

FROM WASHINGTON OFFICE  
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March 4, 1964

Court Rules Public Aid  
Requires Public Policy

WASHINGTON (BP)-- United States Supreme Court action here involving two North Carolina hospitals may have far-reaching effects on church-state institutions that have been aided in government programs, according to C. Emanuel Carlson, executive director of the Baptist Joint Committee on Public Affairs.

By declining to review a case decided by the United States Court of Appeals for the Fourth Circuit the Supreme Court in effect said that private hospitals that have received Hill-Burton grants must be regulated by public policy regarding discrimination.

The Moses H. Cone Memorial Hospital and the Wesley Long Community Hospital, both in Greensboro, N.C., are private, nonprofit corporations. The Cone Hospital has received \$1,269,950 and the Long Hospital has received \$1,948,800 in Hill-Burton grants.

Prior to the Court decision Long Hospital denied admission to all Negro patients and did not grant staff privileges to Negro physicians and dentists.

The Cone Hospital did not grant admission to Negro patients on the same terms and conditions as white patients. When the complaint against it was filed, it did not admit Negro physicians and dentists to staff privileges.

Negro physicians, dentists and patients instituted action in the United States District Court for the Middle District of North Carolina, Feb. 12, 1962. The District Court ruled in favor of the hospitals on the ground that they are private corporations and are not regulated by public policy.

The case was taken to the Fourth United States Court of Appeals, where it was decided, 3-2, that acceptance of Hill-Burton grants is "sufficient involvement to imbue the activities of the hospitals with 'state action' and bring them within the Fifth and Fourteenth Amendment prohibitions against racial discrimination."

The refusal of the Supreme Court to review the decision of the lower court has the effect of making the lower court decision the law in the Fourth District. Although it is not binding on the other federal court districts, it is expected that they will adopt this decision as their view.

In commenting on this major court action Carlson said that "it is quite understandable." He pointed out that "the American Constitution knows only one kind of citizenship" and that there is no constitutional basis for discrimination.

"This far-reaching principle of democracy would be meaningless," he continued, "if churches or other groups could become the administrators of public services using public funds but not public policies."

The significance of the decision, the Baptist official said, is that "public funds are accompanied by public policies." For this reason he said that hospitals built by public money "have no legal grounds on which to discriminate in their admissions policies, in services rendered, or in employment practices."

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A further effect of the decision Carlson pointed out is that now "physicians who have been excluded because of religious differences on medical codes have proper grounds for protest, and the use of public medical facilities for religious impacts and propaganda can expect to be challenged."

Carlson viewed the case as having a direct bearing on church colleges receiving government grants and on the desire of parochial schools on the elementary and secondary levels for public aid.

"The concept of a 'church-public' college, for instance," he said, "has no constitutional base and has no real prospect in American history. This case, therefore, highlights the importance of the policy decisions now being formulated by colleges with denominational backgrounds or connections."

As for parochial schools he said, "Continued religious discrimination in administrative control, in admissions, in employment of teachers, in curricular content, or in requirements and activities could quickly become issues for legal action if the demands of parochial educators are met with federal grants."

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Senate Faces Religious  
Issues In Civil Rights

(3-4-64)

WASHINGTON (BP)-- The U. S. Senate faces interesting religious issues when it debates the controversial civil rights bill passed earlier by the House of Representatives.

The civil rights bill is the most comprehensive yet faced by Congress. It provides for nondiscrimination in public accommodations, voting rights, desegregation of public facilities and of public education, extension of the Commission on Civil Rights, nondiscrimination in federally assisted programs and equal employment opportunities.

The House passed version contains provisions for religious discrimination in certain areas. Sen. Hubert Humphrey (D., Minn.), Senate floor manager for the measure, said he would resist any changes in the House bill when it comes before the Senate.

Special consideration in the bill for religious groups is as follows:

1. It prohibits inquiry and investigation by the Commission on Civil Rights into membership practices or the internal operations of any religious organization.
2. It exempts religious corporations, associations or societies from non-discrimination requirements in employment practices.
3. It allows religious discrimination in federally assisted programs, while forbidding discrimination in such programs on the basis of race, color, or national origin.

In order to make doubly sure that church institutions are exempt from certain nondiscrimination requirements the House bill wrote in two other provisions: (1) discrimination in employment on the basis of religion, sex or national origin is not unlawful if these are bona fide occupational qualifications for employment, and (2) discrimination in employment on the basis of religion is not unlawful in schools that are "in whole or in substantial part, owned, supported, controlled or managed by a particular religion...or if the curriculum of such school...is directed toward the propagation of a particular religion."

Another provision of the House bill allows employers to discriminate against atheists. Specifically, it says, "it shall not be an unlawful employment practice for an employer to refuse to hire and employ any person because of said person's atheistic practices and beliefs."

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Jewish Lawyer Hits  
Shared Time Proposal

WASHINGTON (BP)-- A prominent Jewish constitutional lawyer testified here that "shared time" proposals before Congress would not solve the church-state issue in education. Other witnesses varied in their positions from support of the bill to lukewarmness and indecision.

Leo Pfeffer, general counsel of the American Jewish Congress, appeared at hearings of a special House subcommittee on education on a shared time education measure. Other witnesses were Francis Keppel, Commissioner of Education of the Department of Health, Education and Welfare, and representatives of the National Education Association and Americans United.

The bill, sponsored by Adam Clayton Powell (D., N.Y.), chairman of the House Education and Labor Committee, would amend the National Defense Education Act of 1958 to provide \$15 million over three years to public school agencies for pilot projects in shared time. This would enable private school students to take such subjects as mathematics, science and modern foreign languages in the public schools.

Pfeffer said that the shared time proposal would not be taken as a general aid to education program and therefore would be no solution to the church-state issue. It would, he said, encourage a rapid growth of parochial schools, including denominations not now offering such schooling.

"The result can only be an acceleration of the exodus of pupils from public schools and the kind of administrative and educational chaos that will create havoc with the public school system," Pfeffer stated.

The Jewish lawyer said that as the bill is written it would appear to be "immune to constitutional attack" but he expressed fear of its effect on the public schools. Interest in the humanities might be lessened, he said, with the "subjects which would broaden the horizon of the students" not being taught in the public schools, making them become "one gigantic gym or shop."

He said the American Jewish Congress "vigorously opposed" shared time education and the provision of federal funds to support such schooling.

Francis Keppel, U.S. Commissioner of Education, defined shared time as a "dual enrollment" which would act "to bridge social, economic, and religious differences within the community" and to develop greater popular support for education. "Dual enrollment," he said, "would be directed to the specific benefit of the individual, rather than of the state or the nonpublic school."

One possible disadvantage, Keppel pointed out, might be that some state constitutions contain prohibitions against "indirect" as well as "direct" aid to religious organizations. "Relieving the religious school of part of its burden of education may be interpreted in some states as an example of indirect aid," he said.

The Commissioner said he favored the inclusion of the shared time proposal in the administration's general aid to education bill. He did not say whether he would favor the shared time bill separately.

Representatives of the National Education Association and of Americans United stated that their organizations had taken no official position on shared time education. Franklin C. Salisbury, general counsel for Americans United, said that organization's attitude is one of "watchful waiting."

Earlier witnesses favored the shared time proposal as a possible solution to the church-state issue in federal aid to education. However, Msgr. Frederick G. Hochwalt, speaking for the National Catholic Welfare Conference, said he did not consider this a substitute for a general aid to education program and that their earlier position on federal aid to parochial schools had not changed.

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### Sharp Church-State Issues Face Baptists

ATLANTIC CITY, N.J. (BP)--Prayer and Bible reading in public schools, the assassination of President Kennedy, and federal aid to higher education took the spotlight in church-state relations the past year, according to the report of the Baptist Joint Committee on Public Affairs to the Southern Baptist Convention here.

On June 17 the United States Supreme Court ruled in the Schempp and Murray cases from Pennsylvania and Maryland that required devotionals in the public schools violate the establishment of religion clause of the First Amendment.

Public reaction to the 1963 decision, according to the Public Affairs Committee report, was milder than in 1962 following the New York Regents' prayer case which ruled that official government prayers for public schools violated the First Amendment. This changed situation was due to better reporting and better understanding of the issues, the report stated.

Nevertheless, it was pointed out that there is a rising national reaction against the Supreme Court's decision. "Patriotic" groups and politicians are fanning the emotional flames on this issue, according to the report.

The Baptist Joint Committee on Public Affairs has been in agreement with the Supreme Court's decisions that official government prayers and required devotions violate the separation of church and state and the free exercise of religion.

"The assassination of President Kennedy and the shift to a new national administration immediately shifted the problem of religious liberty and church-state relations in the United States," the report said. President Kennedy, a Roman Catholic, took a strong position for "separation," a position popular with Protestant voters. On the other hand, President Johnson, a Protestant, "has not found it necessary to make such commitments and whose eventual policies remain to be developed," the report pointed out.

At the end of the first session of the 88th Congress the Higher Education Facilities Act of 1963 was signed into law by President Johnson. This law authorized an initial distribution of \$1.2 billion as grants and loans to public and private institutions for the construction of academic facilities for teaching science, engineering, mathematics, foreign languages and for libraries.

Immediately church-related colleges were put on the spot, according to the Public Affairs Committee report. They face the problem of accepting public funds, a practice long rejected by Baptist institutions.

Some of the questions that follow, according to the Public Affairs Committee are: "What effect will the new national policy in education have on the churches and their educational programs? Will the presently church-related colleges maintain this relationship even though public funds are provided to them? How much and in what ways will federal controls be extended to schools receiving federal aid?"

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The Executive Committee of the Southern Baptist Convention, in response to a request from the state convention executive secretaries, has appointed a seven-member committee to study these questions. They are instructed to consult with the Education Commission and the Baptist Joint Committee on Public Affairs in their study.

C. Emanuel Carlson is the executive director of the Committee, which maintains offices in Washington, D. C. The Committee is a denominational agency maintained by eight Baptist groups in North America. It is instructed by the conventions "to act in the field of public affairs when Baptist interests, principles or agencies are involved."