization of one or more food preparation centers for delivery to participating schools for the purpose of providing meals to students on a more economical basis than could be provided by a community acting individually.

Section 16-7-22, Determination of average daily membership. - Each community shall be paid pursuant to the provisions of Section 16-7-17 an amount based upon the provisions of either subsection (a) or subsection (b) of this section, whichever shall be the greater.

(a) On or before September 1 of each year

(a) the average daily membership of each city and town for the reference year shall be determined by the commissioner of education, from data supplied by the school committee in each community in the following manner: The aggregate number of days of membership of all pupils enrolled in grades one (1) to twelve (12), both inclusive, increased by one-half (1/2) the aggregate number of days of membership of all pupils in kindergarten, in all public schools in each city and town in the reference year

(i) increased by the aggregate number of days of membership of pupils residing in the particular city or town whose tuition in schools approved by the department of education is paid by the particular city or town, and

(ii) decreased by the aggregate number of days of membership of non-resident pupils enrolled in the public schools of the particular city or town and

(iii) decreased further, in the case of a city or town which is a member of a regional school district during the first year of operation of such regional school

district, by the aggregate number of days of membership of pupils residing in the city or town who could have attended the public schools in such regional school district if such regional school district had been operating during the previous year shall be divided by the number of days during which such schools were officially in session during such reference year. The resulting figures shall be the average daily membership for such city or town for the reference year; and

(b) On or before September 1 of each year

(a) the average daily membership of each city and town for the reference year shall be determined by the commissioner of education, from data supplied by the school committee in each community, which data shall be determined by said school committees from the annual census pursuant to (chapter 18 of title 16). The commissioner of education shall determine the average daily membership in the following manner: The aggregate number of days of membership of all pupils enrolled in grades one (1) to twelve (12), both inclusive, increased by one-half ($1/2$) the aggregate number of days of membership of all pupils in kindergarten in all schools (public, private or parochial) in each city and town in the reference year

(i) increased by the aggregate number of days of membership of pupils residing in the particular city or

town in schools approved by the department of education in other cities and towns and

(ii) decreased by the aggregate number of days of membership of non-resident pupils enrolled in the schools of the particular city or town and

(iii) decreased further, in the case of a city or town which is a member of a regional school district during first year of operation of such regional school district, by the aggregate number of days of membership of pupils residing in the city or town who would have attended the schools in such regional school district if such regional school district had been operating during the previous year, shall be divided by the number of days during such reference year. The resulting figures shall be the average daily membership for such city or town for the reference year; and

(c) The average daily membership of pupils attending public, parochial and private schools as determined in subsection (b) shall apply for the purposes of determining the percentage of the state's share under the provisions of Subsection 16-7-16 (d), 16-7-16 (e), 16-7-18, 16-7-19, 16-7-20, and 16-7-21.

For the purpose of applying the percentage so determined the cost of the basic program in Subsection 16-7-17 and 16-7-20 shall be determined in accordance with the provisions of subsection (a).

(d) In the case of regional school districts, the aggregate number of days of membership by which each city or town is decreased in subsection (a) (iii) above divided by the number of days during which the schools attended by such pupils were officially in session shall determine the average daily membership for such regional school district during the first year of operation. After the first year of operation, the average daily membership of each regional school district, except the Chariho Regional High School District and the Foster-Glocester Regional School District shall be determined by the commissioner of education, from data supplied by the school committee of each regional school district for the reference year in the manner provided in paragraph (a) above.

Funds for Nonpublic School Record Keeping

Section 16-40.1-1. Legislative Findings. - The general assembly hereby finds and declares that:

The state has the responsibility to provide educational opportunity of quality which will prepare its citizens for the challenges of American life in the last decades of the twentieth century,

In public schools these fundamental objectives are accomplished in part through state financial assistance to local school districts.

Substantial numbers of pupils in the state comply with the compulsory education law by attending nonpublic schools. It is a matter of state duty and concern that such nonpublic schools be reimbursed for the actual costs which they incur in providing services to the state which they are required by law to render in connection with the state's responsibility for reporting, testing and evaluating.

Section 16-40.1-2. Definitions. - 1. "Commissioner" shall mean the state commissioner of education.

2. "Qualifying school" shall mean a nonprofit school in the state, other than a public school, which provides instruction in accordance with title 16.

Section 16-40.1-3. Apportionment. - The commissioner shall annually apportion to each qualifying school, for school years beginning on and after July 1, 1982, an amount equal to the actual cost incurred by each such school during the preceding school year for providing services required by law to be rendered to the state in compliance with the requirements of administration, grading and the compiling and reporting of the results of tests and examinations, maintenance of records of pupil enrollment and reporting thereon, maintenance of pupil health records, and the

preparation and submission to the state of various other reports required by law or regulation.

Section 16-40.1-4. Application. - Each school which seeks an apportionment pursuant to this chapter shall submit to the commissioner an application therefor, together with such additional reports and documents as the commissioner may require, at such times, in such form and containing such information as the commissioner may prescribe by regulation in order to carry out the purposes of this chapter.

Section 16-40.1-5. Maintenance of records. - Each school which seeks an apportionment pursuant to this chapter shall maintain a separate account or system of accounts for the expenses incurred in rendering the services required by the state to be performed in connection with the reporting, testing and evaluation programs enumerated in Section 16-40.1-3. Such records and accounts shall contain such information and be maintained in accordance with regulations issued by the commissioner, but for expenditures made in the school year 1982, the application for reimbursement made in 1982 pursuant to Section 16-40.1-4 shall be supported by such reports and documents as the commissioner shall require. In promulgating such record and account regulations and in requiring supportive documents

with respect to expenditures incurred in the school year 1981-82, the commissioner shall facilitate the audit procedures described in this chapter. The records and accounts for each school year shall be preserved at the school until the completion of such audit procedures.

Section 16-40.1-6. Payment. - No payment to a qualifying school shall be made until the commissioner has approved the application submitted pursuant to Section 16-40.1-4.

Section 16-40.1-7. Audit. - No application for financial assistance under this chapter shall be approved except upon audit of vouchers or other documents by the commissioner as are necessary to insure that such payment is lawful and proper.

The state department of audit shall from time to time examine any and all necessary accounts and records of a qualifying school to which an apportionment has been made pursuant to this chapter for the purpose of determining the cost to such school of rendering the services referred to in Section 16-40.1-3. If after such audit it is determined that any qualifying school has received funds in excess of the actual cost of providing the services enumerated in Section 16-40.1-3, such school shall immediately reimburse the state in such excess amount.

Section 16-40.1-8. Noncorporate entities. - Apportionments made for the benefit of any school which is not a corporate

entity shall be paid, on behalf of such school, to such corporate entity as may be designated for such purpose pursuant to regulations promulgated by the commissioner. A school which is a corporate entity may designate another corporate entity for the purpose of receiving apportionments made for the benefit of such school pursuant to this chapter.

Section 16-40.1-9. Severability of provisions. - If any provisions of this chapter or the application thereof to any person or circumstances is held invalid, its invalidity does not affect other provisions or applications of the chapter which can be given without the invalid provision or application, and to this end the provisions of this chapter are severable.

...SOUTH CAROLINA...

Section 43-25-60. Itinerant teachers shall assist in schools; visually handicapped pupils shall be reported to Commission. The Commission may employ qualified itinerant teachers to assist teachers in public or private schools who are responsible for the teaching of visually handicapped students. The itinerant teacher shall assist the public or private school teacher by providing methods and materials for teaching such student. The State Department of Education shall report to the Commission the schools having visually handicapped students. All principals or

heads of private schools shall report to the Commission the names of visually handicapped students in attendance.

Grants to Students Attending Private Schools

Section 59-41-10. Definitions. The following words and phrases as used in this chapter shall, unless a different meaning is plainly required by the context, have the following meanings:

(a) "School child" shall mean any person between the ages of six and twenty whose domicile is with his or her parent within the State and who is otherwise qualified to attend the public schools of any school district in which he or she resides.

(b) "Parent" shall mean the natural or adoptive parent or the guardian having legal custody of a child eligible and entitled to receive a scholarship grant under this chapter who is actually paying or who will pay the tuition cost of attendance of such child at a school which qualifies such child to receive a grant under the terms of this chapter.

(c) "Private school" shall mean a private or independent elementary or high school which is not operated or controlled by any church, synagogue, sect or other religious organization or institution.

Section 59-41-20. Children eligible for grants; amount. Subject to the terms and provisions of this chapter every

school child in the State who has not yet finished or graduated from high school and who desires to attend a private school located within the State shall be eligible for and entitled to receive a State scholarship grant in an amount equal to the per pupil cost to the State of public education as certified by the Governor.

Section 59-41-30. Grants payable from appropriations.

The State scholarship grants provided for in Section 59-41-20 shall be payable from funds appropriated by the General Assembly for the payment thereof.

Section 59-41-40. School districts shall provide supplements to grants; levy of taxes. It shall be a prerequisite to the grant above permitted that the local school district in which the school child resides make available a grant of local funds to such school child and to that end the trustees of each school district within the State are hereby authorized to appropriate funds in addition to the State scholarship grants provided for in Section 59-41-20 in such amount that is equal to the per pupil cost to the school district exclusive of all State funds received for such purposes. The trustees of each school district are authorized to levy taxes where the school district has the power to tax, to raise funds for the payment of such local supplements to the State scholarship grants. The State Board of Education shall render such

assistance to the trustees as may be necessary to determine annual per pupil expenditures of the school district for the purpose of fixing the amount of any supplement to be paid under this section.

Section 59-41-50. Grant and supplement shall not exceed private school tuition. The total of the annual scholarship grant provided for each child by this chapter shall not exceed the actual cost of tuition at the private school attended by the child.

Section 59-41-60. State Board authorized and directed to promulgate rules and regulations. The State Board of Education is hereby authorized and directed to promulgate such rules and regulations, consistent with the terms of this chapter, for the receiving and processing of applications for scholarship grants, the payment of grants and the administration of this chapter generally as it may find necessary or desirable. Such rules may, among other things, provide for the payment of scholarship grants by the school districts of the State to the parent of any child entitled to receive a scholarship grant in installments or otherwise, and for the proration of scholarships for children attending school less than a full school year; they shall include a minimum academic standard that shall be met by any school in order to entitle children attending such school to receive a scholarship grant; provided, however, that no rule promulgated

under the authority of this chapter shall restrict, or in any way affect, the requirements of such school concerning the eligibility of pupils who may be admitted thereto or specify minimum physical plant facilities of any such school.

Section 59-41-70. Obtaining or expending scholarship funds other than for tuition unlawful. It shall be unlawful for any person to obtain, attempt to obtain, expend or attempt to expend, any scholarship funds provided by this chapter for any purpose other than in payment of, or reimbursement for, the tuition cost of the child to whom such scholarship has been awarded at the institution he or she is authorized to attend under his or her scholarship grant.

Section 59-41-80. Penalties. Any person convicted of violating the provisions of this chapter shall be punished by imprisonment for a term not to exceed three years or by a fine not to exceed two thousand dollars, or by both, in the discretion of the court.

Section 59-41-90. Effect of invalidity. If any portion of this chapter, or the application thereof to any person or circumstance is, for any reason, declared unconstitutional, such declaration shall not affect the validity of the

remaining portions of this chapter or its application to other persons and circumstances.

...SOUTH DAKOTA...

Driver Education

Section 32-5-50. Dealers participating in driver education program--Application to commissioner of motor vehicles--Fee.--Any motor vehicle dealer licensed under the provisions of chapter 32-6 who participates in the driver education program in the schools of the state by furnishing any school or schools with a motor vehicle used in such program, shall upon application to the commissioner of motor vehicles and payment of a fee of one dollar, receive from said commissioner of motor vehicles a public school corporation license plate for the operation of such vehicle upon the highways of the state. A violation of this section is a class 1 misdemeanor.

...TENNESSEE...

...TEXAS...

...UTAH...

Driver Education

Section 53-14-13.5. Enrollment of private school pupils in driver education classes.--Local school districts maintaining automobile driver education classes shall allow pupils enrolled in grades nine to twelve, inclusive,

of regularly established private schools located in said school district to enroll in the most accessible public school in said school district for the purpose of receiving driver education. The enrollment of such pupils of regularly established private schools shall be on the same terms and conditions as applies to the pupils of public schools within said school district, as such terms and conditions relate to the driver education classes only.

...VERMONT...

Driver Education

Section 1045. Driver training course. A driver education and training course, approved by the department of education and the department of motor vehicles shall be made available to pupils whose parent or guardian is a resident of Vermont and who have reached their fifteenth birthday and who are regularly enrolled in a public or private high school approved by the state board.

Maintenance of Public Schools

Section 821. School district to maintain public elementary schools or pay tuition. Each school district shall provide, furnish, and maintain one or more approved schools within the district in which elementary education for its pupils is provided unless:

(1) The electorate authorizes the school board to provide for the elementary education of some or all of the pupils residing in the district by paying tuition in accordance with law to public elementary schools in another school district. However, a school board without previous authorization by the electorate may pay tuition for elementary pupils who reside near an elementary school in an adjacent district upon request of the pupil's parent or guardian, if in its judgment the child's education can be more conveniently furnished there, or

(2) The school district is organized to provide only high school education for its pupils.

(3) Otherwise provided for by the general assembly. -
Added 1969. No. 298 (Adj. Sess.), Section 52, 3ff.
July 1, 1970.

Section 822. School districts to maintain high schools or pay tuition.

(a) Each school district shall provide, furnish, and maintain one or more approved high schools in which high school education is provided for its pupils unless:

(1) The electorate authorizes the school board to close an existing high school and to provide for the high school education of its pupils by paying tuition in accordance with law. Tuition for its pupils shall be paid to a high school, public or private, approved by the

state board, to be selected by the parents or guardians of the pupil, within or without the state. The school board may both maintain a high school and furnish high school education by paying tuition elsewhere as in the judgment of the board may best serve the interests of the pupils, or

(2) The school district is organized to provide only elementary education for its pupils.

Section 823. Elementary tuition. Tuition for elementary pupils shall be paid by the district in which the pupil is a resident. The tuition paid shall be at a rate not greater than the calculated net cost per elementary pupil in average daily membership in the receiving school district for the year of attendance.

Section 824. High school tuition. (a) Tuition for high school pupils shall be paid by the school district in which the pupil is a resident. The district shall pay the full tuition charged its pupils attending an approved public high school in Vermont or an adjoining state, or a public or private school in Vermont functioning as an approved area vocational center; or for its pupils enrolled in a private school not functioning as a Vermont area vocational center, but which has been approved by the Vermont State board or by comparable authority, an amount not to exceed the average announced tuition of Vermont union high schools for the year of attendance or any

higher amount approved by the electorate at an annual or special meeting warned for that purpose. However, any increased amount approved by the electorate may not be included as a current expenditure of the district for the purposes of aid paid under chapter 123 of this title.

Section 3445. Use of funds. State aid may be used by a town school district or an incorporated school district only for legitimate items of current expense, including, but without limitation, the following: transportation, advanced instruction, supervision and teachers' salaries. It may be used for aid to schools other than public schools as defined in section 3441(2) of this title.

Student Tuition

Section 3441. (2) Public school means any school which provides elementary or secondary school education as defined in this title, and which received its principal support from public funds; and shall also include a private school to which a Vermont school district pays tuition from public funds on behalf of a pupil.

...VIRGINIA...

...WASHINGTON...

Shared-time

Section 28A.41.145. Part time students - Defined - Enrollment authorized - Reimbursement for costs - Funding authority recognition - Rules, regulations.

(1) For purposes of this section, the following definitions shall apply:

(a) "private school student" shall mean any student enrolled full time in a private or private sectarian school:

(b) "school" shall mean any primary, secondary or vocational school;

(c) "school funding authority" shall mean any non-federal governmental authority which provides moneys to common schools;

(d) "part time student" shall mean and include any student enrolled in a course of instruction in a private or private sectarian school and taking courses at and/or receiving ancillary services offered by any public school not available in such private or private sectarian school district and any student involved in any work training program and taking courses in any public school, which work training program is approved by the school board of the district in which such school is located.

(2) The board of directors of any school district is authorized and, in the same manner as for other public school students, shall permit the enrollment of and provide ancillary services for part time students, including

(a) the part time enrollment of students involved in any work training program and desirous of taking courses within the district upon the school board's approval

of any such work training program and (b) the part time enrollment of any private school student in any school within the district for the purpose of attending a class or classes or a course of instruction if the class, classes, or course of instruction for which the private school student requests enrollment, are unavailable to the student in the private school in which the student is regularly enrolled: Provided. That this section shall only apply to part time students who would be otherwise eligible for full time enrollment in the school district.

(3) The superintendent of public instruction shall recognize the costs to each school district occasioned by enrollment of and/or ancillary services provided for part time students authorized by subsection (2) and shall include such costs in the "weighting schedule" established pursuant to RCW 28A.41.140. Each school district shall be reimbursed for the costs or a portion thereof, occasioned by attendance of and/or ancillary services provided for part time students on a part time basis, by the superintendent of public instruction, according to law.

(4) Each school funding authority shall recognize the costs occasioned to each school district by enrollment of and ancillary services provided for part time students authorized by subsection (2), and shall include said costs in funding the activities of said school districts.

(5) The superintendent of public instruction is authorized to adopt rules and regulations to carry out the purposes of RCW 28A.41.140 and 28A.41.145.

Section 28A.48.107. Commencement exercises - Lip reading instruction - Joint purchasing, including issuing interest bearing warrants - Budgets. Every board of directors, unless otherwise specifically provided by law, shall:

(1) Provide for the expenditure of a reasonable amount for suitable commencement exercises:

(2) In addition to providing free instruction in lip reading for children handicapped by defective hearing, make arrangements for free instruction in lip reading to adults handicapped by defective hearing whenever in its judgment such instruction appears to be in the best interests of the school district and adults concerned;

(3) Join with boards of directors of other school districts in buying supplies, equipment and services by establishing and maintaining a joint purchasing agency, or otherwise, when deemed for the best interests of the district, any joint agency formed hereunder being herewith authorized and empowered to issue interest bearing warrants in payment of any obligation owed: Provided, however, that those agencies issuing interest bearing warrants shall assign accounts receivable in an amount equal to the amount of the outstanding interest bearing warrants to the county

treasurer issuing such interest bearing warrants:

Provided further, that the joint purchasing agency may cooperate with and jointly make purchases with private schools of educational supplies, equipment, and services so long as such private schools pay their proportionate share of the costs involved in such purchases; and

(4) Prepare budgets as provided for in chapter 28A.65 RCW. (1971 c 26 Section 1; 1969 c 53 Section 2; 1969 ex.s. c. 223 Section 28A.58.107. Prior: 1967 ex.s c 29 Section 1, part; 1967 c 12 Section 1, part; 1965 ex.s c 49 Section 1, part; 1963 c. 104 Section 1, part; 1963 c 5 Section 1, part; 1961 c 305 Section 1, part; 1961 c 237 Section 1, part; 1961 c 66 Section 1, part; 1955 c 68 Section 2, part, prior: 1943 c 52 Section 1, part; 1941 c 179 Section 1, part; 1939 c 131 Section 1, part; 1925 ex.s c 57 Section 1, part; 1919 c 89 Section 3, part; 1915 c 44 Section 1, part; 1909 c 97 p 285 Section 2, part; 1907 c 240 Section 5, part; 1903 c 104 Section 17, part; 1901 c 41 Section 3, part; 1897 c 118 Section 40, part; 1890 p 364 Section 26, part; Rem. Supp, 1943 Section 4776, part. Formerly RCW 28.58.100(&). (13) and (14).

...WEST VIRGINIA...

Textbooks

Section 18-5-21b. Textbooks may be furnished to pupils in private schools whose parents are unable to provide same.

The board of education of every county, upon application of the proper authorities of any private school, may likewise provide state-adopted textbooks for use of the pupils enrolled therein whose parents, in the judgment of the board, are unable to provide same.

Transportation

Section 18-5-13. Authority of boards generally. The boards, subject to the provisions of this chapter and the rules and regulations of the state board, shall have authority;

(1) To control and manage all of the schools and school interests for all school activities and upon all school property, whether owned or leased by the county, including the authority to require that records be kept of all receipts and disbursements of all funds collected or received by any principal, teacher, student or other person in connection therewith, any programs, activities or other endeavors of any nature operated or carried on by or in the name of the school, or any organization or body directly connected with the school, to audit such records and to conserve such funds, which shall be deemed quasi-public moneys, including securing surety bonds by expenditure of board moneys;

(2) To establish schools, from preschool through high school, inclusive of vocational schools; and to establish

schools and programs, or both, for post high school instruction, subject to approval of the state board of education;

(3) To close any school which is unnecessary and to assign the pupils thereof to other schools: Provided, that such closing shall be officially acted upon and teachers and service personnel involved notified on or before the first Monday in May, in the same manner as provided in section four of this article, except in an emergency, subject to the approval of the state superintendent, or under subdivision (5) of this section;

(4) To consolidate schools;

(5) To close any elementary school whose average daily attendance falls below twenty pupils for two months in succession, and send the pupils to other schools in the district or to schools in adjoining districts. If the teachers in the school so closed are not transferred or reassigned to other schools, they shall receive one month's salary;

(6) (a) To provide at public expense adequate means of transportation, including transportation across county lines, for all children of school age who live more than two miles distance from school by the nearest available road; to provide at public expense and according to such regulations as the board may establish, adequate means of

transportation for school children participating in board-approved curricular and extracurricular activities; and to provide in addition thereto, at public expense, by rules and regulations and within the available revenues, transportation for those within two miles distance; to provide in addition thereto, at no cost to the board and according to rules and regulations established by the board, transportation for participants in projects operated, financed, sponsored or approved by the commission on aging: Provided, that all costs and expenses incident in any way to transportation for projects connected with the commission on aging shall be borne by such commission, or the local or county chapter thereof; Provided further, that in all cases the buses or other transportation facilities owned by the board of education shall be driven or operated only by drivers regularly employed by the board of education; Provided, however, that buses shall be used for extracurricular activities as herein provided only when the insurance provided for by this section shall have been effected;

(b) To enter into agreements with one another to provide, on a cooperative basis, adequate means of transportation across county lines for children of school age subject to the conditions and restrictions of subdivisions (6) and (7) of this section;

(7) To provide at public expense for insurance against the negligence of the drivers of school buses, trucks or other vehicles operated by the board; and if the transportation of pupils be contracted, then the contract therefor shall provide that the contractor shall carry insurance against negligence in such an amount as the board shall specify;

(8) To provide solely from county funds for all regular full-time employees of the board all or any part of the cost of a group plan, or plans of insurance coverage not provided or available under the West Virginia Public Employees Insurance Act;

(9) To employ and to provide in-service training for teacher aides, the training to be in accordance with rules and regulations of the state board;

(10) To establish and conduct a self-supporting dormitory for the accommodation of the pupils attending a high school or participating in a post high school program and of persons employed to teach therein;

(11) To employ legal counsel;

(12) To provide appropriate uniforms for school service personnel;

(13) To provide, at public expense, adequate public liability insurance, including professional liability insurance for board employees.

No policy or contract of public liability insurance providing coverage for public liability shall be purchased as provided herein, unless it shall contain a provision or endorsement whereby the company issuing such policy waives, or agrees not to assert as a defense to any claim covered by the terms of such policy, the defense of governmental immunity. In any action against the board, its officers, agents or employees, in which there is in effect liability insurance coverage in an amount equal to or greater than the amount sued for, the attorney for such board, the attorney for such insurance carrier, or any other attorney who may appear on behalf of the board, its agents, officers or employees shall not set up the defense of governmental immunity in any such action.

"Quasi-public funds" as used herein means any money received by any principal, teacher, student or other person for the benefit of the school system as a result of curricular or noncurricular activities.

The board of each county shall expend under such regulations as it establishes for each child an amount not to exceed the proportion of all school funds of the district that each child would be entitled to receive if all the funds were distributed equally among all the children of school age in the district upon a per capita basis.

...WISCONSIN...

Transportation

Section 40.53. (1) School Children. Except as provided in Section 40.55, the school boards of all school districts shall provide transportation only to and from the public school which they are entitled to attend, for all pupils, attending public and nonpublic schools, residing in the district, on regular routes approved for the public school bus and two miles or more from the nearest public school they may attend within said district. Such school boards may provide transportation for teachers to and from school subject to the same controls and limitations as are provided by this section for the transportation of pupils. In districts operating high schools, the board may also provide transportation for nonresident public high school pupils residing two miles or more from the school within areas served by the school by bus routes approved by the county school committee and the state superintendent. If the district operating the high school does not provide transportation for nonresident high school pupils, the municipality in which the nonresident pupils reside shall arrange for such transportation and such municipality shall make claim to the county clerk for the cost of transportation so provided in the manner specified in section 40.56 (2). The annual or special school meeting of any school district, or if no such meeting is held, then the school

board of any such district may authorize the transportation of all or any part of the pupils of such school district to and from the public school within the district which they are entitled to attend, but if such transportation is furnished to less than all of the pupils there shall be reasonable uniformity in the minimum distance that pupils will be transported. The board of any public elementary school district which has suspended school shall provide transportation to and from school for all elementary pupils residing therein, and two miles or more from the nearest district school which they may attend, or two miles or more from any other district school which in the opinion of the state department of public instruction it is more feasible for them to attend.

Section 121.15 State aid for driver education programs. To promote a uniformly effective driver education program among high school and vocational, technical and adult education school pupils, each school district operating high school grades and each vocational, technical and adult education district shall receive \$30 for each pupil of high school age who successfully completes a course in driver education approved by the department, but in no case may the state aid exceed the actual cost of instruction. If the appropriation under section 20.255(1) (q)

is inadequate in any year to provide \$30 per pupil, the state aid shall be prorated after the appropriation for administration is deducted. Such state aid shall be paid at the same time as the state aid under sections 121.08 to 121.13 is paid.

...WYOMING...