

FROM WASHINGTON OFFICE
W. BARRY GARRETT, REGIONAL EDITOR
1628—16th St., N. W., Washington, D. C. 20009
Telephone: 232-3087

January 29, 1965

Witnesses Say School
Aid Is Constitutional

WASHINGTON (BP)-- Witnesses at hearings in the House of Representatives and the Senate insist that the proposed federal aid to education bill does not violate the Constitution and the principles of separation of church and state.

Representing the Johnson administration and the nation's education leadership, the witnesses have all been favorable toward the proposed \$1.25 billion education program asked by the President.

Their testimony on the constitutionality of the bill was adamant in spite of seeming contradictions in the bill and in the positions of their organizations.

Rep. Carl Perkins (D., Ky.), chairman of the general subcommittee on education in the House, asked every witness if any part of the bill violates the Constitution. Sen. Wayne Morse (D., Ore.), chairman of the Senate subcommittee on education, asked the same question.

The uniform answer has been that the bill provides for no aid to parochial schools, but rather, aid to school children. Therefore, they said, aid to religious agencies is not involved.

Anthony J. Celebrezze, Secretary of the Department of Health, Education, and Welfare, along with Francis Keppel, Commissioner of Education, testified before both the House and Senate committees.

At the Senate hearing Sen. Jacob K. Javits (R., N.Y.) asked Celebrezze if the Department of Health, Education, and Welfare still held to the church-state principles set forth in a legal brief of 1961 which prohibited across-the-board public aid to parochial schools.

The secretary replied that the proposed bill had been submitted to the Justice Department for an examination of the church-state aspects that might be in it. He reported that a letter from the Justice Department said the bill meets the constitutional test.

At this point, Sen. Robert Kennedy (D., N.Y.), brother of the late President Kennedy and former attorney general of the United States, interrupted to give his view. He said that it had been his responsibility to produce the legal brief for President Kennedy and that in his opinion the present bill is in harmony with the principles laid down in the 1961 document.

In earlier testimony, Robert E. McKay, chairman of the National Education Association legislative committee, said that the National Education Association gives its wholehearted support of President Johnson's education bill.

"National Education Association policy insists that legislation providing general or specific aids be consistent with the constitutional provision respecting an establishment of religion and with the tradition of separation of church and state," McKay said.

"The President's proposals do not, in my opinion, violate these principles," he testified.

-more-

A seeming contradiction in the National Education Association testimony, however, appears in McKay's statement. He said that "central to the Association's policy on federal support is the position that expenditure of the federal funds be only for the purposes for which the states and localities, under their constitutions and statutes, may expend their own public education funds."

The Administration bill says that in cases where states are prohibited by their constitutions or statutes to provide public funds for private schools the Commissioner of Education is authorized to allocate the books, library supplies and teaching aids directly to the private schools for use by children and teachers.

The Republican members of the education subcommittees in both the House and Senate are taking the lead in probing the church-state issue and in expounding the dangers of "federal control" of education if federal funds are provided.

However, a Democratic Senator and one of the sponsors of the bill, Sen. Jennings Randolph (D., W. Va.) expressed uncertainty about the church-state problems involved. He said that he would have to study very carefully the testimony on these points and that he hoped the religious problem could be satisfactorily resolved.

Rep. James J. Delaney (D., N.Y.), a Roman Catholic and a member of the House Education and Labor Committee, was a key person in scuttling President Kennedy's education bill because it did not provide aid to parochial school pupils. In an interview with Associated Press Delaney said that, although President Johnson's bill does not go as far as he would like, he would support it because "it makes the child, not the school, the beneficiary of the program."

The ways in which parochial school pupils might be aided by the new education bill are encouragement for dual enrollment in both public and private schools, providing textbooks and a variety of library services, the development of community education centers that are open for all pupils, and teacher training programs open for teachers in all schools.

The justification for such aids to parochial school pupils is that these are in the same categories as school lunches and bus rides. The aids are being advocated as child benefit and welfare and not as aids to the schools themselves.

A seeming contradiction in the bill is that although the aids are for the pupils the allocations will be made through the private schools. In other words, it appears that the private schools would become the administrators of public funds or aids for the benefit of the pupils. It is pointed out that the textbooks and teaching aids would necessarily be the same as those provided for the public schools.

-30-

Protestants, Catholics
Agree on Education Bill

(1-29-65)

WASHINGTON (BP)-- Protestant and Catholic spokesmen testified in general support of President Johnson's \$1.25 billion program of aid to education. The support ranged all the way from caution to enthusiastic endorsement. All agreed that public funds should not be used for religious education and indoctrination.

Appearing before a House of Representatives subcommittee on education were seven Protestant leaders and four Roman Catholic spokesmen. Notably absent were the bitter conflicts over aid to parochial schools that have been one of the major stumbling blocks in aid to education proposals of recent years.

Rep. Hugh L. Carey (D., N.Y.) characterized the event as "a day of aggiornamento." ("Aggiornamento" is the term used by Vatican Council II to express its efforts at reform, of updating the Roman Catholic Church.) The New York Congressman, a Roman Catholic himself, has been one of the chief objectors to education aid because it did not provide help for parochial schools.

Protestants and Catholics alike were high in their praise of the progress seen in the current education proposals in resolving the religious liberty and church-state dilemma that plagued earlier proposals.

Formerly the Catholics stood firmly opposed to all education plans that did not include parochial schools. Equally adamant were the Protestants in their insistence that public funds be used for public purposes.

-more-

The common meeting ground is that no public funds shall be used for religious instruction or aid to church schools but that pupils in private schools can be constitutionally aided with certain services by public agencies.

None of the witnesses thought that the present proposed program is a perfect solution to the education needs of the nation. But they did agree that it represents a major breakthrough in the religious issue and in help to the nation's needy pupils.

Testifying for the Protestants were C. Emanuel Carlson, executive director of the Baptist Joint Committee on Public Affairs; Arthur S. Flemming, president of the University of Oregon and former secretary of the U.S. Department of Health, Education, and Welfare and now first vice-president of the National Council of Churches; and H. B. Sissel, secretary for National Affairs of the United Presbyterian Church in the U.S.A.

Others on the Protestant panel were W. Astor Kirk, from the Board of Social Concern of The Methodist Church; Philip A. Johnson, executive secretary of the Division of Public Relations of the National Lutheran Council; Richard Upsher Smith for the Executive Council of the Protestant Episcopal Church; and Dean Kelley of the Division of Christian Life and Mission of the National Council of Churches.

On the Roman Catholic panel were Frederick G. Hochwalt, director of the Department of Education of the National Catholic Welfare Conference; William E. McMannus, superintendent of the Chicago Archdiocese schools; John McDowell, superintendent of the Pittsburgh Archdiocese schools; and Edward McArdle, a Catholic layman representing Catholic parents.

In his testimony Carlson pointed out a number of weak spots in the proposed education bill as far as proper church-state relations are concerned. He made a number of specific, positive suggestions to the Congress for the correction of these weaknesses. He expressed hope that "the church-state issue is being resolved in favor of religious freedom."

Carlson insisted that the bill should contain assurances (1) that no religious institutions would acquire property at public expense, (2) that no public funds would be used to meet institutional program needs, and (3) that the state should keep complete control of the spending of the funds, the ownership of the property, and the terms on which personal use is made of it.

He said that if this were done "there would be no religious issues raised because the materials are public school materials, and best of all, there would be no eroded confidence resulting from charges of evading the law."

Since the proposed aid would include needy pupils in private schools as well as in public schools, Flemming asked the Congress to provide five safeguards against aid to religious schools. They are:

1. That benefits for students not include "grants from federal, state or local tax funds for non-public elementary and secondary schools;"
2. That benefits for students must be determined and administered by public authorities responsible to the electorate;
3. That the benefits should be identifiable by the students as public services;
4. That the benefit program not be used directly or indirectly for the inculcation of religion or the teaching of sectarian doctrine; and
5. That, in the administration of the program, there be no discrimination by reason of race, religion, class, or national origin in the distribution of the benefits.

Johnson, speaking for the Lutherans, expressed appreciation for the safeguards in the bill against tax support for sectarian instruction. He added that "we would be very much concerned that such safeguards not only survive the ordeal by amendment through which all bills of this kind must pass, but also that the administration of the bill, if passed, be scrupulously correct in relation to these safeguards on constitutionality and of the integrity of both church and state."

Sissel praised the legislators for their skill in drafting the education bill. He said that it "seeks to avoid placing the Congress of the United States again on the horns of the old church-state dilemma and holds forth promise for the first time in 10 years

of the enactment, of a viable program of federal aid to elementary and secondary education."

He concluded by urging the education subcommittee "to give meticulous and serious attention to correcting what I would regard as unnecessarily vague language" in certain sections of the bill.

The Roman Catholic educators, while approving the proposed bill, did so with considerable caution. Hochwalt described it as "a workable compromise" and as "obviously an accommodation." He stated his view as "one of reserved approval and cautious optimism."

Catholic educators have previously used their influence to block education aid because it included only public schools. Hochwalt explained the reason for the shift in the Catholic position. He said:

"We indicate our willingness to cooperate with this legislative proposal because of the assurance that all children in need will benefit from the program."

In the cross-examination of the Catholic witnesses by members of the congressional committee there was no objection to public control of the aids provided by public funds. They were willing to cooperate with public schools in providing aids to needy pupils.

The use of public school textbooks by parochial pupils was acceptable to the Catholic educators.

Hochwalt agreed that public aid to the religious education instruction of the Roman Catholic schools would be both unconstitutional and undesirable.

While the Catholic educators faced candidly the problems of administering the public aids to private school pupils, they said that the difficulties are not insurmountable. Some of the problems can be solved by specific requirements in the law, they said. Others can be ironed out in administrative regulations. Yet others in local communities constitute problems of human relations that cannot be solved by law.

-30-

FCC Commissioner Hits
Required Religion Rule

(1-29-65)

WASHINGTON (BP)-- A member of the Federal Communications Commission is calling for reconsideration of the policies of the Commission in regard to religious broadcasting.

"The time seems to be long past due for the FCC to analyze and reconsider its practices and doctrines in the light of the First Amendment and to extend the constitutional principle and the great spirit of religious liberty to American broadcasting," he said.

Commissioner Lee Loevinger issued his challenge to the six other FCC commissioners in an address to the 22nd annual meeting of the National Religious Broadcasters.

The National Religious Broadcasters is an organization of persons who use radio and television for the advance of their religion. They follow closely the National Association of Evangelicals.

In his speech Loevinger reviewed the history of Supreme Court decisions relating to religious liberty and separation of church and state. His conclusion was that the Constitution restrains government of all categories and all the agents of government from intruding into the religious life of the nation. He pointed out that the position of government in regard to religion is one of neutrality.

The whole tenor of the Supreme Court decisions in relation to religious liberty, Loevinger said, is to forbid government from requiring or regulating religion.

At the present time it is the policy of the Federal Communications Commission to require religious programming when broadcasters seek licenses or renewal of licenses.

The Commissioner reported that the Federal Communications Commission "has stated that its judgment of religious programming is not based on the percentage of time devoted to religion, and that 'the percentages are not so important as the content and make-up of the over-all program category'."

-more-

He added that the Commission has preferred applicants on the basis of its analysis of the content of their proposed religious programs. Also it has imposed a demerit against others because of a "lack or weakness in religious programming."

The point at issue in Loevinger's challenge of present policies is whether or not the Federal Communications Commission as an agent of government can constitutionally require broadcasters to include religion in their programming.

The Commissioner said that the Commission "has gone far beyond the limits that have been marked by the Supreme Court as permissible government action in the field of religion."

He charged that "the FCC rushes in where government agents are forbidden to tread when it requires religious programming and determines that a certain amount of religious broadcasting is or is not adequate or excessive, or that the public interest is or is not served by the broadcasting of particular views on religion or of the views of particular churches or sects, and when it awards a preference or demerit on the basis of an official judgment as to the quantity, quality or content of religious broadcasting--all of which it has done in reported cases."

Hints of a smoldering fight over the religious question in broadcasting were given by Loevinger last spring in a speech to the National Association of Broadcasters. At that time he challenged the constitutionality of the policies of the FCC.

The fight was further agitated in an article in the Jan. 15, 1965 issue of The Reporter magazine by Marcus Cohn a prominent Washington communications lawyer.

Cohn charged that "while the U. S. Supreme Court has been gradually strengthening Jefferson's 'wall of separation between church and state', the Federal Communications Commission has been doing its best to persuade people to go to church."

The attorney predicted that if and when the Commission eliminated its requirement for religious broadcasting, it would not affect substantially the amount of religious programming broadcast by stations. He said, "It might even result in an increase of such programs."

In October 1963 the Baptist Joint Committee on Public Affairs sponsored a religious liberty conference on "Church-State Relations in Mass Communications." One hundred and forty Baptist leaders from seven national Baptist bodies met for the discussions.

The conference concluded that government controls are necessary for the protection of the rights and liberties of all in the mass media of communications. Referring to radio and television the conference said that "the airways are public but the facilities are private to be regulated by the government for the public good."

The Baptist leaders recognized the complex problems in religious broadcasting but appealed for application of the principles of religious liberty both for the broadcasters, the public, the churches and individuals.



1628 - 16TH ST. N.W.
WASHINGTON, D. C. 20009



AIR MAIL

FRED SOMMERAMP
EXECUTIVE COMMITTEE
460 JAMES ROBERTSON PKWY
BARTONVILLE 3 TENN

THE WASHINGTON OFFICE OF THE BAPTIST PRESS

WATCH FOR THE (BP) CREDIT LINE