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Constitutional Law - Bible Distribution in Public School Banned

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CASE NOTES

CONSTITUTIONAL LAW–BIBLE DISTRIBUTION IN PUBLIC SCHOOL BANNED

The defendant Board of Education planned to allow the distribution through its school facilities, by the Gideons International, excerpts from the King James Bible to students whose parents so requested. An injunction to halt the distribution by the school board was sought by Jewish and Catholic parents whose children attended the school, on the grounds that such distribution would be unconstitutional. Such a distribution was held to be unconstitutional as a violation of Amendments One and Fourteen of the United States Constitution, and article one, paragraph four of the New Jersey Constitution.[1] *Tudor v. Board of Education of Borough of Rutherford,* 100 A. 2d 857 (N.J., 1953).

The New Jersey court in the *Tudor* case bases its adjudication on the preference of one religion over others by the school board. If the facts of the case support a finding of a preference, such a preference of one religion over another would be unconstitutional.[2] The finding of a preference was based on the sectarian nature of the Bible excerpts to be distributed, the testimony at the trial indicating that this version was unacceptable to the Jewish and Catholic religions.[3]

The Court stated in its opinion:

> Our decision in this case must be based upon the undoubted doctrine of both the Federal Constitution and our New Jersey Constitution, that the state or any instrumentality thereof cannot under any circumstances show a preference for one religion over another.[4]

The United States Supreme Court has considered the relation of the school system to religion under the United States Constitution in several recent cases. The First Amendment, with regard to its prohibition against governmental action abridging religious freedom, is applicable to the states, as well as to the federal government, by virtue of the Fourteenth Amendment.[5] The supplying of text books[6] and reimbursement for trans-

[1] N.J. Const. Art. I, § 4. "There shall be no establishment of one religious sect, in preference to another."

[2] Fowler v. Rhode Island, 345 U.S. 67 (1953); Zorach v. Clauson, 343 U.S. 306 (1952); People ex rel. McCollum v. Board of Education, 333 U.S. 203 (1948).

[3] Tudor v. Board of Education, 100 A. 2d 857, 865 (N.J., 1953).

[4] Ibid., at 864, 865.

[5] Cantwell v. Connecticut, 310 U.S. 296 (1940).

[6] Cochran v. Louisiana, 281 U.S. 370 (1930).

portation costs on public buses[7] to private school children was held constitutional, as the aid was considered in furtherance of a public purpose and as a service to the individual recipients, rather than the support of a religious denomination, analogous to police and fire protection given to religious property. However, the use of school premises during school hours for the conduct of sectarian instruction by religious groups was decided to be unconstitutional, as a use of tax supported facilities for dissemination of religious doctrine.[8] This decision, however, was distinguished in a subsequent released-time case, on the basis that the physical facilities of the school were not used and the mere excuse of pupils to attend sectarian instruction from school time is not unconstitutional. The "accommodation" of religion by the school was approved in this case, so long as it does not amount to a preference, and the school's facilities are not used in conducting the religious classes.[9]

What amounts to a preference has been considered most frequently in the states in regard to Bible reading in the public schools. The majority of the states allow the Bible to be read in the public schools, especially if attendance at such readings is not required. In New Jersey, the reading of part of the Old Testament and the Lord's Prayer was held not to be sectarian, and therefore, not unconstitutional.[10] Colorado considered the reading of parts of the Old Testament by the teacher, without comment when attendance by the students was not compulsory, to be constitutional; as not being a preference or an establishment of religion in violaiton of the State Constitution.[11] Minnesota held the reading of the Old Testament without comment to be constitutional.[12] A Georgia case held an ordinance requiring the reading of the King James Bible in schools to be in conformity with the State Constitution.[13] The purchase of the King James Bible for the school library was held to be constitutional in a California decision.[14] The reading of the King James Bible and the

[7] Everson v. Board of Education of Ewing Township, 330 U.S. 1 (1947). Four justices dissented.

[8] People ex rel. McCollum v. Board of Education, 333 U.S. 203 (1948).

[9] Zorach v. Clauson, 343 U.S. 306 (1952).

[10] Doremus v. Board of Education, 5 N.J. 435, 75 A. 2d 880 (1950). Distinguished from the Tudor case, as this case only involved the Old Testament and the Lord's Prayer, not the New Testament as in the instant case.

[11] People ex rel. Vollmar v. Stanley, 81 Colo. 276, 255 Pac. 610 (1927).

[12] Kaplan v. Independent School District, 171 Minn. 142, 214 N.W. 18 (1927).

[13] Wilkerson v. City of Rome, 152 Ga. 762, 110 S.E. 895 (1922).

[14] Evans v. Selma Union High School District, 193 Cal. 54, 222 Pac. 801 (1924). The Court did not consider the purchase to be an approval, and so therefore not a preference.

Lord's Prayer where attendance by students is optional was held not to make the school sectarian in violation of the State Constitution of Texas.[15]

A minority of states consider Bible readings to be violative of their state constitutions. The reading of the Old Testament and the New Testament in schools was held to be a preference of the Christian religion in Louisiana, and unconstitutional.[16] Where the attendance of the children was required at a Bible reading, an unconstitutional preference was held to result by the Nebraska Court.[17] Even where the attendance at a Bible reading was voluntary, it was held unconstitutional by a Wisconsin case.[18]

Questions of preference, other than those involved in the Bible reading cases, have been considered by some courts. The holding of religious meetings in a school-house approximately four times a year, when there was no interference with the school program, was considered to be constitutional in Nebraska.[19] In two New Mexico cases the distribution of sectarian pamphlets on the school premises, placed there by teachers, was held to be unconstitutional as the fostering of a sect by the school, and a preference by the school system.[20]

The Illinois Constitution forbids the use of public school funds in aid of any sectarian purpose.[21] In an early Illinois case a requirement that University of Illinois students attend a short religious service and hymn singing was held to be constitutional, and considered not to be sectarian.[22] However in *Ring v. Board of Education*,[23] the giving of sectarian instruction by reading of the Bible was held unconstitutional. The provision for the excuse of pupils from this reading did not render the program constitutional. Under this holding it appears that Illinois follows the minority view on the question. The temporary use of school buildings for a religious meeting was held not to violate the Illinois Constitution.[24] The excuse of children from school for one hour a week at the request of their parents, to attend religious instruction outside the school premises, was

[15] Church v. Bullock, 104 Tex. 1, 109 S.W. 115 (1908).

[16] Herold v. Parish Board, 136 La. 1034, 68 So. 116 (1915).

[17] State v. Scheve, 65 Neb. 853, 93 N.W. 169 (1903).

[18] State v. District Board, 76 Wis. 177, 44 N.W. 967 (1890).

[19] State v. Dilly, 95 Neb. 527, 145 N.W. 999 (1914).

[20] Miller v. Cooper, 56 N.M. 355, 244 P. 2d 520 (1952); Zellers v. Huff, 55 N.M. 501, 236 P. 2d 949 (1951).

[21] Ill. Const. Art. VIII, § 3 (1870). See also Art. II, § 3 forbidding any preference by law to any religious denomination or mode of worship.

[22] North v. Board of Trustees, 137 Ill. 296, 27 N.E. 54 (1891).

[23] 245 Ill. 334, 92 N.E. 251 (1910).

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

considered constitutional.[25] No charge of preference was made in this case. In the famous *McCollum* case,[26] the Supreme Court of Illinois held the program involving the use of school premises for sectarian instruction to be constitutional. This decision was reversed by the United States Supreme Court.[27] As previously indicated, the use of school premises for a purpose considered to be sectarian is almost universally held unconstitutional. Many states have constitutional provisions to this effect,[28] and most others reach it by judicial interpretation. The material to be distributed in the instant case appears to have been sectarian, and as the school board was cooperating in its distribution, allowing the use of school buildings for the purpose, obtaining permission from parents, and otherwise aiding the project, the effect contemplated amounted to a preference by the school board of one religious belief over others. The requirement that the state refrain from giving preference to one religious belief over others is thus met in New Jersey by refusing the aid of the school system in the distribution of sectarian matter to all. While this would seem to keep the school system and the state neutral in the contest among sectarian creeds, it also seems to grant a preference to the opponents of religion over those who favor it, which does not seem necessary in order to comply with the Constitution. The requirement that the state remain neutral in the contest among various religions does not require that the state adopt an antagonistic attitude toward religion in general.

CONTRACTS–COMMENCEMENT OF BIDDING AT AUCTION "WITHOUT RESERVE" PRECLUDES WITHDRAWAL OF PROPERTY

The defendant, who was part owner of a large estate which included personalty and realty, employed an auctioneer to conduct its sale. The auctioneer and the defendant prepared an advertisement which stated that the proprety was to be sold "without reserve." This advertisement was published in a daily newspaper and in brochures which were distributed at the commencement of the auction. Prior to the sale the auctioneer repeated the terms of the advertisement. The defendant and his attorney were present but made no objection or public correction. The bidding continued until the plaintiff bid $41,000, which the auctioneer acknowledged. Before another bid was made, the unsatisfied defendant

[25] People ex rel. Latimer v. Board of Education, 394 Ill. 228, 68 N.E. 2d 305 (1947).

[26] People ex rel. McCollum v. Board of Education, 396 Ill. 14, 71 N.E. 2d 161 (1947).

[27] 333 U.S. 203 (1948).

[28] See e.g., Ill. Const., note 21 supra; N.J. Const., note 1 supra.