A Review of

The State and Sectarian Education

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INTRODUCTION

The February issue of the *Research Bulletin* prepared by the Research Division of the National Education Association represents a commendable effort to compile the facts concerning one of the most intricate topics in American Education—the relation of the state to sectarian education. The Bulletin gives evidence of a painstaking search for accurate information pertaining to the great mass of statutory and judicial law on the subject. In its 44 pages the reader will find a well-documented review of the legal issues involved in such well-known practices as the transportation of non-public school children, Bible reading in the public school, and release time. Two excellent tables give a general summary of pertinent statutes and regulations in the states.

Catholic educators are intensely interested in this research on a topic which vitally affects the present condition and future development of Catholic educational institutions in the United States. Even from a cursory review of the Bulletin, the Catholic educator will sense immediately that the spiritual welfare of thousands of souls is dependent upon the decisions of state legislatures and courts. Release time spells the difference between religious literacy or illiteracy. A statute authorizing the transportation of all school children may mean that thereby parents will be able to send their children to Catholic schools. Moreover, the interest of the Catholic educator extends far beyond his immediate concern for the welfare of church-controlled institutions. By the profession of his faith he is committed to an educational creed which unequivocably condemns the principle of secularized education. He believes that the school which neglects religious training fails to prepare the child for life in this

world and in the next. As an American profoundly appreciating the religious foundations of our American democracy, he believes that an educational plan which excludes religion from the school's curriculum is inconsistent with the sacred traditions of our national heritage. The fact that year after year thousands of American schools graduate millions of young people who are well informed on every important topic except religion is of no small concern to the Catholic educator. Well-informed people unrestrained by religious convictions are as treacherous as shifting sand and as dangerous as the well-trained but ferocious watchdog. As Calvin Coolidge once observed, schools which neglect their responsibility to impart religious instruction "turn their graduates loose with simply an increased capacity to prey upon each other."

The publication of the N. E. A. Bulletin appears at a time when considerable attention is being paid to the complexities of church-state relationships in education. Presently we are witnessing an ever increasing concern by many Protestant leaders over the failure of American youths to become members of the churches. There is a noticeable apprehension that the debilitating secularism of public education may eventually cause the death of American Protestantism, or at least it will depreciate its influence as a cultural force in American life. Churchmen have a right to feel slighted when social science students visit every public institution in the community except the churches. Clergymen know from bitter experience that, if children are marched past the churches while they are in school, they will probably continue to pass them by after they graduate.

A few religious leaders may see in this Bulletin a hopeful and encouraging indication that perhaps religion may be granted a token consideration in the public school. For the most part Protestant clergymen will be pleased with the trend toward a favorable decision by state and local officials in granting release time for

religious instruction. Friends of the church-controlled schools will be somewhat encouraged by the action of a few states in providing transportation and textbooks for children in non-public schools.

Taken in its context, however, the N. E. A. Bulletin is by no means a friendly gesture toward denominational religion. The authors of the Bulletin feel that it is necessary to warn the American public and more directly the public school profession that sectarianism once again is threatening the public school system of the United States. This is not to say that the authors of the Bulletin are opposed to religion. If we correctly understand the typical N. E. A. reasoning on this topic, it would propose:

1) That the church and home take full responsibility for sectarian or denominational religious instruction; and

2) That the public school teach the "spiritual values" which may or may not be more satisfactory—and perhaps more directly "religious"—than sectarian doctrines.

This Bulletin in its full context aims to teach one significant lesson—the public school must always be on guard against the encroachment of the churches, and particularly of any church which operates its own schools.

In this review of the Bulletin we call attention to the N. E. A. statements of policy which are interwoven with the assembled facts. Secondly, we wish to present a few more facts which we believe will improve upon the research which went into the Bulletin.

Our comments will be directed to the various chapters of the Bulletin. We suggest that in reading this review the reader have at hand a copy of the Bulletin so that he may check upon our observations.

THE FOREWORD

In the Foreword, President Givens commends the American people for their vigilance in seeing to it that public funds for education are legally expended. It is said that the people have insisted that public money shall not be spent for church schools. Doctor Givens' observation does not appear to be relevant to any present-day situation. We are not aware of any recent instance when the issue of public support for church schools, presented in its own right and not as a phase of a general legislative reform, was brought to the people for their decision. It is interesting to note that in 1938 the *people* of New York voted in favor of a constitutional amendment authorizing the transportation of non-public school children.

In the fifth paragraph of the Foreword we read: **"Such efforts to direct public funds to sectarian schools weaken the financial support of public education which in many states is not adequate to provide acceptable public educational opportunities."**

This statement is inaccurate and misleading. Children attending sectarian schools do so in compliance with the compulsory education laws of the states. The state is under an obligation to provide suitable educational facilities for all children. As a matter of fact the state fails to fulfill its obligation to children in sectarian schools. If, however, the states were to assume their rightful responsibility, they need not curtail their expenditure for public schools; they would simply be required to levy adequate taxes to cover the cost of educating all school children and not just those attending the state-controlled schools. As it is now, at the minimum annual expenditure of $40 a child, the saving to the American taxpayers accruing from the enrollment of 2,399,908 children in Catholic elementary

and secondary schools amounts to over $95,000,000 a year. If the average national expenditure of $110.03 per child in average daily attendance of public schools were spent for the education of every child in the Catholic elementary and secondary schools, the cost to the taxpayers would come to $264,061,877.24 (a sum slightly in excess of the federal appropriation requested by the N. E. A. for the equalization of educational opportunity in the public schools). The expense to the taxpayers actually would be much higher since most of the children in Catholic schools live in the states where the per capita expenditure for public education is in excess of the national average. Furthermore, we do not think that President Givens could produce any substantial evidence to show that Catholic parents who support their own parochial schools have opposed increased expenditures for public education.

It appears to us that America's strength is dependent not only upon the minimization of differences but as well upon respect for differences. We fear that sometimes Americanism is incorrectly identified with majority rule in the sense that those who differ from the majority are regarded as un-American. Although the parochial schools are in the minority, they should not merely be tolerated as though they were the pet projects of a few cranks who do not agree with the educational policies of the majority. The parochial school should be encouraged so that public and non-public schools may continue to grow together side by side, each performing its educational task in its own way. We claim that the inalienable rights of a minority should not be violated by the majority. It is our conviction that the state constitutions and laws which *in effect* make it impossible for parents of a minority religious group to select religious schools for the education of their children are a clear violation of inalienable parental prerogatives. Such, indeed, is the regrettable situation in our democracy where many

Catholic parents who cannot raise sufficient funds to maintain parochial schools are forced to send their children to a public school even though they have a profound conscientious objection against exposing their children to the secularizing results of public education. The indirect suppression of voluntary education by the states is a national disgrace. Our nation, which boasts of its respect for the rights of minorities, is far less considerate of the wishes of a minority group of parents than are some other nations which we criticize severely for their failure to meet our democratic standards.

CHAPTER I

With the opening sentence of this chapter we find ourselves in complete agreement. A thorough review of the history of public education in the United States will reveal that the abolition of religious instruction in the public schools and the limitation of public funds for the support of public schools were expedients for the temporary solution of a perplexing administrative problem. Secularism was not a *principle* with the founders of our American public school system; rather, it was the inevitable outgrowth of a hasty decision to put an end to religious controversy by banning religion and religious groups from participation in public education. To say repeatedly that church-controlled schools shall be denied an equitable share of public funds or to claim that religious instruction cannot be associated with public education does not establish the alleged "principle" to which reference is made so frequently in the Bulletin. On the contrary, the so-called principle is nothing more than a rationalization of a condition which developed after the Civil War. The elimination of religious instruction from the American educational pattern held no place in the intention of the sincere religious men who established the public school system. What we have now is a condition which has far outrun their intention. We think that the relation of church and state in education needs to be reexamined in the light of present conditions. A nostalgia for the frenzied secularism of the post-Civil War period is no more pertinent to our present situation than is sympathy for the laissez-faire liberalism of the intrepid post-Civil War industrialist.

Chapter I speaks of the deep roots of the problem and goes on to discuss the gradual development of the separation of church and state as a political principle

of American government. We fail to see how the separation of church and state pertains to the problems raised in subsequent chapters. The Bulletin blandly assumes that any assistance granted by the government to a sectarian school is tantamount to support of the church. This approach to the problem is deliberate obscurantism. A sectarian school (as the authors of the Bulletin insist upon calling church-controlled schools) should be defined as an educational institution conducted under religious auspices. The fundamental difference between a public school and a sectarian school is not that of sectarianism; rather, it is that of control over the curriculum and management of the school. The public school is managed by the government or by a semi-governmental agency; the sectarian school is controlled by the Church. Both types are dedicated to the purpose of training intelligent American citizens. For this reason the state permits parents to choose one or the other in compliance with the compulsory education laws. In preparing the child for the fullness of American citizenship, the church school makes use of those religious doctrines which inspired our American form of government. At the same time the church school teaches the child the great religious doctrines he must understand if one day he is to be ready for life in the company of God in Heaven. The religious instruction is practical; it persuades the child to become an active member of the church organization. In so doing, it does not alienate his loyalty to American institutions, but it does give him an opportunity to acquire religious motivation for his practice of patriotism.

In summary, it appears to us that the separation of church and state is a working political principle which should not be brought into disrepute by citing it as a solution for irrelevant problems.

CHAPTER II

The second chapter is ineptly titled "Constitutional Separation of Church and State." One would presume that every state in the Union explicitly provides for a constitutional separation of church and state. However, as the Bulletin observes (page 9), only one state mentions the separation of church and state in its constitution. What the Bulletin does discuss in this chapter are the references to religion which are found in state constitutions such as the prohibition against the establishment of a religion, giving a religious test for public office, or sectarian instruction in the public school, and so on.

We note that the Bulletin does not consider the last two of Cooley's five conditions for religious liberty (page 7) to be "within the scope of this Bulletin." To our way of thinking they are most pertinent to the topic under discussion. Catholic parents place a close association between the parochial school and the practice of their religion. Sending their children to a parochial school is part of their religion in the same manner as saying their prayers or having their children baptized. Because some Catholic parents lack sufficient private resources for the construction and maintenance of a parochial school, they are compelled to send their children to the public school. These parents might rightfully say that the distribution of educational funds exclusively to public schools is definitely restraining the free exercise of religion according to the dictates of their consciences.

Let us put the case in a succinct form:

"Since the passage of the compulsory attendance laws,

"Either Catholic parents must send their children to non-religious public schools, and thus suffer violation of conscience rights—

"Or Catholic parents must create and maintain at their own expense schools conformable to their religious beliefs, and thus submit to a penalty for the exercise of their conscience—

"Or Catholic parents, unwilling to send their children to public schools and unable to finance their own schools, could refuse to obey the attendance laws, and would then suffer imprisonment for their religious convictions."*

The dilemma in which Catholic parents are placed is a restraint of the free exercise of religion.

A remark in the summary of the chapter is in such poor taste that it actually devaluates the whole Bulletin. It is said that New York's constitutional amendment permitting the free transportation of parochial school children has made the "church and state less separate" (page 13). Certainly this exaggeration will not be taken seriously.

This chapter concludes by pointing out that the "courts are unanimous in holding that no union of church and state is possible under our state constitutions" (page 13). This statement is irrelevant. The issue of the union or the separation of church and state has not been contested in the courts. Even if it had been, the decisions of the courts would be irrelevant to such questions as release time, Bible reading, and the other controversial issues discussed in the following chapters of the Bulletin. We think that the authors of the Bulletin might well have heeded the warning expressed in the decision of the Supreme Court of Mississippi:

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* "A Plea for Conciliation," Most Rev. John R. Hagan, Proceedings, N.C.E.A. Convention, 1939, page 73.

"There is no requirement that the church should be a liability to those of its citizenship who are at the same time citizens of the state, and entitled to privileges and benefits as such. Nor is there any requirement that the state should be godless or should ignore the privileges and benefits of the church."

"Calm reason must not be stampeded by random cries of church or state or sectarian control, or by the din from the conflict of catechism and dogmatism. A wholesome sanity must keep us immune to the disabling ptomaine of prejudice."

CHAPTER III

This chapter proposes to set forth the statutes and court decisions which "implement" constitutional provisions discussed in the previous chapter. The Bulletion makes no claim "to ferret out all the laws all the states have passed bearing directly and indirectly on the problem of the relationship of church schools and the state government" (page 14). Likewise, the authors of the Bulletin have selected for review only those court decisions which they consider to be of prime importance for the correct interpretation of the constitutional limitations on the use of public funds for the direct or indirect support of non-public schools. It is the purpose of this portion of this review to supplement the data in the Bulletin with some additional laws and decisions which will throw more light upon the various problems. Some of the statutes and decisions came into effect after the publication of the Bulletin.

Tax Levies and Appropriations

The Bulletin is correct in its conclusion, based on the cases which it reviews, that direct financial aid to religious schools is prohibited in almost every state either by constitution or statute. There are some court decisions, however, which definitely establish an exception to the general rule. The Bulletin discusses the case of Dunn vs. Chicago Industrial School, 117 N. E. 735 (Ill. 1917), as one of these exceptions. In this case the city of Chicago had contracted with the Chicago Industrial School for Girls, an institution operated by Catholic Nuns, to contribute toward the maintenance of delinquent girls committed to its care by the courts. The Supreme Court of Illinois ruled that this contract was not in violation of the Illinois constitution inasmuch as the amount, $15.00, allotted per month for

each girl was inadequate for her complete maintenance. The court declared, "It is the state and not the industrial school that is benefited." The Bulletin refers to the reasoning in this case as a "pragmatic argument." It is rather easy to call a process of deduction "pragmatic" when you do not agree with it.

The Bulletin is incorrect in its conclusion that the reasoning in the Dunn Case "was not followed in subsequent decisions" (page 17). Actually the same situation involved in the Dunn Case came before the Supreme Court of Illinois in the subsequent case of St. Hedwig's Industrial School vs. Cook County, 124, N. E. (Ill. 1918) 629. The court reaffirmed the validity of another contract involving payments of public funds for the maintenance of a child residing in a church-controlled industrial home.

The Bulletin is also inaccurate in its statement, "With the exception of this unusual case, no issues directly involving aid to sectarian schools came before any court of record since 1900" (page 17). Apparently the authors of the Bulletin overlooked the case of State vs. Johnson, 176 N. W. (Wis. 1919) 224. This case was concerned with a Wisconsin statute enacted shortly after the end of World War I which authorized payment of tuition for veterans continuing their education. A construction of the law by administrative officials permitting the payment of tuition to a religious school was attacked as a violation of the State Constitution. However, the court ruled that this action did not violate the constitution. The decision declared, "The contention that financial benefit accrues to religious schools from the Act is equally untenable. Only actual increased cost to such schools occasioned by attendance of beneficiaries is to be reimbursed. They are not enriched by the service they render. Mere reimbursement is not aid."

Likewise, the case of Sargent vs. Board of Education, 177, N. Y. 317, 69 N. E. 722, (N. Y. 1904) is not dis-

cussed. In this case the court ruled that a local board of education could use tax funds for the maintenance of the school operated by a Catholic orphanage and for the salaries of the teachers in this institution. It was held that this action did not violate the New York Constitution which has a provision to the effect that: "Nothing in this Constitution contained shall prevent the legislature from making such provision for the education and support of the blind . . . or prevent any county, city, town, or village from providing for the care, support, and maintenance and secular education of inmates of orphan asylums."

It will be noted that the Illinois and New York cases cover specific situations—industrial homes and orphanages—and do not authorize special aid to church schools as such. The funds were granted as a recompense for the Church's effort on behalf of unfortunate boys and girls. However, because a school is as necessary in an industrial home or orphanage as the dining hall, any measure of public assistance to the institution must give incidental assistance to its educational effort. The tender of public assistance in such circumstances is then a part of the larger problem of whether the state may make some recompense to private charity for the easing of the tax burden due to its efforts. As the Bulletin states, there are courts, probably in the majority, which hold that such cannot be done; some on general principles, others because of the incidental but necessary inclusion of assistance to education under religious auspices. The latter group in so holding are forced, perhaps against their desires, into the position that religion is an intruder in the field of charity and that the church orphanage like the parochial school must be regarded as a private institution to be tolerated only because the members of a religious denomination are determined to prevent their abolition.

USE OF CHURCH BUILDINGS

The discussion of this topic is centered around an important distinction. In litigation involving the use of church property for public school purposes the courts have *not* questioned the right of local school boards to rent church-owned buildings for the housing of public schools; however, the courts have differed in their opinions as to the extent to which the church property may retain its ecclesiastical characteristics while being used as a public school. Four decisions—William vs. Board of Trustees, 191 S. W. 507; Knowlton vs. Baumhover, 166 N. W. 202 (Iowa); State vs. Taylor, 240 N. W. 573 (Nebr.); and Harfst vs. Hoegen, 163 S. W. (2d) 609, Missouri (apparently this case was overlooked by the authors of the Bulletin)—have declared that certain practices associated with the use of church buildings for public schools have vitiated the agreement entered into by the school authorities and the Church. The reasoning underlying these decisions is well summarized in an excerpt from the case of State vs. Taylor: "The school building and surroundings, the religious emblems, the prayers of the pupils, the garb and doctrinal attitude of the Sisters, and the instructions and services of the parish priest in the chapel and classrooms create an environment that reflects the spirit, example, and belief of the Catholic religion in the school itself. Inculcation of that religion is part of the school work."

Other court decisions which have permitted the use of church buildings for public school purposes have stressed the circumstances of the situation which would "protect" the child from sectarian distraction during public school hours. For example, in both the Connecticut and Indiana cases the decisions point out that sectarian instruction was not given during the regular class hours but was confined to a period either before or after school. The Connecticut decision also emphasized the fact that the Catholic orphanage in New

Haven meets the "essentials that must be present to constitute a school a public school. It must remain under the exclusive control of the state through the state's constituted agencies and must be free from sectarian instruction."

It is difficult to draw any definite conclusion from the conflicting decisions on this topic. The status of the schools operated on the basis of agreement between school and church authorities is at best anomalous. Legally they are public schools, yet in actual practice there is an inevitable concession for incidental or indirect religious instruction. Their existence is one of the phenomena made possible by the intricacies of the American system of case law as it crosses state borders. They represent an attempt to work out even-handed justice by compromising on constitutional provisions on the one hand and actual facts on the other. For example, those responsible for school administration in Vincennes, Indiana (State vs. Boyd, Bulletin, page 18) had to meet a situation which permitted no delay for the exploration of fine-spun legal technicalities; so practical men of affairs worked out a solution which put children back in school. A compromise of inflexible constitutional provisions with an equally inflexible situation of fact appears to be the most logical explanation of the decision cited in the Bulletin.

FREE TEXTBOOKS

The Bulletin's appraisal of the practice of loaning free textbooks to children in non-public schools is rather vague and somewhat timid. The fact is that the legal evidence in support of the practice is most convincing. In a very explicit decision the Supreme Court of the United States (Cochran vs. Louisiana State Board of Education, 281 U.S. 370) ruled that the taxing power of the State of Louisiana was expended *for a public purpose* in providing textbooks for

children in non-public schools. It appears to us that this declaration of the "public purpose" aspect of the grant to non-public school children is equally as significant as the alleged "child benefit theory." Furthermore, we think it noteworthy that the Supreme Court of the United States handed down this decision *after* the New York Court had ruled contrariwise on the same topic. To say that the Mississippi decision merely "supports" (Bulletin, page 21) the "child benefit theory" is to underestimate the profound reasoning which appears in the learned decision written by Justice Alexander. We think that this decision is a calm, logical, and convincing analysis of the relationship of church and state in American education. It deserves more attention than the casual treatment accorded to it in the Bulletin.

TRANSPORTATION AT PUBLIC EXPENSE

Since the Bulletin was published there have been several developments in regard to this topic:

1) The case of Everson vs. Board of Education, 44A (2d) 333 (New Jersey) (Bulletin, page 23) sustaining free bus transportation for parochial school pupils in New Jersey has been appealed to the Supreme Court of the United States where it is now pending. The decision thereon will probably clarify this problem as far as the federal constitution is concerned.

2) The decision of Sherrard vs. Jefferson County Board of Education, 171 S.W. (2d) 963 (Bulletin, page 22) holding the Kentucky bus transportation law invalid insofar as it applied to non-public school children, for all practical purposes has been reversed by the case of Nichols vs. Henry, 191 S.W. (2d) 930 (Kentucky, 1946). The statute under which the Sherrard Case was decided had provided for transportation of non-public school children at the expense of the *school* fund. In the Sherrard Case the court held that this

action was in violation of the state constitution. Subsequently, the legislature amended the bus transportation statute so that the funds for transportation would be paid from the general funds. In the Nichols Case the Court upheld the constitutionality of the revised statute.

3) In California the case of Bowker vs. Baker et al, 167 P (2d) 256 (1946) was decided in the Supreme Court to sustain the validity of a statute authorizing the transportation of non-public school children at public expense.

4) In 1943 a Washington statute authorizing the transportation of non-public school children was declared unconstitutional in the case of Mitchell vs. Consolidated School District, 135 Pac. (2d) 79 (Bulletin, page 22). Subsequent to this decision the legislature of Washington enacted a new statute authorizing the transportation of "all children attending school in accordance with the laws relating to compulsory attendance," Section 13, Chapter 28, Laws of 1933 as amended by Section 1, Chapter 77, Laws of 1943. This new statute appears to be an attempt to correct the language of the previous statute which had failed to correlate properly free transportation and compulsory school attendance. The constitutionality of this new statute has been challenged in an action now pending in the lower courts.

5) The electors of Wisconsin will vote in the November election on a constitutional amendment which would legalize the transportation of non-public school children. Meanwhile, there is an action pending in the Supreme Court of the State testing the right of a school board to transport non-public school children under the law as it now stands.

The Bulletin fails to give sufficient recognition to the prevailing trend in the decisions of the courts which

have declared that the free transportation of non-public school pupils is an exercise of the state's police power in protecting children from highway hazards and other dangers. There seems to be a growing realization on the part of the courts that the protection of non-public school children enroute to and from school is a duty of the state which cannot be disregarded by resorting to the dubious argument that this service might bring an incidental benefit to the school. If a child is killed while walking along the public highway on his way to school the local authorities charged with public safety will be held responsible for this tragedy. Whether the child was on his way to a public or parochial school certainly will be irrelevant in such a case.

The recent decision of the Kentucky Court of Appeals expressed accurately the latest legal thinking on this topic:

"In this advanced and enlightened age, with all of the progress that has been made in the field of humane and social legislation, and with the hazards and dangers of the highway increased a thousandfold from what they formerly were, and with our compulsory school attendance laws applying to all children and being rigidly enforced, as they are, it cannot be said with any reason or consistency that tax legislation to provide our school children with safe transportation is not tax legislation for a public purpose. Neither can it be said that such legislation, or such taxation, is in aid of a church, or of a private, sectarian, or parochial school, nor that it is other than what it is designed and purports to be, as we have stated hereinabove—legislation for the health and safety of our children, the future citizens of our state. The fact that in a strained and technical sense the school might derive an indirect benefit from the enactment, is not sufficient to defeat the declared purpose and the practical and wholesome effect of the law." (Nichols vs. Henry)

EMPLOYMENT OF TEACHERS

This topic raises the question concerning the legality of employing public school teachers who are members of a religious community and who wear religious garb while teaching in the public school. The Bulletin gives a very succinct and direct answer to the question: "The wearing of distinctive religious dress is not considered unconstitutional sectarian influence; but if public school teachers are prohibited from wearing such garb the restriction is valid." The Pennsylvania Court expressed this idea in its decision in the case of Commonwealth vs. Herr, 78 Atl. 68 (Pa. 1910) (Bulletin, page 25)

"We cannot assent to the proposition that the intent, or the effect, of the legislation is to disqualify any person from employment as a teacher on account of his religious sentiments. It is directed against acts of the teachers whilst engaged in the performance of his or her duties as such teacher. It is true that the acts prohibited are those which may indicate, and indeed may be directed by, the religious sentiments of the teachers. Therefore, we are lead to the broader inquiry whether this constitutes an infringement of the natural and indefeasible right of all men to worship God according to the dictates of their consciences."

"The system of common school education in this commonwealth is the creature of the state . . . This carries with it the authority to determine what shall be the qualifications of the teachers, but in prescribing them the legislature may not make religious belief or church affiliation a test. Nevertheless, the power of the legislature to make reasonable regulations for the government of their conduct whilst engaged in the performance of their duties must be conceded . . . As shown by the preamble of the act under consideration the Legislature deemed it 'im-

portant that all appearances of sectarianism should be avoided in the administration of the schools of the commonwealth.' This was the ostensible object of the legislation and we can discern no substantial ground for concluding it was not the sole object which the Legislature had in contemplation. Nor are we able to conclude either that the object was beyond the scope of legislative power, or that the regulation adopted had not just and proper relation to that object."

EXCUSING PUPILS DURING SCHOOL HOURS

The Bulletin's coverage on this subject is quite complete. However, the Bulletin does not mention that the New York case which upheld the practice of release time at White Plains, New York was sustained in the Court of Appeals, (People vs. Graves, 156 N.E. 663). The result is that the release time situation in New York has been given definite judicial approval and has not been left in the neutral status implied by the Bulletin.

Since the publication of the Bulletin the Supreme Court of Illinois has approved the practice of release time as it is conducted in the Chicago schools. (Ira Latimer vs. Board of Education, 1946)

PRACTICES AND CUSTOMS

The authors of the Bulletin have rendered a real service to research students who are investigating the relationship of church and state in American education in providing the excellent table on page 36. This table is an accurate summary of the prevailing practices in the 48 States and the District of Columbia.

CHAPTER IV

State Supervision of Sectarian Education

In this chapter the Bulletin discusses the extent to which state educational authorities may supervise non-public schools. It stresses the point that sectarian schools are not under the control of the state except to the degree that they are subject to its police power. This would seem to imply that the state exercises no supervision beyond watching the schools to see that nothing inimical to the state is taught therein. As a matter of fact, however, the evidence in the Bulletin clearly shows that the states take a very positive stand in setting requirements and standards for such physical and mental development as the state deems necessary for its future citizens.

It is important to observe that the fundamental distinction between a public school and a church school rests with the control of the school by the state or by the Church. In the case of the public school the state regulates to a considerable degree the content of the child's education. It does so on behalf of the parents who have delegated to the states this sacred responsibility. In the case of the church school the church authorities regulate to a considerable degree the content of the child's education. The Church exercises this authority both in its own right as a qualified educational organization and by reason of the delegation to do so which it receives from the child's parents.

We wish to emphasize that both the public school and the church school are *satisfactory* as far as the state's essential interest in education is involved. Therefore, we come to the conclusion that the state's action in disbursing funds only to the public schools is an arbitrary procedure unjustified by any sound principles

of political administration. Church schools might well present this dilemma to the state authorities: "If our schools meet state standards the state should support them. If they do not meet state standards they should be closed." To refuse public funds for the support of church-controlled schools is a clear violation of equity.

CONCLUSION

Church-controlled schools do not receive the public recognition which they deserve for their contribution to the welfare of the nation. We think that the failure on the part of the state to encourage the church-controlled school constitutes a serious danger to the democratic administration of education in the United States. Certainly, the most zealous exponent of public education would deplore any tendency toward totalitarianism in our American education system. Furthermore, he would be disturbed by any law which would directly or indirectly impose a uniform education upon all the children of our nation. If he reads the Bulletin carefully he will discover that the state laws are such that they tend to mold education into a government-controlled form. At best the church-controlled schools are only tolerated. The detailed legislation revealed in this Bulletin should open the eyes of the American public to the petty meanness of many state regulations. One cannot help but see in these stringent state measures an undemocratic philosophy which has little or no sympathy for any school except the public school.

As a prominent educator* recently observed, "The public school system is not American education. It is only part of it." We believe that the American education system should embrace more than one kind of education. We hope that soon the American people in their wisdom will amend state constitutions and repeal discriminatory state laws so that side by side the public school and the church school may prosper together free of artificial barriers which prohibit the genuine American cooperation of which both are eminently capable.

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* Archbishop McNicholas of Cincinnati, Ohio.