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by

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FOREWORD

Superintendents, school board members, teachers, clergy and the lay public are becoming increasingly aware of public school practices and activities that might be considered religious in nature. The 1962 and 1963 court decisions resulted in serious concern as to the rule of public education and its relation to religion.

This concern regarding religious practices in Kentucky public schools has been reflected in the many requests made to the Department of Education for information on "just what can or cannot be done and remain within the law."

Since this question of religious practices in the public schools is of such great interest and concern, the Department of Education is proud to present this comprehensive, objective analysis as one of its series of education bulletins.

The author is to be commended for confining this paper to the elementary and high school levels since the question of religion in the colleges is generally conceded to be of a different nature.

This summary of information on the Church-State issues in the public school is not intended to be an exhaustive report, but does represent, however, the most current information available on the practices in Kentucky public schools. And too, this bulletin because of its historical treatment of the issue will be of specific interest to those searching for the "facts."

The author's objective approach to the questions directs one toward a reasoned discussion and a growing understanding of American society. It can, hopefully, lead to the formulation of guidelines so that superintendents, board members, principals, teachers, and parents may understand and support the lawful operation of public schools in our State.

Harry M. Sparks
Superintendent of Public Instruction

TABLE OF CONTENTS

LIST OF TABLES

TABLE OF CASES

An Analysis Of The Present Trend In The Church-State Issue In Public Schools Of Kentucky

CHAPTER I

INTRODUCTION

The age-old problem of defining the proper relationship between the Church and the State is today more prominent than it has been for more than one hundred years. The American people have recently been faced anew with the question as to what extent a people can go in building a barrier between their religion and their government. In June of 1963, the Supreme Court of the United States handed down a decision on religious exercises in the schools that attempted to outline the extent to which religion and government could intermingle in a public institution. The result has had the same effect of many other court decisions in that it has, by answering a specific question, opened a whole new field of questions with new dimensions. It would be inconceivable that this paper could answer the questions that these cases present for the diverse population of this country. The writer has, therefore, limited this paper to a study of this current situation as it pertains to the public schools of Kentucky.

STATEMENT OF THE PROBLEM

The problem of this study is to examine the current policies of local boards in Kentucky to determine how school districts have interpreted and observed the Supreme Court decisions. This paper will also attempt to identify the different practices and procedures followed in implementing school policies dealing with religious exercises in the school. Because of the relative recency of changes in legal interpretations, the local schools' reactions have not as yet been determined. This paper, in analyzing current practices and the changes that have taken place, will represent the first attempt at estimating the reaction of the schools of Kentucky toward the Supreme Court decisions dealing with this current controversial issue.

Recently the newly elected Attorney General of Kentucky

(elected in 1963) has issued an opinion that differs in many respects from the previous Attorney General of Kentucky's opinion. This paper will attempt to record the diversity of policies and practices that these conflicting opinions may have caused.

More specifically, the policies of the local school boards will be studied as to released time, voluntary prayer, voluntary Bible reading, baccalaureate exercises, pupils' attitude, religious holiday services, and religious clubs. The local school officials will be asked also to explain or express their feelings on these topics in an effort to gain better insight into the local administrators' ideas and problems.

PROCEDURE

The procedure involved in this research was first for the writer to review pertinent literature on the subject and assemble it. The writer then arranged an appointment with Kentucky State Department of Education officials who helped develop the questions which they believe provide valuable information. Through this procedure the questions were deduced that were most significant to the problem. The questions formed were written into a questionnaire. The questionnaire contained short answer questions which were easy to answer, and therefore, produced better returns. The questionnaire was sent to all the local school districts.

LIMITATIONS

The problem faced in this study goes much deeper than can be studied through purely statistical measurements and primary research. The problem here to be analyzed is one faced by a changing society. This paper then will serve only to examine a small segment of public school policy in one state of the nation. Because of the great diversity of public school policies and opinions, the paper can be used only to indicate the current situation in Kentucky.

A further limitation of this study is the fallibility of all questionnaire-based research in that the best questions always produce ambiguities which may be interpreted differently. Also the receiver of the questionnaire is not obligated to an answer; and, therefore, many times questionnaires are not returned. Another problem which is peculiar to this type of problem is that the question of religion touches most persons very deeply; and therefore, responses to the questionnaire may be prejudiced toward what should be rather than what is or perhaps vice-versa.

ORGANIZATION OF THE PAPER

Chapter I of this paper states the problem of this study, describes the procedure used in investigating the problem, and the limitations encountered in this type of research.

Chapter II provides a historical account of the significant developments in this subject area—both in Kentucky and in the United States as a whole.

Chapter III analyzes the findings of the study.

Chapter IV is a summation of the paper.

CHAPTER II

REVIEW OF THE LITERATURE

The principle of the separation of Church and State has recently been subjected to the attention of the public more than ever before in American history. The idea of this separation was born and nurtured in the centuries immediately preceding the establishment of the American Colonies. The governments of this era generally held religious convictions which led to the persecution of other religious groups. These practices did not end with the establishment of the Colonies. Religious persecution continued until the Colonists were shocked to the sensibility of separating Church and State. It then became apparent that religion and government should operate in their own individual spheres and there should be no encroachment upon one another. Thomas Jefferson expressed the principle that there shall be a "wall of separation" between Church and State. This idea then was engendered to permit each citizen to enjoy the religion of his choice.[1]

The history of Europe is dominated by accounts of religious disputes and wars. In Europe the Christians fought against Christians. The Protestant forces fought to keep from being engulfed once more in Catholicism. Europe was a battleground of religious wars for hundreds of years. "Heretics" were murdered for offenses they did not commit. The Roman and Spanish Inquisitions convicted and condemned persons for witchcraft, blasphemy, heresy, and many other offenses; and the offenders were promptly executed. Moors and Jews were persecuted and brutally murdered. In the German states and England, Catholics were persecuted; and in Spain and Italy, Protestants were subjected to an equal fate. The Counter Reformation produced fanatical bloodshed on both sides.[2]

The First Amendment to the Constitution of the United States provides that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof." This provision is made applicable to the states by the Fourteenth Amendment. "It follows that neither Congress nor any state shall make

[1]Robert R. Hamilton and Paul R. Mort, *The Law and Public Education* (Brooklyn, New York: The Foundation Press, 1959), p. 25.

[2]James Mulhern, *A History of Education* (New York: The Ronald Press Company, 1959), p. 322.

any law respecting an establishment of religion or prohibiting the free exercise thereof." We are concerned here primarily with the resultant effect that this rule has had on the schools.

The First Amendment contains two clauses which provide regulations regarding religion. The first clause, generally known as the "Establishment Clause," says, "Congress shall make no laws respecting the establishment of religion. . . ." The final six words of the First Amendment, ". . . or prohibiting the free exercise thereof" . . .," is what is known as the "Free Exercise Clause." In describing what is meant by the First Amendment, one must consider with what the original draftsmen were concerned when drafting the amendment.

Legal interpretation. The interpretation of what the drafters of the First Amendment meant when they wrote, "Congress shall make no law respecting an establishment of religion . . .," is really the center of the controversy as may be said of all cases which involve the interpretation of statutes or constitutional questions.

The question of custom and law arises here. The question of whether law molds society, or whether law is clay in the hands of society arises. In the former, law is the active principle which acts to shape the inert society. At the other extreme, we have an active society changing and reshaping the ideas and laws of former legislators and judges. The idea that society influences and changes the law is the school of Savigny, Duguit and Llewellyn which has had a tremendous influence on the legal thought in this country. This legal realism has become firmly implanted and doubtlessly has influenced all judicial policies in this century. This legal realism prides itself in the theory that the decision is not made solely through the perspective of the precedent prism or through any strict interpretation thereof. This influence must be considered in attempting to understand any judicial decision in interpretation of constitutional or statute law. Because all men are handicapped by having to communicate in words, there is always the latitude for judges that defining the words presents. Pound suggests several ways that a legislative rule may be interpreted, ranging from the very strict to the very lenient. The judges have reached past the definition of words and of phrases and have applied the Fourteeth Amendment, which was not written until much later, to interpret the First Amendment. It would seem then that changes in the philosophy of law, as to the intent of lawmakers, could play a much more important part in the decision than at the first meets the eye.

Virginia led the colonies in the sentiment against the establishment of the church in government. Virginia disestablished the Church of England in the 1780's. Thomas Jefferson and James Madison played the leading roles in Virginia's disestablishmentarianism.

In 1786, the State legislature of Virginia passed a Statute of Religious Liberty which abolished tax support of churches. This document said:

> Whereas Almighty God hath created the mind free; that all attempts to influence it by temporal punishments or burthens, or by civil incapacitations, tend only to beget habits of hyprocrisy and meanness, and are a departure from the plan of the Holy author of our religion . . . that to compel a man to furnish contributions of money for the propagation of opinions which he disbelieves, is sinful and tyrannical; that even the forcing him to support this or that teacher of his own religious persuasion, is depriving him of (his) liberty. . . .
>
> Be it enacted by the General Assembly that no man shall be compelled to frequent or support any religious worship . . . but that all men shall be free to profess, in manners of religion, and that the same shall in no wise diminish, enlarge or affect their civil capacities.
>
> Virginia Statute of Religious Liberty, 1786[3]

Thomas Jefferson made it clear in his autobiography that the Virginia Statute was not only concerned with separate branches of religion within Christianity, but included all religions.

> A Singular Proposition proved that its protection was meant to be universal. Where the preamble declares that coercion is a departure from the plan of the holy author of our religion, an amendment was Proposed, by inserting the word, 'Jesus Christ,' so that it should read 'a departure from the plan of Jesus Christ, the holy author of our religion;' the insertion was rejected by a great majority, in proof that they meant to comprehend, within the mantle of its protection, the Jew and the Gentile, the Christian and Mahometan, the Hindoo, and infidel of every denomination.
>
> Thomas Jefferson: *Autobiography,* 1821[4]

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[3]The American Jewish Committee. *Church, State and the Public Schools,* (A Citizens Handbook. New York: Institute of Human Relations Press, 1961) pp. 13-14.

[4]*Ibid.,* p. 14.

In a letter to Edward Livingston in 1822, James Madison said, ". . . religion and Government will both exist in greater purity, the less they are mixed together.[5]

First Amendment (Establishment Clause). In five of the thirteen colonies, including Massachusetts, the church held substantial ground. The Constitution excluded in the powers of Congress control over religion–"Congress shall make no law respecting an establishment of religion."

Madison drafted the First Amendment; and he, though being from Virginia and opposed to Church-State mingling, comprehended the meaning of the words of the "establishment clause" as "Congress should not establish a religion, and enforce the legal observation of it by law, nor compel men to worship God in any manner contrary to their conscience."[6] The wording of the clause then placed a ban against congressional action that would guarantee the local policies of all the states. The word "respecting" in the clause means "having to do with" and not "tending toward."

First Amendment (Article I)

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; . . . .

Fourteenth Amendment (Article XIV)

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

Historically, the First Amendment applies only to Congress, to the federal government and does not include the states. In 1845, the Supreme Court ruled that the First Amendment did not restrain the states in making laws. Then in 1868, the Fourteenth Amendment was passed and it provided in part that: ". . . nor shall any State deprive any person of life, liberty, or property, without due process of law. . . ." It was not until 1925 that the Fourteenth Amendment was applied to the First Amendment to provide "liberty" against the state. In 1834, the Court specifically singled out religious liberty as being protected from state violations. The "free exercise" clause was applied to the First Amendment in the 1940's as a restriction

[5]*Ibid.*, p. 15.
[6]*Ibid.*, p. 17.

on state action, and it was as late as 1947, in the Everson case, when the "establishment of religion" clause was given application to states. In the 1948 McCollum case, the Supreme Court first declared unconstitutional a legislative enactment, either state or federal, based on the "establishment of religion clause." This was one hundred and fifty-eight years after the First Amendment was first enacted.[7]

Church versus State in Kentucky. Although Thomas Jefferson had advocated a wall between Church and State, his own Virginia legislature, in 1783, had incorporated the Transylvania Seminary as the official school of the state for the Transylvania Territory, which is now Kentucky. "The trustees were drawn very largely from the membership of the Presbyterian Church."[8] This fact introduced the idea of religious control of higher education. The first head of Transylvania University was Reverend David Rice, a Presbyterian minister.[8]

In 1816, Governor Slaughter of Kentucky advocated liberal support of Transylvania University. In 1820, the Kentucky legislature established a Literary fund. It was provided that one-half of the profits of the Bank of the Commonwealth of Kentucky would go to this fund. It provided that from this fund $20,000 would be provided for payment of debts of Transylvania University. It also provided that one-third of the profits from the Branch Bank of the Commonwealth, located at Harrodsburg, would be appropriated to Centre College, a Presbyterian school.[10]

We have here then, a mixture of both religious and state control of education. This tradition of Church-State cooperation continued well into the 1800's. It was not only in Kentucky and Virginia Statutes, but also in other state constitutions and statutes where there was provided support for denominational schools at all levels.

Education at the college level was definitely inter-mixed with state and religion, and also the administration of the schools at the state level. The first seven State Superintendents of Public Schools were Protestant Clergymen.[11]

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[7]Harry N. Rosenfield, "Separation of Church and State in the Public Schools," *The University of Pittsburgh Law Review*, (March, 1961), p. 561.

[8]Moses Edward Ligon, *A History of Public Education in Kentucky*, (Lexington, Kentucky: The University of Kentucky Press, 1942), p. 56.

[9]*Ibid.*

[10]*Ibid.*, p. 59.

[11]Barksdale Hamlett, "History of Education in Kentucky," *Bulletin of the Kentucky State Department of Education*, No. 4, (Frankfort, Kentucky, 1914), pp. 15-78.

From 1830 to the Civil War, there were skirmishes over Bible readings in the schools. These conflicts were mostly a result of the dissension between Catholic and Protestant as to which version of the Bible should be read. The Catholic position was repulsed and the Protestant Version of the Bible readings became the way of the Common School.[12]

During the 1850's, a wave of nativism swept the country. This was a policy favoring the native inhabitants of a country against immigrants."[13] Nativism "found expression in the old Protestant-Catholicism controversy."[14] This conflict was intensified in Kentucky by the movement to establish an adequate public school system. The Protestants, to a large extent, had taken refuge in the idea of a public school to shield them from having to attend Catholic schools.[15] In 1847, an arch-nativist, the Reverend Robert J. Breckinridge, was appointed Superintendent of Public Instruction. He realized that the Protestant schools and academies were not meeting the demands of the majority of the people in Kentucky; and, consequently, many Protestants were having to attend Catholic schools. Breckinridge then made proposals that general school tax be established, and another being support for schools by private subscription.[16]

Bishop Martin John Spalding, speaking for Catholics, listed his objections to the Public School Program. One of these was that Catholics paid taxes to support schools from which they received no benefit.[17] This is still an active argument of the Catholics today.

We can see now that the Church and State had progressed from its original relatively quiet mixing to the mid-19th Century where there arose a bitter conflict between religious groups over government appropriations for public schools. To this time the public school was controlled by Protestants but from this point on there emerged a gradual breakdown of this control to the point that we have reached today. The division between Church and State gradually began to show as court decisions established a criteria by which separation could be made.

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[12]Charles E. Deusner, "The Know Nothing Riots in Louisville," *The Register*, Vol. 61, No. 2 (Frankfort, Kentucky: Kentucky Historical Society, April, 1963), pp. 122-127.

[13]*Ibid.*, p. 128.

[14]*Ibid.*

[15]*Ibid.*

[16]*Ibid.*, p. 129.

[17]*Ibid.*, p. 130.

In a number of states, as in Kentucky, Bible reading was required. While Bible reading in public schools has been in our public schools throughout American history, only recently have there been laws requiring or permitting it. The first law of this type was in 1826, in Massachusetts; but it was not until almost a century later that any state followed the lead of this state. The early cases, with few exceptions, upheld the reading of the Bible in public schools. This pattern began to change though, for it was in an 1890 Wisconsin case that suit was brought to require teachers to discontinue reading the Bible on the ground that it was sectarian instruction contrary to the provision of the Wisconsin Constitution. The suit was successful.[18]

The issues that the courts had to contend with most frequently relating to religion in schools, boiled down to these essentials: free textbooks for parochial pupils, transportation of children to parochial schools at public expense, released time for religious instruction, Bible reading in public schools, and religious literature in schools.

The Hackett case. By the early 1900's, Kentucky's courts had established a policy by which they have abided to the present. The case that set the precedent was Hackett v. Brooksville Graded School District. In this case the court dealt with the question of Bible reading by saying that a public school opened with prayer and the reading without comment of passages from the King James' Translation of the Bible, during which pupils are not required to attend, is not a "place of worship," within the meaning of the Constitution, § 5, providing that no person shall be compelled to attend any place of worship or contribute to the support of a minister of religion.[18]

Concerning the type of Bible, the Hackett case said that the King James' Translation of the Bible, or any edition of the Bible, is not a sectarian book, and the reading thereof without comment in the public schools does not constitute sectarian instruction, within the meaning of Ky. St. 1903 § 4368, providing that no books of a sectarian character shall be used in any common school, nor shall any sectarian doctrine be taught therein. It also said a prayer offered at the opening of a public school, imploring the aid and presence of the Heavenly Father during the day's work, asking for wisdom, patience, mutual love and respect, looking forward to a heavenly reunion after death, and concluding in Christ's name is not

[18]Hamilton and Mort, *op. cit.*, p. 31.
[19]Hackett v. Brooksville Graded School District, 87 S. W. 792, 120 Ky. 608.

sectarian, and does not make the school a "sectarian school," within Const. § 189, prohibiting the appropriation of educational funds in aid of sectarian schools.[20]

The prayer that the Kentucky Court of Appeals upheld was the following fixed prayer in conjunction with reading of the King James version of the Bible. It reads as follows:

> Our Father who are in Heaven, we ask Thy aid in our day's work. Be with us in all we do and say. Give us wisdom and strength and patience to teach these children as they should be taught. May teacher and pupil have mutual love and respect. Watch over these children, both in the schoolroom and on the playground. Keep them from being hurt in any way, and at last, when we come to die may none of our number be missing around Thy throne. These things we ask for Christ's sake. Amen.[21]

Despite the fact that there are several different versions of the Lord's Prayer, commonly used by different groups, differing in length and in the use of "debts" or "trespass," it is believed that no one of these versions is more sectarian than the prayer quoted above. It is commonly believed that under the construction adopted in the case cited above, the Lord's Prayer is nonsectarian under the Kentucky Constitution.[22]

Concerning a general prayer, it is to be observed that the Supreme Court, itself, has for many years opened with the prayer, "God, save the United States and this honorable court." This prayer is still said after the court takes its place; but in this case there is no instructional material or statement of creed.

In Congress, before the opening of each session, both the House and the Senate have prayer. Unlike the Supreme Court prayer, these contain much creedal and instructional material. But in the case of Congress, there is ample time provided for persons, who do not want to take part, to arrive late. The Congress of the United States on September 25, 1789, the day that the Bill of Rights was passed, followed this procedure.

The McCollum case. A leading case that was decided by the Supreme Court is McCollum v. Board of Education. This 1948 case

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[20] *Ibid.*

[21] *Ibid.*

[22] Opinion by John Breckinridge, Attorney General of Kentucky, September 5, 1962.

involved the constitutionality of "released time." It involved a religious instruction program that was completely integrated within the school curriculum. It provided students the opportunity to withdraw from class and go to study hall. There were separate classes provided for by Protestant teachers, Catholic priests, and a Jewish Rabbi. Students who did not choose to take part in religious instruction were required to go to another part of the building. The pupils who were released to go to the religious courses were required to be present in their religious classes and reports were kept by their regular teachers on their absence and presence. The Supreme Court held that this was a violation of the First Amendment to the Constitution. Justice Black pointed out that not only were the public, tax supported, schools being used for religious instruction, but the religious groups were benefiting from the state's compulsory education requirement.[23]

Four years later in a New York case, a statute was challenged that had apparently been organized with the exceptions of the McCollum case in mind. This time the Supreme Court of the United States held this released time program constitutional.[24] This was unlike the released time structure statute in Kentucky which says,

> The boards of education shall fix one day each week when pupils who have expressed a desire for moral instruction may be excused for at least one hour to attend their respective places of worship or some other suitable place to receive moral instruction in accordance with the religious faith or preference of the pupils.[25]

In the Zorach case only those children who attended religious classes away from school were excused from public school classes.

Released time. Released time is the system of education used in public schools which provides that children who want to attend religious services may be excused from school. Under the released time procedure, a student who does not want to attend a religious service remains in the school under school supervision. Released time rose out of the disappearance of the Protestant denominational school. There was a feeling that the student was not getting enough

[23]People of State of Illinois ex rel. McCollum v. Board of Education of School District No. 71, Champaign County, Illinois, et. al., 33 U. S. 203, 68 S. Ct. 461, (1948).

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

[25]K. R. S., 158.220,

religious training on Sundays and another plan was derived. The child was to receive religious instruction during the school day by being released from school.[26]

The released time practice was first started in Gary, Indiana, in 1913. This program spread until by 1960; probably every state utilized this program to some extent.

The United States Supreme Court has dealt with two cases involving time; they are Illinois ex. rel. McCollum v. Board of Education[27] and Zorach v. Clauson,[28] previously mentioned.

Attorneys General of over twenty states have issued forty-nine opinions since 1948, on the subject of released time. In five of the states where opinions were issued on this subject, the Attorneys General showed that released time was contrary to the United States Constitution. In Arizona, the Attorney General ruled that a released time program was unlawful because of local statutory provisions. Eleven other states (California, Georgia, Indiana, Iowa, Kentucky, New Mexico, North Carolina, Oregon, Pennsylvania, South Dakota, and Vermont) base their released time opinions on whether they involve using public property and funds to support religion. The McCollum case is considered the leading case in the released time area. California, Kansas, Kentucky, Indiana, Oregon, Nevada, Washington, and Wisconsin had opinions issued both before and after the Zorach case. Before the Zorach case, an Indiana opinion indicated that the states released time program was unconstitutional, but in a later opinion, following the Zorach case, the Attorney General ruled that the same statute which was before unconstitutional was now entirely constitutional.[28]

A Washington opinion previous to the Zorach case indicated that released time did not violate the constitution, but subsequent to the Zorach case, the Washington opinion showed almost any released time program to be unconstitutional. A Wisconsin case before said that released time violated the United States Constitution and after indicated that released time violated both the United States Constitu-

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[26]Commission on Law and Social Action of the American Jewish Congress, *Digest and Analysis of State Attorney General Opinions* (New York, 1959), pp. 3-4.

[27]Illinois ex. rel. McCollum v. Board of Education, 333 U.S. 203, 68 S. Ct. 461, 92 L. Ed. 649 (1948).

[28]Zorach v. Clauson, 343 U.S. 306, 72 S. Ct. 679.

[29]Commission on Law and Social Action of the American Jewish Congress, *op. cit.*, p. 5.

tion and the Wisconsin Constitution. The ultimate conclusion reached, though, suggested that the Zorach case had made no significant change in the attitudes of the State Attorneys General toward released time.[30]

A 1948 Kentucky Attorney General opinion simply said that use of school property for religious purposes was unconstitutional, but released time away from school premises was constitutional. In 1952, a Kentucky opinion said that because the released time involves little use of tax money and no credit for religious courses is given, released time in Kentucky is constitutional. In a 1954 opinion, it was stated that Kentucky's released time program was constitutional under the Zorach case. This opinion was also based on the Kentucky Constitution which prohibits the state government from exercising power over the parent to force children to attend a school of which the parent does not approve. In 1962, the Attorney General of Kentucky noted that public school buildings may not be used for religious instruction.[31] A Nevada opinion, in 1948, coincided with the 1948 Kentucky opinion in that released time was constitutional if it were not held on public school property. The schools must have no hand in the performance of the religious activity.[32]

Dismissed time. Dismissed time is different from released time in that all children are dismissed from public schools at a time when school would normally be in session. The religious education is during the "business hours" of school. When all the children are dismissed, the ones not desiring to attend religious services may use the time for any purpose. In a dismissed time program, the children not being compelled to account for their time are free also not to attend religious programs. Because attending religious services is not a prerequisite to leaving school and attendance to religious services is not guaranteed, there has not been much interest in establishing it. It has been found that dismissed time programs have met with less opposition than has released time.[33]

In a 1949 opinion the Attorney General of Colorado said that school superintendents cannot dismiss school to allow children to attend religious exercises.[34] In Pennsylvania, released time is authorized by statute, but the Attorney General of that state ruled that

[30] *Ibid.*
[31] *Ibid.*
[32] *Ibid.*, p. 6.
[33] *Ibid.*, p. 7.
[34] 1949-1950 Colorado A/G Rept. 128, Op. N. 1650-49.

school officials are not authorized to dismiss school to attend religious classes.[35] In Wisconsin it was found that dismissed time that does not involve the use of public facilities or the compulsory school law is probably constitutional.[36]

Shared time. Shared time is a term that may cause misunderstanding in that it does not mean to imply that the public school is sharing, and thereby, giving something away to the parochial school. Alternatives in terminology have been suggested which include "split time," "reserved time," and "dual school enrollment."[37] But by using the "shared time" term, it can be explained as a public school sharing the child's time with a parochial school. The public school pursues the natural public school context where, when the children attend the parochial session, they may be exposed to "denominational religious emphasis."[38]

The Bible as educational literature. The Bible as educational literature was not given much consideration by the courts until the recent Supreme Court decisions. Some of the courts did, though, comment briefly on the contents of the Bible as a textbook. A Louisiana court said that reading the Bible as a whole was religious instruction, but reading the New Testament was Christian instruction Some of the dissenters to the idea that the Bible teaching should be banned felt that if the Bible was declared illegal, the impression derived would be that all books based on the Bible principles would be objectionable. These people also felt that atheists and free thinkers did not constitute sects; and therefore, the teaching of sectarian religion in schools was not in opposition to any organized belief.[38]

Bible reading has been given favor in that it will provide a general moral instruction which will be beneficial to students in developing ethical principles. It has been felt that even with the Bible reading in schools, students too frequently have merged without "*basic* ethical principles." But the feeling is persistent that the Bible reading did provide religious virtue to an extent. The question then faced is what common ground may moral instructions be taught on

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[35]1947-48 Pa. Op. A/G 141, Op. No. 584.
[36]38 Wis. O. A. G. 281.
[37]R. L. Hunt, "AASA Convention" (closed circuit TV, February 16, 1964).
[38]Harry L. Stearns, "In Religious Education, Shared Time," *N. E. A. Journal,* (March, 1964), p. 28.
[39]Donald E. Boles, *The Bible, Religion and the Public Schools* (Ames, Iowa State University Press, 1963), p. 126.

that will not be offensive to certain groups? The Supreme Court of the United States pointed out that deciding this question did not come within the scope of judicial power.[40] The court said that judges could not control the remedy because,

> Judges are made of the same stuff as other men and what would appear to be heretical or doctrinal to one may may stand out as a literary gem or as inoffensive narrative to another.[41]

Religious influence of schools. As to whether Bible reading is beneficial to students in becoming more religious, research findings on this subject have varied a great deal. A number of studies performed by sectarian schools found that children from church affiliated schools were definitely more religious.[42] In 1957, Alice and Peter Rossi found that Catholics who attended parochial schools had better attendance at church services than those who did not.[43] Gerhard Lanski found that parochial school students performed their religious observances in a better manner than those who had not attended religious schools. He found that they were more faithful to the church ritual also and held more orthodox views of the doctrine. They were also more in accord with the churches position on divorce and birth control; and a larger percentage married within their own religion.[44] Helen V. McKenna found that parochial school Catholics scored higher on the St. Catherine Religious Attitude Scale than did those who attended public schools.[45]

The University of Chicago made a study of the religiousness of pupils with different school backgrounds. This study was carefully planned to reduce some of the variables that were evident in the findings of McKenna, Lanski and the Rossi's. The University did away with the variable in which the school backgrounds differed and so did the home and the church backgrounds. There were

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[40]*Ibid.*, p. 124.

[41]H. Hartshorne and M. S. May, *Community Backgrounds of Education* (Studies in Deceit, Studies in Service, Studies in the Organizational Character, discussed in L. S. Cook. New York, 1938), p. 287.

[42]Gerrard Lenski, *The Religious Factor: A Sociological Study of Religion's Impact on Politics, Economics, and Family Life* (Garden City, New York: Doubleday and Co., 1961), pp. 298-299.

[43]Peter H. Rossi and Alice Rossi, "Background and Consequences of Parochial School Education," *Harvard Educational Review*, XXVII (Summer, 1957), pp. 171-172.

[44]Gerhard Lenski, *op. cit.*

[45]Relen Veronica McKenna, "Religious Attitudes and Personality Traits," *Journal of Social Psychology*, LIV (August, 1961), pp. 379-88.

children selected to participate from both the parochial schools and the public schools. The parochial school children were divided into two groups as were the public school children. The parents of the students were questioned so as to ascertain the religiousness of the parents. The children were tested and compared with the parent's religiousness, parent-student congeniality, and church training—all as factors. It was found that generally schools did not influence the students' values and attitudes significantly. With all of the above factors taken into effect, it was found that differences in schooling made little difference.[46]

The above research by the University of Chicago then indicates that the reading of the Bible in the public schools would not tend to produce religious values in the students if they were being taught the contrary at home. But in the case of a void of religious teaching at home, the subject might become influenced by religious doctrine. Too, it might be said that if religion is of no value as it is taught at school, then, this is not the job of the school and, according to the wall doctrine, would better be taught elsewhere.

The Gobitis case. The individual's religious rights as opposed to the state was brought forth in the case of Minersville District v. Gobitis in which a battle was waged by the Jehovah Witnesses in an effort to suspend compulsory flag salute and pledge of allegiance. Lillian Gobitis and her brother, William, were expelled from Minersville, Pennsylvania, schools for refusing to salute the United States flag. The Jehovah Witnesses, to which these children belonged, believed that this salute of respect should be reserved only for God. The question then was, does the individual's religious beliefs pre-suppose the national symbol which lends to the "cohesive sentiment" of the country? The problem was stated by Abraham Lincoln as the "profoundest problem" which confronts a democracy. He stated the delimma as this: "Must a government of necessity be too strong for the liberties of its people, or too weak to maintain its own existence?"[47]

Justice Frankfurter said in his majority opinion of the Minersville case that, "the foundation of a free society is the binding tie of cohesive sentiment."[48] He went on to say that we live by symbols

[46]Donald A. Erickson, "Religious Consequences of Public and Sectarian Schooling," *The School Review* (Chicago: The University of Chicago Press, Spring, 1964), pp. 22-33.

[47]Minersville District v. Gobitis. 310 U.S. 586, 60 S. Ct. 1010, 84 L. Ed. 1375 (1940).

[48]*Ibid.*

and that our flag is a symbol of the American nation. The national unity symbolized by this flag transcends all individual differences. Frankfurter went on to say that individual and family rights presuppose that the society they live in will be an orderly society which guarantees their rights. The society then may protect itself by teaching through the public school process certain underlying foundations which will preserve a free society. The court, therefore, ruled that the school and legislature may require the individual student to salute and pledge allegiance to the flag.[48]

The West Virginia case. Following the Gobitic case, the West Virginia legislature passed into statute the requirement that all schools conduct classes in the Constitution of the United States,

> . . . for the purpose of teaching, fostering, and perpetuating the ideals, principles and spirit of Americanism, and increasing the knowledge of the organization and machinery of the government.[50]

The West Virginia case then, on January 9, 1942, ordered that the salute to the flag be mandatory on all teachers and pupils, and that refusal to do so would be punished by dismissal or expulsion. The child who is expelled is counted "unlawfully absent" and may not be reentered until compliance with the law. The Jehovah Witnesses asked the United States District Court for an injunction to restrain enforcement of these laws. In this case, Mr. Justice Jackson delivered the opinion of the court which disagreed with the Gobitis case in that the present court felt that the salute to the flag here was a compulsion of students to declare a belief.[51]

> Mr. Jackson and the majority said that the local authorities:
> . . . in compelling the flag salute and pledge transcends constitutional limitations on their power and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control.[52]

The Doremus case. In the Doremus case, in 1950, the Court was called upon to rule on the constitutionality of statutes which required Bible reading in school. The court in this case took the Position, as did the Hackett case in Kentucky—that the Bible was

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[49] *Ibid.*

[50] West Virginia State Board of Education v. Barnette, 319 U.S. 624, 63 S. Ct. 1178, 87 L. Ed. 1628 (1943).

[51] *Ibid.*

[52] *Ibid.*

not a sectarian book. The court said that the United States was made up of people from three great religions—Jewish, Catholic and Protestant—and that the other religions were so numerically small that their impact on our American life was negligible. The court went on to say that the American history was made of incidents which presupposed the existence of God. As for the atheist. Judge Case said that,

> . . . he lives in a country where theism is in the warp and woof of the social and the governmental fabric and he has no authority to eradicate from governmental activities every vestige of the existence of God.[53]

As for the Lord's Prayer, the court found that it was a prayer which could be used by both Protestants and Catholics alike, and anyone else who believes in God. The Lord's Prayer does not mention the existence of Christ; and, therefore, it would not be obnoxious to Jews. Dr. Philip Bernstein, a Rabbi in Rochester, New York, said that the Lord's Prayer, it was believed by Jews, since it was based upon an ancient Jewish prayer called "The Kaddish." There is no reference to Christ, and is a prayer to "God, the father." There then, according to the court, is nothing "controversial, ritualistic or dogmatic about the Lord's Prayer."[54]

Judge Case felt that the state should be "stripped of religious sentiment" but it should not endeavor to eradicate religious feeling from the people. The statute that was under attack had been the law for forty-seven years. The court felt here that the American jurisprudence had never held to the overthrow of custom in established law unless it was patent unconstitutionality. The courts decision in the Doremus case was then that the statutes in question did not "impinge" upon the requirements of the First Amendment.[55]

The Regents Prayer case. The recent Regents school prayer case, Engel v. Vitale, was a dispute over a twenty-two word prayer recited each morning in the public schools of the Herricks School district in New York. The prayer said:

> Almighty God, we acknowledge our dependence upon Thee, and we beg Thy blessings upon us, our parents, our teachers, and our country. Amen.[56]

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[53]Doremus v. Board of Education, 5 N. J. 435, 75 Atl. 2d 880 (1950).
[54]*Ibid.*
[55]*Ibid.*
[56]Engel v. Vitale, U. S., Vol. 8 L. Ed. 601, (1962).

The Board of Regents recommended that this twenty-two word prayer be offered at the beginning of each school day. This prayer was recited until June 25, 1962, when a six to one decision of the United States Supreme Court declared the practice unconstitutional, and a new storm broke over the Supreme Court.

The Appellants charged that this case came under the precedent set by the McCollum case, that there would be even more reason to rule this prayer unconstitutional than the McCollum case. Not only in this case is the teacher involved in excusing the child to go to a religious exercise; not only in this case does it involve a religious activity during school hours; and not only in this case is the purpose to teach religion, or to teach a religious exercise; but even further, this case says, that here the child must stay in the classroom unless there is an affirmative act on the part of his parents to excuse him. The decision handed down by the New York Justice Bernard S. Meyer said:

> . . . . That the establishment clause of the constitution does not prohibit the noncompulsory saying of the Regents' Prayer in the public schools, but that the 'free exercise clause' requires that respondent board take affirmative steps to protect the rights of those who, for whatever reason, chose not to participate. . . .[57]

From this decision the Plaintiff appealed to the United States Supreme Court. The case was taken by the Supreme Court and the Appellant won the decision on these grounds, as stated in the majority opinion of Justice Hugo Black. He said:

> . . . . It has been argued that to apply the Constitution in such a way as to prohibit state laws respecting an establishment of religious services in public schools, is to indicate a hostility toward religion or toward prayer. Nothing of course could be more wrong . . . (The framers of the Bill of Rights knew that the First Amendment, which tried to put an end to governmental control of religion and of prayer, was not written to destroy either. They knew rather that it was written to quiet well-justified fears which nearly all of them felt, arising out of an awareness that governments of the past had shackled men's tongues to make them speak only the religious thoughts that government wanted them to speak and to pray only to the God that government wanted them to pray to. It is neither sacreligious to say that each separate

[57] *Ibid.*

> government in this country should stay out of the business of writing or sanctioning official prayers and leave that purely religious function to the people themselves and to those the people choose to look to for religious guidance.[58]

By reconciling the authorities after the Engle v. Vitale case, it is possible to make the following conclusions without reference to the action of the courts in the later Abington Township and Murray cases. Biblical instruction must be voluntary. By providing the student an opportunity to arrive late does make the Bible reading voluntary, but the opportunity given the student to withdraw from class is not voluntary according to the McCollum case. A short prayer is constitutional if the children are given sufficient time to arrive after the exercise is over. A nonsectarian, unofficial prayer may be substituted for the Lord's Prayer which, like the Supreme Court's own prayer, contains no creedal or instructional material, nonsectarian or otherwise, may perhaps be used without opportunity for late arrival. This type of prayer is hard to draft but can be compounded if there is no invocation of Christ, and it states simply, "O, God," without description.[58]

The Abington Township and Murray cases. The most recent Supreme Court decision, (June, 1963), involved two cases concerned with both prayers and Bible reading in the nation's schools. The court ruled on the constitutionality of recitations of the Lord's Prayer and reading of the Bible as religious exercises in public schools. In neither case is the Bible reading limited to passages of the Old Testament. Before these cases reached the Supreme Court, they had drawn conflicting decisions and comments here in the lower courts. In the Maryland case, the state Court of Appeals upheld the propriety of these practices in Murray v. Curlett. In Pennsylvania, a federal court found Bible reading, with or without recitation of the Lord's Prayer, unconstitutional under the First Amendment.[60]

In Murray v. Curlett, William J. Murray III, a student at Woodbourne Junior High School in Baltimore, and his mother, who describe themselves as atheists, brought suit to test the constitutionality of a Board of School Commissioner's regulation that was adopted in 1905:

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[58]*Ibid.*

[59]Opinion by John Breckinridge, *op. cit.*

[60]Statement by Finis E. Engleman, (Washington, D. C.: American Association of School Administrators, 1963).

> Opening Exercises. Each school, either collectively or in classes, shall be opened by the reading, without comment, of a chapter in the Holy Bible and/or the use of the Lord's Prayer. The Douay version may be used by those pupils who prefer it. . . .[61]

The board amended this regulation to include the following:

> Any child shall be excused from participating in the opening exercises or from attending the opening exercises upon written request of his parent or guardian.[62]

The plaintiffs appealed that this regulation in its entirely violated their freedom of religion as based on the First Amendment and the separation of Church and State.

The second case, (Abington Township v. Schempp, was an appeal by Abington Township from a decision of a federal court finding for Schempp. Mr. and Mrs. Edward L. Schempp are Unitarians and parents of three children attending the public schools in Abington Township, Pennsylvania; and they asserted that the federal constitution was violated by the following Pennsylvania law:

> At least ten verses from the Holy Bible shall be read, without comment, at the opening of each public school on each school day, by the teacher in charge. If any school teacher, whose duty it shall be to read shall fail or omit to do so, said school teacher shall, upon charges preferred for such failure of omission, and proof of the same before the board of school directors of the school district, be discharged.[63]

The judges of the lower court rejected the contention that the Bible was being used principally as a work of art and for its historical significance. The court said the Holy Bible, regardless of version, is "A religious document devoted primarily to bringing man in touch with God."[64]

The state legislature of Pennsylvania then amended the statute as follows:

> At least ten verses from the Holy Bible shall be read, without comment, at the opening of each public school on each school day. Any child shall be excused from such Bible

[61] *Ibid.*
[62] *Ibid.*
[63] *Ibid.*
[64] *Ibid.*

reading, or attending such Bible reading, upon written request of his parent or guardian.[65]

The three-judge federal court then declared this law unconstitutional too.

The basic question then that the Supreme Court of the United States was based with was:

> Were the readings from the Holy Bible and recitation of the Lord's Prayer, conducted by school authorities as part of the opening daily exercises in the public schools essentially religious services, thus constituting an 'establishing of religion' in violation of the United States Constitution.[66]

The Supreme Court in resolving this had these five basic choices from which it could have ruled:

1. It could have returned both cases to trial courts for the taking of testimony on the issue of injury to children of complainants.
2. It could have decided that the complainants did not have standing to institute law suits and refuse to rule on the constitutionality of Bible reading and recitation of the Lord's Prayer in the Public Schools.
3. It could have held the recitation of the Lord's Prayer unconstitutional because it is a sectarian religious practice and simultaneously hold that reading from the Holy Bible is not a sectarian practice and, hence, not unconstitutional.
4. It could have held that neither the recitation of the Lord's Prayer nor the reading of the Holy Bible violates the United States Constitution since provision is made in both the Abington Township and Murray cases for excuse of any child from class who does not want to participate. (This would have departed from the Engel v. Vitale case).
5. But the court turned the above down and decided that both Bible reading and recitation of the Lord's Prayer, as part of the opening exercise in the public schools are religious exercises which offend the First Amendment; and, hence, must be discontinued notwithstanding provision for the excuse of objecting students.[67]

[65] *Ibid.*
[66] *Ibid.*
[67] *Ibid.*

The court in this case clearly distinguishes between religious exercises and the study of religion. The court says that the study of the Bible or of religion, when presented objectively as part of a secular program of education, is not opposed to be the First Amendment.

Mr. Justice Goldberg re-emphasized the footnote in the Engle v. Vitale case which said that patriotic exercises which include references to the Diety are permissable. He said:

> There is of course nothing in the decision reached here that is inconsistent with the fact that school children and others are officially encouraged to express love for our country by reciting historical documents such as the Declaration of Independence which contains references to the Diety or by singing officially espoused anthems which include the composer's professions of faith in a Supreme Being, or with the fact that there are many manifestations in our public life of belief in God. Such patriotic or ceremonial occasions bear no true resemblance to the unquestioned religious exercise that the state has sponsored in this instance.[68]

Justice Tom C. Clark, in his majority opinion, said that by requiring reading of the Bible and recitation of the Lord's Prayer, which are prescribed as a part of the curricular activities of the students required by law to attend school, violates "the command of the First Amendment that the Government maintain strict neutrality, neither aiding nor opposing religion."[68] (See Appendix C.) Clark added:

> While the Free Exercise Clause clearly prohibits the use of state action to deny the rights of free exercise to anyone, it has never meant that a majority could use the machinery of the state to practice its beliefs.[70]

Clark continued with this statement:

> The place of religion in our society is an exalted one, achieved through a long tradition of reliance on the home, the church and the inviolable citadel of the individual heart and mind. . . . in the relationship between man and religion, the state is firmly committed to a position of neutrality.[71]

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[68] *Ibid.*, p. 2.

[69] Opinion by Ray Corns, Assistant Attorney General of Kentucky, "Bible Reading and Prayer in the Public Schools," 1963.

[70] *Ibid.*

[71] *Ibid.*

Attorneys' General opinions. In September, 1963, John B. Breckinridge, the Attorney General of Kentucky, issued an opinion in response to a letter of request from the State Department of Education. (See Appendix D.) The questions by the Department were concerned with the steps that should be taken in response to the June, 1963, Supreme Court decisions. The questions were:

1. Do these decisions nullify KRS 158.170 (which require the Bible to be read daily in Kentucky public schools) relative to Bible reading in the common schools in Kentucky?
2. Do these decisions prohibit a teacher, on a voluntary basis, from requiring daily prayer in the presence of children in the common schools of Kentucky?
3. Do these decisions prohibit children, on a voluntary basis, from daily Bible reading in the presence of other children in the common schools of Kentucky?
4. Do these decisions prohibit children, on a voluntary basis, from daily prayer in the presence of other children in the common schools in Kentucky?
5. Do these decisions prohibit a local school board from adopting a policy of requiring daily Bible reading in the presence of children in every classroom or session room in the district,
6. Do these decisions prohibit a local school board from adopting a policy requiring daily prayer in the presence of children in the common schools of Kentucky?
7. Do these decisions prohibit a principal from adopting a policy requiring Bible reading in the presence of children in the school of which he is principal?
8. Do these decisions prohibit the study of the Bible by classes in history and literature? If not, would there be any limitation on the number of days the Bible might be studied by classes in history and literature?[72]

The answers to the first two questions are "yes." In other words, the Supreme Court decisions have nullified K.R.S. 158.170, and it also prohibits teachers from voluntarily conducting prayer and Bible reading in the school. In response to questions three and four, the Attorney General said that the Abington and Murray decisions

[72]Questions by Samuel Alexander, Chief Assistant Superintendent of Public Instruction, State Department of Education, Frankfort, Kentucky, September, 1963.

clearly prohibit children from reading the Bible and prayer during school hours. Breckinridge stated that "bearing in mind the discipline maintained in classrooms—involve the authority and prestige of the school system through the teacher."[73] The student can only engage in private prayer or Bible reading in, "such a manner as not to come into conflict with the requirements of the First Amendment."[74]

The Attorney General also said that the Abington and Murray cases prohibited local boards of education from adopting policies requiring Bible reading and prayer. These decisions also prohibit a principal (question seven) from establishing rules of policies requiring Bible reading and prayer in his particular school. In response to the last question, the Attorney General decided that according to the Supreme Court precedent, it would not be objectionable to study the Bible for its literary and historical value.[75]

Robert Matthews, Attorney General of Kentucky succeeding John B. Breckinridge, issued this opinion as a guideline to schools. (See Appendix D.) In response to a question by Charles B. Grow of the Kentucky School for the Deaf at Danville, as to the worship of the deaf students, Matthews advised:

> . . . that religion would be inhibited at the school for the deaf if the children, on a voluntary basis, were not afforded the opportunity of religious instruction on Sunday on the school premises.[76]

Therefore, it is the opinion of the Attorney General:

> . . . that non-sectarian non-denominational religious instruction can continue to be given on a voluntary basis on Sunday at the school by teachers employed by the school.[77]

He supports this opinion by saying that the restraining of religion in this school would be inhibition of religion which is prohibited by the First Amendment as well as is the advancement of religion.

Prayers and Bible readings are permitted in Parent-Teacher-Association meetings, and voluntary Bible classes can be held without

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[73]Opinion by John B. Breckinridge, Attorney General of Kentucky, OAG 63-790, September 3, 1963.

[74]*Ibid.*

[75]*Ibid.*

[76]Opinion by Robert Matthews, Attorney General of Kentucky, February 7, 1964.

[77]*Ibid.*

the regular school hours or school curriculum. The Attorney General bases this on K.R.S. 162.050, which authorizes school property to be used by,

> . . . any lawful public assembly of educational, religious, agricultural, political, civic, or social parties . . .[78]

while school is not in session. He says that pupils may organize voluntarily devotional sessions which do not conflict with "regularly scheduled classes conducted on the school premises with the regular scheduled hours."[78]

Matthew's opinion permits voluntary baccalaureate exercises, and the display of the Nativity scene at Christmas. It is explained that the Nativity scene portrays the occurrence of a historical event. In support, the New York case of Lawrence v. Buchmueller (243 N.Y.S. '2d' 87 '1963') is cited.

A period of meditation may be set aside by the school to support a program to strengthen moral and spiritual values. It is also the opinion of the Attorney General that during this period of meditation, a student may voluntarily or spontaneously say a prayer silently or vocally. He says that probably this same freedom would not be extended to the teacher because the teacher is cloaked with the mantle of school authority.

Matthews advises that missionaries may make periodic visits to schools to conduct religious services before or after regularly scheduled classes for students to attend voluntarily. He also says that nothing is objectionable for children, during completely free lunch periods or recesses, to attend religious services conducted on the schools grounds by missionaries.[80]

In a Florida Supreme Court decisions, Montgomery v. State, it was said:

> . . . The Constitution of the United States is the Supreme law of the land; and it is the duty of all officials, whether legislative, judicial, executive, administrative or ministerial, to so perform every official act as not to violate the Constitutional provisions. . . .[81]

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[78]*Ibid.*
[79]*Ibid.*
[80]*Ibid.*
[81]Montgomery v. State. 45 So. 879, 881 (1908).

When a school system does not abide by the Supreme Court's interpretation of the Constitution, they are violating the law. Noncompliance with the Supreme Court's ruling is not in itself a criminal offense, but it is a civil violation of the Federal Constitution as interpreted by the Supreme Court.[82]

Legislative action. In the session of the House of Representatives of the United States since September, 1963, fifty-seven members introduced resolutions to amend the Constitution of the United States. These fifty-seven members, instead of supporting fifty-seven different resolutions, joined together to present one joint resolution and to form an article to amend the Constitution. Mr. Becker of New York was chosen as the spokesman for this group. House Resolution 407, as submitted by this group, presented this article as an amendment:

> Section 1. Nothing in this Constitution shall be deemed to prohibit the offering, reading from, or listening to prayers or biblical scriptures, if participation therein is on a voluntary basis, in any governmental or public school, institution, or place.
>
> Section 2. Nothing in this Constitution shall be deemed to prohibit 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 or upon any coinage, currency, or obligation of the United States.
>
> Section 3. Nothing in this article shall constitute an establishment of religion.
>
> Section 4. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of three-fourths of the several States within seven years from the date of its submission to the States by the Congress.[83]

In the United States Congress, the Committee on the Judiciary was appointed to start hearings on Bible reading and prayer in public schools. On April 22, 1964, at 10:30 a. m., the Committee started hearings. Representative Emanuel Cellar, Chairman of the House Judiciary Committee on March 19, 1964, announced that 144 resolu-

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[82]Opinion by Walter E. Alessandroni, Attorney General of Pennsylvania, Department of Justice, No. 260, August 26, 1963.

[83]United States Congress, House, Committee on the Judiciary, "Prayer and Bible Reading in Public Schools," *Congressional Record,* Vol. 109, No. 142, September 10, 1963 (Washington: Government Printing Office, 1963).

tions aleady had been filed with the Committee which indicated very great interest in the important topic.[84]

In the Senate of the United States on December 20, 1963, Senator Vance Hartke referred to an editorial entitled "No Law," which attempted to explain the Supreme Court's stand on Bible reading and prayer. It specifies that the Court does not give the state the right to make a law forbidding worship in schools. The fact that individual children are permitted to be absent during worship periods, does not make the act of worship in schools constitutional.

Whether the Court has ruled out Bible reading and prayer when conducted by individual schools or teachers, remains a conflict among interpreters. But the Court's decision does say that "the exercises and the law requiring them" violate the Constitution. On this basis then, any public school religious exercise is forbidden. On the other hand, the opening paragraph of the Court's opinion stipulates that the issues are presented to the "Court in the context of State action requiring that schools begin each day with readings from the Bible." If taken that the entire opinion must be read in this context, then it does not affect the Bible reading and prayer when conducted by individual schools or teachers.[85]

In the Kentucky legislature in the spring, 1964, the following bills and resolutions were submitted. House Bill 321 provided that any "public school district or system may provide for students and faculty free time whereby the students may meet in assembly with the faculty for a devotional period. This Bill died in the Senate.

There were two House resolutions adopted—Numbers 36 and 44. The first resolution encouraged all teachers to start each school day with a prayer and the latter was a request to the United States Congress to propose a Constitutional amendment to the effect that freedom of religion shall include the right to offer prayer in public schools.

The Senate, likewise, in Senate Resolution 46 adopted a proposal of a Constitutional amendment to the effect that freedom of religion be required to include the right to offer prayer in public schools.

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[84]United States Congress, House, Committee on the Judiciary, "Bible Reading and Prayer in Public Schools," *Congressional Record*, Vol. 110, No. 51, March 19, 1964 (Washington: Government Printing Office, 1964).

[85]United States Congress, Senate, Committee on the Judiciary, "Bible Reading and Prayer in Public Schools," *Congressional Record*, Vol. 109, No. 211, 88th Congress, 1st Session, on S. 24093, December 20, 1963, (Washington: Government Printing Office, 1963).

Also in the Senate, a bill (#128) was proposed which would permit any teacher to read from the Bible and to have prayer whenever he sees fit. This Bill would also permit public school officials to hold chapel services anytime in the public schools; but this bill, like House Bill 321, was not made into law.

The historical developments presented in this chapter serve to verify that the problems faced today are developments of decades and centuries of disputes involving church and state. The solution to this problem will probably not be accomplished in this century. It is, though, the responsibility of all to study the controversy and try to arrive at conclusions that will provide a just and equitable solution.

CHAPTER III

THE QUESTIONNAIRE RESULTS

The local school districts were questioned in an attempt to determine their present status in conducting their school system relative to the Supreme Court's decision which invalidated Kentucky's compulsory Bible reading law. Kentucky encountered a problem which was also faced by twelve other states that also had Bible reading required by law. Kentucky's Bible reading law was declared invalid by Attorney General Breckinridge in his September, 1963, opinion. (See Appendix D.) Later, the opinion of succeeding Attorney General Matthews, in February, 1964, complicated the first opinion by questioning the Supreme Court's intent as interpreted by Breckinridge. (See Appendix E.) Because the Attorneys' General opinions do not coincide as to the policy the schools should use in following the court decisions, there has been and probably will remain a great difference in practices and policies of the individual local school districts. The board members of each district have been left largely to their own discretion in trying to reconcile the interpretations of the Supreme Court's decision.

In the June 26, 1963, Kentucky State Boad of Education meeting, a motion, which was subsequent to the Abington Township and Murray decisions, was carried unanimously to continue present practices of Bible reading and prayer until the Attorney General of Kentucky had clarified the Supreme Court's ruling.[86]

In the September meeting of the State Board, State Superintendent of Public Instruction Wendell P. Butler said that local superintendents ". . . must use their own discretion, and noted that there is a distinction between a ruling and an opinion handed down."[87] He noted it was clear that ". . . officially prescribed prayers and compulsory prayers on Bible reading are prohibited by the ruling of the Supreme Court," but related activities are questionable.[88]

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[86]Kentucky State Board of Education, Minutes of Quarterly Meeting, (Frankfort, Kentucky: State Department of Education, June 26, 1963). (Mimeographed.)

[87]Kentucky State Board of Education, Minutes of Quarterly Meeting (Frankfort, Kentucky: State Department of Education, September 24, 1963). (Mimeographed.)

[88]*Ibid.*

To guide them, the boards have been given only the two diverse Attorneys' General opinions. This factor has probably lent itself to a difference of opinion on some of the matters that are in the gray zone between the poles of interpretation. Some of the questions submitted to the superintendents were designed to obtain their feelings on the interpretation of this area. These questions covered the areas of voluntary Bible reading and prayer by pupils, shared time, sponsorship of clubs, religious holiday programs, baccalaureate services, dismissed time, and released time. (See Appendix A.)

The questionnaire that was sent to the superintendents was for the most part returned promptly and within the deadline date. The questionnaire was sent to all the local districts. The first mailing produced a 75 per cent response. The second mailing resulted in an additional 17 per cent being returned. The ultimate total for all questionnaires in number was 188 of the 204 districts or 92 per cent.

Local policy changes. Four questions were asked to determine specifically what boards of educations had endeavored to do in the way of policy changes. Table I gives the response to these questions. Questions one was asked in an effort to ascertain whether the local board had taken any action subsequent to the Supreme Court decision and, if so, was the policy a written one? Of the 188 districts responding, only 27 had adopted written policies which would affect their former procedures. This number of 27 represented only 14.6 per cent of the total number returned. The policies of this 14.6 per cent that were adopted, could have been to continue prayer and Bible reading or to discontinue it. In number three, one question is asked, "Does this policy authorize Bible reading and Prayer?" To this question, eleven of the districts answered affirmatively. This is to say that eleven districts, after the Court decision, actually adopted written policies that authorized Bible reading and prayer.

In question 22 and 23 (Table I) we have a clarification of what the schools' policies represent. It was found that in 121 of the districts, the unwritten policies or understandings permitted Bible reading and prayer in the schools. In other words, 68.7 per cent of the responses to this question permitted Bible reading and prayer in their schools through unwritten policies or understandings.

In number 23 (Table I), the question is designed to indicate whether the school system as a whole, with direction from the district's central office, actually altered their practices. Did the school system as a whole, through board policy, discontinue Bible reading

and prayer? Of the 177 answers to this query, the response showed that after the Supreme Court decisions in June, 1963, 116 districts did *not* discontinue prayer and Bible reading; or 65.6 per cent of responding districts made no changes.

TABLE I

Responses To Questions Indicating Changes in Overall Policy As Stated On Questionnaire

Question	Answer	Total	% Yes
1. Has your Board of Education written a policy on Bible reading and prayer in its schools subsequent to the Supreme Court decisions in June, 1963?	Yes 27 No 159	186	14.6
3. If "Yes" is the answer to the first question, does the policy authorize Bible reading and prayer in the schools?	Yes 11 No 16	27	40.7
22. Do your individual schools have unwritten policies or understandings permitting Bible reading and school prayer?	Yes 121 No 55	176	68.7
23. Did your school system discontinue Bible reading and prayer after the Supreme Court decision?	Yes 61 No 116	177	34.4

Principals' and teachers' discretion. Table II is concerned with the permissibility of teachers and principals conducting religious activities in class. The question has arisen as to whether an individual school may conduct religious services through the principal or the teacher in charge. This procedure would presumably by-pass the state as a means of conducting prayer or Bible reading. It is generally recognized that because the principal and teacher are representing the state in the occupational functions, that their conducting religious worship is contrary to the United States Constitu-

tion. Here the pupils are a captive audience and thereby should not be subject to religious worship administered by an agent of the state.

It seemed to be the general feeling of the local districts' boards that if they took no official action, then, the principal and the teacher would inherit the right to administer Bible reading and prayer. This is substantiated by Table II in which 124 local districts indicated that they left Bible reading and prayer to the discretion of the principal. A total of 152 districts responded to this question and only 18.4 per cent indicated that the principal did not have the prerogative to conduct religious services.

In question 4 of Table II, the boards were asked as to the permissibility of having teachers make the decision to conduct religious activities. Here again 124 districts reported that they would leave the discretion to the teacher. It should be noted here that the majority of the superintendents of this number felt, as indicated in their comments, that the teachers conducting services were not, according to the Supreme Court, unconstitutional where a principal might be. There were more responses to question 4 than there were to question 2, and although both had the same number of affirmative answers, the percentage allowing the discretion to teachers was lower—70.0 per cent as compared to 81.6 per cent in question 2. One superintendent added that their teachers were encouraged to conduct Bible reading and prayer and to hold these sessions at the beginning of each school day.

TABLE II

Totals On Two Questions Indicating Discretionary Power Of Teachers And Principals

Question	Answer	Total	% Yes
2. If "No" is the answer to the first question, is the discretion left to the principal of the individual school?	Yes 124 No 28	152	81.6
4. May individual teachers in your district read the Bible and conduct prayer at their own discretion?	Yes 124 No 53	177	70.0

Voluntary devotional exercises. Voluntary devotion (Table III) presents a source of conflict on many interpretations of the Court ruling. The question arises as to whether a voluntary prayer can be sanctioned by teacher, principal, or local board and still contain all the ingredients of a privately conceived voluntary prayer? It is the thought of many that when the prayer or Bible reading is permitted, then it ceases to be voluntary. Of course there is no restriction against any person, by his own stimulus, meditating silently. The departing line on the conflicting opinions of Attorneys General Breckinridge and Matthews on voluntary prayer would seem to hinge on whether the stimulus was provided and instigated by an official source.

Also involved in voluntary devotions, we have the problem of allowing children to voluntarily read the Bible in presence of other children. Since the classroom is not a place where children are allowed to exercise every spontaneous whim, it is doubtful that a child could voluntarily read the Bible in the presence of the class without the sanction of the person in charge. When this sanction is exercised, then, the state is no longer in a neutral position.

Voluntary devotion is taken into account in Table III. Question 5 inquires as to whether children are allowed to read voluntarily from the Bible in the presence of the other children? The response here indicated that 125 districts permitted voluntary Bible reading. Of the total of 172 districts responding to this question, those that permitted voluntarily reading the Bible represented 72.7 per cent of the total.

As to whether the children could pray voluntarily in the presence of the class, 168 answers were returned and 70.2 per cent permitted voluntary prayer.

Question 7 asks whether the school officially sets aside a period in which Bible reading and prayer are conducted? The districts indicated here that 58 had a period set aside for a devotional period which represented 32.9 per cent of the total returned.

Another question (number 14) was asked to determine whether the schools had permitted students to organize their own devotional period or session which would be conducted during school hours. Affirmative answers numbered 23 which represented only 12.5 per cent of the total. This response could be viewed in two ways. One of which being that the children had not really been affected enough to seek their own answer to the problem, and the other was the school may not allow them this broad prerogative.

TABLE III

Voluntary Devotional Periods

Question	Answer	Total	% Yes
5. Are children allowed to read voluntarily from the Bible in the presence of other children in the classroom?	Yes 125 No 47	172	72.7
6. Are children allowed to pray voluntarily in the presence of the class?	Yes 118 No 50	168	70.2
7. Is there a voluntary period set aside during each school day at which Bible reading and prayer are conducted?	Yes 58 No 118	176	32.9
14. Have pupils organized, on a voluntary basis, devotional sessions in which prayer or Bible reading is utilized during school hours?	Yes 23 No 161	184	12.5

Religious clubs. Concerning religious clubs organized in school, it was found that only 28 districts had sponsored this type of program. This represented only 15.5 per cent of the total. The districts that reported school sponsored religious clubs named the Y-Teens Clubs, Hi-Y Clubs, Tri-Hi-Y Clubs, and the Good News Clubs as the ones most common.

In one large high school it was observed that two teachers organized and conducted a religious service once a week. The service took place immediately after school was dismissed and the club was held in a classroom. This was complicated by the fact that the school was and is on double sessions, so the school was actually in session at the time. The program proceeded with religious songs, a brief sermon by one of the teachers, Bible readings, and Prayer at the end. The club was a Protestant organization.

Religious holidays. Religious holiday services have caused some question over their constitutionality. It is generally accepted though,

that the school may conduct holiday services. Two questions of the questionnaire were involved with this problem. The first question in Table IV asks, "Are Christmas and Easter programs conducted where songs are sung or speeches said which invoke and recognize the deity?" The responses to this question produced more "Yes" answers than any other question. Of the total of 180, 97.2 per cent said that they did have such programs. But, as is indicated in question number 10, there is only 22.7 per cent that has any policy to this effect.

Two of the districts reported that they invited Protestant ministers to conduct their holiday services. Another superintendent reported that his district had always held Christmas and Easter services in a chapel which was not on school grounds.

TABLE IV

Questions On Holiday Services

Question	Answer	Total	% Yes
9. At Christmas or Easter programs, are songs sung or speeches conducted which invoke the aid or recognize the existence of the deity?	Yes 175		
	No 5	180	97.2
10. Does your school system have a policy permitting the conducting of services in honor of religious holidays during school hours?	Yes 40		
	No 136	176	22.7

Released time. The situation created by released time (Table V) has been questioned over the years. (See pp. 22-23.) This questionnaire indicates that in Kentucky, this program is used very little—probably because of the influence that the McCollum case has had over the years. Also, influencing the response to this question would be the KRS 158.220 which gave permission to the local boards to excuse children for one hour a week to attend their respective places of worship.

TABLE V

Response On Released Time Questions

Question	Answer	Total	% Yes
11. Does your Board of Education have an arrangement to excuse children to attend places away from school premises for worship or other moral instructions during school hours?	Yes 32 No 147	179	17.9
12. If "Yes" is the answer to Question number 11, were these arrangements to excuse children to attend places away from school for worship or for moral instruction in effect prior to the June, 1963, decision of the United States Supreme Court?	Yes 30 No 2	32	93.7
13. Does your Board of Education have arrangements to excuse children from class to attend periods of worship on the school premises during school hours?	Yes 4 No 178	182	2.2

Baccalaureate exercises. The holding of baccalaureate exercises, in most cases, has been interpreted to be constitutional if attendance is made voluntary. (See Table VI.) Baccalaureate services are held outside of school hours and are frequently held at places other than on school property. By making attendance voluntary, this practice seems to be perfectly permissible. The reporting districts indicated that 178 would continue to hold baccalaureate services. Only 3 districts said they would not have these services. To the question which asks, "Will your Board of Education make attendance at baccalaureate services voluntary?", 131 reported they would make these services voluntary. This was 77.5 per cent of the total answering this question. One superintendent qualified his answer by saying that attending was voluntary for all except the graduating class.

Another said that attendance was voluntary but all were expected to attend. Four superintendents said that attendance at baccalaureate in their district had always been voluntary.

TABLE VI
Responses To Questions On Baccalaureate Exercises

Question	Answer	Total	% Yes
15. Will your school system continue to hold baccalaureate services for graduating classes?	Yes 178		
	No 3	181	98.3
16. Will your Board of Education make attendance at baccalaureate services voluntary?	Yes 131		
	No 38	169	77.5

Missionaries. In Table VII we find that 37.9 per cent of the districts permitted missionaries to conduct services during school hours before the June, 1963, Supreme Court decision. This represented a total of 68 districts. Since the Supreme Court's decision, this number of districts—permitting missionaries during school hours—has dropped to 29.

One district reported that recently they received requests from missionaries to come to the schools and tell Bible stories. Another district said missionaries were permitted on the grounds to teach during school hours, but only during the lunch hour.

TABLE VII
Questions Relative To Admitting Missionaries On School Premises

Question	Answer	Total	% Yes
17. Did your school board permit missionaries to conduct services during the school day on school premises before the June, 1963, Supreme Court decision?	Yes 68		
	No 111	179	37.9
18. If the answer to number 17 is "Yes," is this practice being continued since the Supreme Court decision?	Yes 29		
	No 45	74	39.1

Pressure from religious groups. The superintendents were asked if their board had been subjected to any "great pressure" to continue Bible reading and prayer. Only 26 reported that they had been under "great pressure" to continue Bible reading and prayer. This amounted to only 14.7 per cent of the responses to this question. It should be noted here, though, that in referring back to questions number 1 and number 3, we see that only 16 districts had made a change of written policy in the first place. Using this as a comparison then, it would seem that 16 out of this 26 that had changed their policy had also been under pressure to change back.

Answers on this particular question ranged anywhere from slight to heavy pressure. The Parent-Teacher-Association in one district, according to the superintendent, had pressured the board to continue the same as had been done previous to June, 1963.

Most districts have not received help from their ministerial association in trying to set up a program for moral training. The ministerial association in 41 school districts had assisted in trying to provide a solution for the children's moral experiences. This was 23.7 per cent of the total. Three superintendents said that services had been offered if needed.

Students' reactions. A question was entered into the questionnaire specifically to measure the reaction of the students. It was assumed that if the students were adversely affected by the court decision, then they would show some type of reaction. When asked if any principals had detected "any change in pupils' attitude toward religion," the answer was "yes" for only 3.4 per cent. In other words 96.6 per cent of the reporting districts noticed no visible change in the students.

Shared time. Although "shared time" has only recently been given much attention, the schools were asked if they employed such a program. It was found that only six reporting districts had any type of shared time program. This was only 3.5 per cent of the total answers returned. (See p. 26 for an explanation of shared time.) In a recent National Education Association study, it was found that of 13,000 districts contacted, 280 employed a shared time program.[89] This represents only .021 per cent. Therefore, even though the 3.5 per cent in Kentucky seems low, the figure is much higher than the national percentile.

[89]"News," *American School and University*, Vol. 36, No. 8, (New York: A Buttenheim Publication, April, 1964), p. 17.

Table VIII shows a complete table of all the answers, totals, and percentages obtained. The total number of questions answered will not equal the number of questionnaires returned because some superintendents declined to answer certain questions.

TABLE VIII

Complete Table Of All Answers, Totals, And Percentages Obtained

Question	Yes	No	Total	% Yes
*Number 1	27	159	186	14.6
Number 2	124	28	152	81.6
Number 3	11	16	27	40.7
Number 4	124	53	177	70.00
Number 5	125	47	172	72.7
Number 6	118	50	168	70.2
Number 7	58	118	176	32.9
Number 8	28	153	181	15.5
Number 9	175	5	180	97.2
Number 10	40	136	176	22.7
Number 11	32	147	179	17.9
Number 12	30	2	32	93.7
Number 13	4	178	182	2.2
Number 14	23	161	184	12.5
Number 15	178	3	181	98.3
Number 16	131	38	169	77.5
Number 17	68	111	179	37.9
Number 18	29	45	74	39.1
Number 19	26	151	177	14.7
Number 20	41	132	173	23.7
Number 21	6	170	176	3.4
Number 22	121	55	176	68.7
Number 23	61	116	177	34.4
Number 24	6	165	171	3.5

*Note—See Appendix A for a statement of each question.

Summary comments. A section of the questionnaire was provided for comments and explanations of the programs which the schools had adopted. The majority of the reflections were against the Supreme Court ruling and several of the comments went to length to say that Bible reading and prayer in that district would not be discontinued without a court order or an injunction against the board of education. Some of the responses were defiant in saying that the religion in schools of local districts was of no concern to the

Supreme Court and would not be stopped. Twenty-five of the writers stated that their boards had given careful thought to the problem but had decided against doing away with Bible reading and prayer in their schools. Another prevalent feeling was that the board of education understood the Supreme Court decision, but would not do away with religious activities until someone from the local populace complained. Here was the feeling that if no one was harmed, then no law had been broken; hence, present practices would continue.

A small portion of the responses stated simply that they did not understand the Supreme Court decision and the Attorneys General Breckinridge and Matthews had only clouded their view. Because of being unable to understand what must be done, nothing had been done and no policies established.

Also mentioned was the proposal for a constitutional amendment. This was proposed quite often. The belief stated was that the majority was being discriminated against by the minority and this should be changed.

There was an underlying feeling in many answers that the Supreme Court had fallen under the influence of the Catholic faith, and many districts that had no Catholics seemed to think that because of this, they were exonerated from complying with the Court's decision.

Six of the districts that responded to the comment portion of the questionnaire, thought that the Supreme Court's decision should be abided by. Of these six, three disagreed with the decision, but felt that the Court's decision should be upheld and followed. The other three felt that religion should be taken completely out of schools.

CHAPTER IV

CONCLUSIONS

We should be eminently aware, when reevaluating the First Amendment, of the consequences of not following its provisions. We should bear in mind that when the First Amendment was written, the controversy over church and state was much the same as it is today in that it involved "the use of state funds for religious teaching."[90] If the First Amendment should be clarified by another amendment, the matter should be studied thoroughly in the light of history. Also the issue should be discussed sufficiently over a period of time so as not to provide an erroneous remedy cultivated by a heated and sudden reaction to the Court's decision. Citizens of the United States should abide by the provisions of the United States Constitutional system and recognize the interpretations of the Constitution of the United States as the Supreme law of the land. If the majority of the people do not agree with the Supreme Court, they should amend the Constitution, not unduly criticize the Supreme Court.

If and when criticism of the Supreme Court is necessary, we should follow the attitude suggested by Dean Erwin Griswold of Harvard University who said:

> The debt which we all owe to the Court is far greater than any individual can repay. Criticism of decisions of the Court or opinions of its members should be offered as an effort to repay that debt, and with thought that conscientious criticism may be an aid to the Court in carrying out its difficult and essential task.[91]

It is not the intent of this paper to present views either for or against the trends that have developed toward religious education in this country. A purely analytical observance of the historical development of this problem produces a better understanding of the basic problem. The issues formed will doubtlessly need further interpretation by the courts to clarify their intent to the individual

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[90]George R. LaNoue, *Public Funds for Parochial Schools* (National Council of the Churches of Christ in the U. S. A.: New York: 1963), p. 45.

[91]United States Congress, House, Committee on the Judiciary, *Congressional Record*, Vol. 109, No. 171, October 24, 1963 (Washington: Government Printing Office, 1963).

American. But until the time of this clarification, it is probably best that we rely on the explanatory advice of Professor Paul Freund who said:

> We've lived with its (conflict between Church and State) for more than a century. Prior to that, these were political. issues. These were issues that often were settled by violence. Now, we look to the Court. The Court is a sort of escape valve—maybe a scapegoat. It's part of the social functions of courts to take on themselves some of the aggression that would otherwise find their expression in social life, and we can't have it both ways. If we want to avoid making this a political issue, or an issue of violence, then we must recognize that the Court is doing what we expect it to do, and we must withhold our abuse.[92]

[92]Paul Freund, Professor of Constitutional Law, Harvard University, "The School Prayer Case," *Storm Over the Supreme Court,* Part II, CBS News Broadcast (Columbia Broadcasting System: Wednesday, March 13, 1963), p. 60.

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APPENDIX A

A COPY OF THE COVER LETTER AND QUESTIONNAIRE THAT WAS SENT TO ALL SUPERINTENDENTS OF LOCAL SCHOOLS DISTRICTS IN KENTUCKY

COMMONWEALTH OF KENTUCKY

DEPARTMENT OF EDUCATION

FRANKFORT

Dear Superintendent:

We are conducting a study to try to determine what direction the local school districts have taken as a result of the June, 1963, decision of the United States Supreme Court relative to prayer and Bible reading in the schools.

The information requested in this study will be unmarked and unnamed so that no school district will be individually identified. This survey will merely provide information for a report on the procedures used with respect to religion in the public schools.

An effort has been made to prepare this questionnaire so that it will not be necessary for you to do any research in providing the answers. In fact, we feel that it should not take more than ten or fifteen minutes of your time to complete all the answers.

We hope that you will give this your immediate attention so that we can have all completed questionnaires in this office by March 30.

There is extra space provided in the questionnaire so that you may express your feelings on any of the issues or provide other pertinent information that you feel will be of value in this study.

Sincerely yours,

Samuel Alexander
Assistant Superintendent
of Public Instruction

QUESTIONNAIRE

1. Has your Board of Education adopted a written policy on Bible reading and prayer in its schools subsequent to the Supreme Court decisions in June, 1963?
   Check one: Yes_____ No_____
2. If "No" is the answer to the first question, is the discretion left to the principal of the individual school?
   Check one: Yes_____ No_____
3. If "Yes" is the answer to the first question, does the policy authorize Bible reading and prayer in the schools?
   Check one: Yes_____ No_____
4. May individual teachers in your district read the Bible and conduct prayer at their own discretion.
   Check one: Yes_____ No_____
5. Are children allowed to read voluntarily from the Bible in the presence of other children in the classroom?
   Check one: Yes_____ No_____
6. Are children allowed to pray voluntarily in the presence of the class?
   Check one: Yes_____ No_____
7. Is there a voluntary period set aside during each school day at which Bible reading and prayer are conducted?
   Check one: Yes_____ No_____
8. Do schools in your district sponsor clubs which perform religious activities on school premises during the regular school day?
   Check one: Yes_____ No_____
9. At Christmas or Easter programs are songs sung or speeches conducted which involve the aid or recognize the existence of the deity?
   Check one: Yes_____ No_____
10. Does your school system have a policy permitting the conducting of services in honor of religious holidays during school hours?
    Check one: Yes_____ No_____
11. Does your Board of Education have an arrangement to excuse children to attend places away from school premises for worship or other moral instruction during school hours?
    Check one: Yes_____ No_____

12. If "yes" is the answer to Question No. 11, were these arrangements to excuse children to attend places away from school for worship or for moral instruction in effect prior to the June, 1963, decision of the United States Supreme Court?
Check one: Yes_____ No_____

14. Have pupils organized, on a voluntary basis, devotional sessions in which prayer or Bible reading is utilized during school hours?
Check one: Yes_____ No_____

15. Will your school system continue to hold baccalaureate services for graduating classes?
Check one: Yes_____ No_____

16. Will your Board of Education make attendance at baccalaureate services voluntary?
Check one: Yes_____ No_____

17. Did your school board permit missionaries to conduct services during the school day on school premises before the June, 1963, Supreme Court decision?
Check one: Yes_____ No_____

18. If answer to No. 17 is "Yes", is this practice being continued since the Supreme Court decision?
Check one: Yes_____ No_____

19. Has your Board of Education been under very great pressure from any groups to continue prayer and Bible reading as a part of your regular school program since the June, 1963, Supreme Court decision?
Check one: Yes_____ No_____

20. Has your ministerial association assisted you in the solution of the problem created by the recent decisions of the United States Supreme Court?
Check one: Yes_____ No_____

21. Have you or your principals been able to detect any change in the pupils' attitude toward religion since the recent Supreme Court decision?
Check one: Yes_____ No_____

22. Do your individual schools have unwritten policies or understandings permitting Bible reading and school prayer?
Check one: Yes_____ No_____

23. Did your school system discontinue Bible reading and prayer after the Supreme Court decision?

Check one: Yes_____ No_____

24. Do you employ a "shared time" program in conjunction with Catholic or other parochial schools whereby students attend these schools part-time for religious and other instruction and the public schools for a part of their educational training?

Check one: Yes_____ No_____

* * * * * * * * *

PLEASE USE THIS SPACE AND BACK TO REFLECT YOUR FEELINGS ON ANY OF THE ABOVE ISSUES

APPENDIX B

A COPY OF THE KENTUCKY ATTORNEY GENERAL'S OPINION MADE IN RESPONSE TO QUESTIONS CONCERNING THE NEW YORK REGENTS' PRAYER CASE

COMMONWEALTH OF KENTUCKY

OFFICE OF THE ATTORNEY GENERAL

JOHN B. BRECKINRIDGE
ATTORNEY GENERAL

September 5, 1962

Honorable Wendell P. Butler
Superintendent of Public Instruction
State Office Building
Frankfort, Kentucky

Dear Sir:

We have found it convenient to handle in one opinion three requests from school personnel:

One asks a general question as to prayer in schools in view of the Supreme Court decision in the New York Regents prayer case.

One asks an opinion as to the constitutionality of an exercise consisting of Bible reading by one person and reciting of the Lord's Prayer in unison.

One asks a question as to Bible reading. No reference is made to prayer.

In Hackett v. Brooksville, 87 S.W. 792 (1905), our Court of Appeals upheld the use of a fixed prayer.

The Court noted that appellant based his action on Section 189 of Kentucky's Constitution, but called attention to the controlling provisions of Section 5, which reads as follows, and went on to say:

> "'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 any wise 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. If, under the guise of public instruction, children should be required to attend schools where worship of God was compulsory, it would seem to be within the prohibition of that section. . . ."

The fixed prayer which the Court of Appeals upheld, in conjunction with reading aloud a passage from the King James version of the Bible, read as follows:

> " 'Our Father who art in Heaven, we ask Thy aid in our day's work. Be with us in all we do and say. Give us wisdom and strength and patience to teach these children as they should be taught. May teacher and pupil have mutual love and respect. Watch over these children, both in schoolroom and on the playground. Keep them from being hurt in any way, and at last, when we come to die may none of our number be missing around Thy Throne. These things we ask for Christ's sake. Amen."

In upholding the use of the above-quoted prayer and the reading of the Bible, the Court said that the prayer neither in form nor substance seemed to represent any peculiar view or dogma of any sect or denomination, or to teach or detract from those of any other, and therefore is not sectarian in the sense that the word is commonly used and understood as provided for in Section 5 of the Constitution. The Court went on to state that the question was not presented nor decided as to whether or not any exercise partaking incidentally of worship is prohibited. This, pending further review by the courts, settles any question under our State Constitution, which has not been amended in the meantime.

Despite the fact that there are several different versions of the Lord's Prayer, commonly used by different groups, differing in length and in the use of "debts" or "trespasses," we feel that not one of these versions is more sectarian than the prayer quoted above. Sometimes the same denomination uses a short version of the Lord's Prayer for one service and a long version for another. One group, for example, uses the long version for communion services and the short for the visitation of the sick. It is hard to say that the difference between Greek and Latin or sick and well is sectarian. We think

thats, under the construction adopted in the case cited above, the Lord's Prayer is nonsectarian under the Kentucky Constitution.

We are not told what version of the Bible is to be used. Probably several versions are at least as nonsectarian as the King James version, the use of which the Court upheld. It may be noted that, apparently, the origin of the version is not controlling. The test, apparently, is whether the translations themselves, some of which were made two or three centuries before the Christian era, take a definite sectarian line, not who translated them or why or with whose approval. On all these latter points, the King James version would be in a different category. On this point, the Court said:

> "That the Bible, or any particular edition, has been adopted by one or more denominations as authentic, or be them asserted to be inspired, cannot make it a sectarian book. The book itself, to be sectarian, must show that it teaches the peculiar dogmas of a sect as such, and not alone that it is so comprehensive as to include them by the partial interpretation of its adherents. Nor is a book sectarian merely because it was edited or compiled by those of a particular sect. It is not the authorship nor mechanical composition of the book, nor the use of it, but its contents, that give it its character."

As to prayer in general, it is noted that the Supreme Court, itself, has for many years opened with the prayer, "God, save the United States and this honorable court." This prayer is still said after counsel have taken their places. Apparently, in former times when cases on the original docket were not always referred to masters, it was said in presence of witnesses and jurymen who attended involuntarily. On the other hand, the prayer is said by the crier, not the others present, and contains no creedal statement or instructional material.

In Congress, it has long been customary to open the sessions of both House and Senate with prayer. These prayers have contained many creedal statements and much instructional material. On the other hand, there is a *substantial* opportunity, often used, to arrive after prayers are over. It is to be recalled that the Congresses which proposed the first and fourteenth amendments for ratification followed this practice.

A leading case decided by the Supreme Court is McCollum v. Board of Education, 333 U. S. 203 (1948). It involved a religious instruction program that was completely integrated into the school program, except for an opportunity to withdraw, temporarily, from the regular schedule and go to study hall. This is much more difficult

for a normally gregarious person to do than to arrive late, and it was referred to as "a mere formal opportunity to withdraw." The program was held unconstitutional.

Later, in Zorach v. Clauson, 342 U.S. 306 (1952), the Court held constitutional a released time program in which, unlike the dismissed time system in Kentucky, only those children who attended religious classes *away from school* were excused from public school classes.

The Court has not so far reviewed cases involving religious activities on school property but otherwise completely detached from the school schedule.

In the Regents prayer case, Engle v. Vitale, U. S., Vol. 8 L. ed. 601 (1962), the Court held unconstitutional the use of a nonsectarian prayer containing the statement, "we acknowledge our dependence upon them." This prayer was recited in unison as a part of the school schedule. The lower courts had held that its use was voluntary. However, it is hard to see how this holding can be reconciled with the view of the McCollum case that "voluntary," for this purpose, is something quite different from the "voluntary" signing of a commercial contract. The concurring opinion of Justice Douglas raises this point.

The opinion of the Court by Justice Black goes off on the point that this was an official prayer. It gives a historical treatment of English background which omits the fact that public discontent with the services in English churches reached a very high point in the 1960's, when fixed prayers were not in use. It ignores the fact that excluding sectarianism is, as a practical matter, much easier with fixed prayers than with extemporaneous prayers. Few people are conscious of what is sectarian in their own religion and it is hard to imagine a truly nonsectarian prayer that has not been revised and corrected many times by many hands. Of course, such correction need not be done by an official body, and, presumably, a fixed prayer that was nonsectarian, thanks to the joint effort of a mixed nonofficial group, would not be within the holding of the decisions.

We think, for the very practical reason that avoidance of sectarianism is difficult without care, study and reflection, that favoring extemporaneous over fixed unofficial prayers is not required by the Federal Constitution, which has been called "an eminently practical document."

In an effort to reconcile the authorities cited above, including the long-established practice of the Supreme Court and Congress, we take the following view pending further guidance by the courts.

Some purely incidental exercise, such as an opening prayer and

brief Bible reading, is not, per se, within the prohibition contained in Section 5, of the Kentucky Constitution against sectarianism.

Any biblical instruction, even if incidental, must be voluntary. A mere opportunity to withdraw does not make it voluntary under the McCollum case. An opportunity to arrive late does make it voluntary under the Congressional precedent as to prayers which have often been long and loaded with instructional material.

A brief opening exercise, consisting of the Lord's Prayer and a few Bible verses, much shorter in total than some of the prayers used to open Congress, is constitutional if, but only if, children are given a really substantial opportunity to arrive after this exercise is over. We assume that there will be no systematic selection of Bible passages on a sectarian basis.

Another nonsectarian unofficial prayer may be substituted for the Lord's Prayer.

A prayer which, like the Supreme Court's own prayer, contains no creedal or instructional material, nonsectarian or otherwise, may perhaps, be used without giving an opportunity for late arrival. Such prayers are, of course, hard to draft and unsatisfactory in practice. They might, however, be useful on rare occasions, such as commencements, where some persons present enter in formation and, therefore, late arrival is impractical. Such a prayer can be composed by starting with a simple, "O, God," without description, name or title, going on through a simple list of petitions, and closing "Amen," without any invocation of Christ.

It is likely that the Supreme Court will decide some question as to Bible reading this coming term. However, it is hoped that the members of the school system may be helped in the interim by what we have said above.

Sincerely yours,

cc: Mrs. Exie B. Beard
R. R. #1
Elkhorn, Kentucky
Mrs. Lennie Alcorn
Route 2
Irvine, Kentucky
Mr. W. C. Shattles, Superintendent
Ashland Public Schools
Ashland, Kentucky
Mr. Samuel Alexander
Assistant Superintendent of Public Instruction
Department of Education

APPENDIX C

A COPY OF THE LETTER FROM RAY CORNS, ASSISTANT ATTORNEY GENERAL OF KENTUCKY, ON BIBLE READING AND PRAYER IN THE PUBLIC SCHOOLS

OFFICE OF THE ATTORNEY GENERAL

TO: Kern Alexander

FROM: Ray Corns
Assistant Attorney General

DATE: July 2, 1963

SUBJECT: BIBLE READING AND PRAYER IN THE PUBLIC SCHOOLS

The Supreme Court July 17, in two cases decided together, held 8-1 that reading of the Bible and recitation of the Lord's Prayer in classrooms, under direction of the local board of education, was unconstitutional. The actions were held in violation of the 1st Amendment as it applies to the states through the 14th Amendment, an establishment of religion or prohibiting the free exercise of religion. The 14th Amendment prohibits state infringement of the individual's constitutional rights.

The two cases dealt with state or local statutes requiring a religious exercise at the outset of each public school day. One case (Abington Township (Pa.) v. Schempp) involved a 1913 Pennsylvania law which required the reading of "at least ten verses" from the Bible at the opening of each school day and permitted any child to be excused from participation upon written consent of his parents. The prayer was read over the school's intercommunications system each morning and followed by recitation, in unison, of the Lord's Prayer while the children stood. The Eastern District Court of Pennsylvania had held the statute violative of the 1st and 14th Amendments.

The other case (Murray v. Baltimore School Board) involved the constitutionality of a 1905 Baltimore Board of School Commissioners' decree requiring city schools to commence each day with "reading, without comment, of a chapter in the Holy Bible and/or the use of the Lord's Prayer." The rule was ultimately amended to allow the excusal of children from participation upon parental request. The Maryland Court of Appeals had affirmed a lower court decision that

the case lacked legal sufficiency and was not in violation of the 1st and 14th Amendments.

In the Pennsylvania case, the King James, Catholic Douay and Revised Standard versions of the Bible were used, as well as the Jewish Holy Scriptures. In the Baltimore case, the King James and Catholic Douay versions were alternated.

Justice Tom C. Clark, writing for the majority, referred to the 1962 decision (Engel v. Vitale) in which the Court ruled a 22-word non-denominational prayer drafted by the New York Board of Regents as unconstitutional: "When the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain." (1962 Almanac p. 240)

The states, Clark said, by requiring reading of the Bible and recitation of the Lord's Prayer, which are prescribed as a part of the curricular activities of the students required by law to attend school, violate "the command of the 1st Amendment that the Government maintain strict neutrality, neither aiding nor opposing religion." Clark added: "While the Free Exercise Clause clearly prohibits the use of state action to deny the rights of free exercise to anyone, it has never meant that a majority could use the machinery of the state to practice its belief."

"The place of religion in our society is an exalted one, achieved through a long tradition of reliance on the home, the church and the inviolable citadel of the individual heart and mind," Clark said, "in the relationship between man and religion, the state is firmly committed to a position of neutrality."

Justices William O. Douglas, William J. Brennan, Jr., and Arthur J. Goldberg and John Marshall Harlan added concurring opinions to Clark's.

Brennan, in a lengthy opinion, traced the evolution of the interpretation of the 1st Amendment. He said, "The fact is that the line which separates the secular from the sectarian in American life is elusive," but the 1st Amendment "must necessarily be responsive to the much more highly charged nature of religious questions in contemporary society." He said the New York Regents' Prayer was "rather bland", not appearing sectarian. "I would suppose that if anything the Lord's Prayer and the Bible are more clearly sectarian,

and the present violation of the 1st Amendment consequently more serious," he added.

Brennan said, "Not every involvement of religion in public life violates the Establishment Clause. Our decision in these cases does not clearly forecast anything about the constitutionality of other types of interdependence between religious and other public institutions." For example, Brennan said, "Hostility, not neutrality," would characterize the refusal to provide chaplains and places of worship for prisoners and soldiers cut off by the state from all civilian opportunities for public communion. The teaching about the Holy Scriptures or about the differences between religious sects in classes of history or literature; invocational prayers in legislative bodies where "mature adults" may absent themselves without direct or indirect penalty; and the motto "In God We Trust," which is interwoven so deeply into the fabric of civil policy," are not the types of involvement the 1st Amendment prohibits, Brennan explained.

In dissent, Justice Potter Stewart said the cases should be returned to the lower courts for more evidence. He said, the High Court's "refusal to permit religious exercise is seen, not as the realization of state neutrality, but rather as the establishment of a religion of secularism, or at the least, as government support of the beliefs of those who think that religious exercises should be conducted only in private."

The question now before us is whether Bible reading and prayer in the public schools can be done on a permissive basis.

One solution might be to permit the teacher, if he voluntarily decides to so, to read the Bible and pray during the first five minutes of the school day. Pupils would be given the right to arrive five minutes late each day if they did not want to hear the Bible read and a prayer uttered.

Our office is in the process of formulating an opinion on the permissive aspect of this issue. We hope to render an opinion on this matter within the next few weeks.

We note in conclusion that the Attorney General of Delaware, according to the press, has ruled that Bible reading and praying on a permissive basis is legal. We have requested a copy of this opinion to assist us in our endeavor herein.

APPENDIX D

A COPY OF THE OPINION OF JOHN B. BRECKINRIDGE, ATTORNEY GENERAL OF KENTUCKY, MADE ON SEPTEMBER 3, 1963, IN RESPONSE TO QUESTIONS FROM THE STATE DEPARTMENT OF EDUCATION

Opinion by Honorable John B. Breckinridge
Attorney General of Kentucky, re Bible Reading

September 3, 1963

OAG 63-790

This opinion is in reply to a recent Department letter of request, in which it is stated that:

> . . . . decisions of the United States Supreme Court regarding Bible reading and prayer in the public schools make it necessary for us to obtain your legal opinion regarding the effect of these decisions on Bible reading and prayer in the public schools in Kentucky.
>
> KRS 158.170 provides that, 'The teacher in charge shall read or cause to be read a portion of the Bible daily in every classroom or session room in the common schools of the state in the presence of the pupils therein assembled, but no child shall be required to read the Bible against the wish of his parents or guardion.'
>
> Subject letter then proceeds to set forth the following eight specific questions apparently directed at eliciting guidelines for the information and advice of the various boards, officers and employees of our common school system:
>
> 1. Do these decisions nullify KRS 158.170 relative to Bible reading in the common schools in Kentucky?
>
> 2. Do these decisions prohibit a teacher, on a voluntary basis, from requiring daily prayer in the presence of children in the common schools of Kentucky?
>
> 3. Do these decisions prohibit children, on a voluntary basis, from daily Bible reading in the presence of other children in the common schools of Kentucky?
>
> 4. Do these decisions prohibit children, on a voluntary basis, from daily prayer in the presence of other children in the common schools of Kentucky?

5. Do these decisions prohibit a local school board from adopting a policy requiring daily Bible reading in the presence of children in every classroom or session room in the district?

6. Do these decisions prohibit a local school board from adopting a policy requiring daily prayer in the presence of children in the common schools of Kentucky?

7. Do these decisions prohibit a principal from adapting a policy requiring Bible reading in the presence of children in the school of which he is principal?

8. Do these decisions prohibit the study of the Bible by classes in history and literature? If not, would there be any limitation on the number of days the Bible might be studied by classes in history and literature?

A response to the broad field of general inquiry entails a review of the Court's latest opinions, the companion cases of *Abington v. Schempp* and *Murray v. Curlett*, ------ U. S. ------, 10 L. Ed. 2d 844, handed down by the Supreme Court on June 17, 1963, and *Engle v. Vitale*, 370 U. S. 421, 8 L. Ed. 2d 601, 82 S. Ct. 1261, 86 A. L. R. 2d 1285 (1962), in the light of the Courts previous opinions construing so much of the United States Bill of Rights as is to be found in the First Amendment (made applicable to the States by the Fourteenth Amendment's adoption in 1868):

> *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.

In the *Engle* case the Court held unconstitutional the use of 22-word prayer composed by a state board of regents and recited in unison as a part of the school schedule, leaving some question as to whether or not the prayer was prohibited because of its official composition or because of its official composition or because it was administered through the compulsory machinery of the state. (See OAC 62-779.)

In a single opinion the Court held unconstitutional, in the *Abington case,* a Pennsylvania statute which read in pertinent part as follows:

> 'At least ten verses from the Holy Bible shall be read, without comment, at the opening of each public school on each school day. Any child shall be excused from such Bible

reading, or attending such Bible reading, upon the written request of his parent or guardian.'

And, in the companion *Murray* case, the Court found unconstitutional a rule adopted by the Board of School Commissioners of the City of Baltimore (pursuant to a permissive statute adopted by the Maryland legislature) providing for opening exercises in the city's schools consisting primarily on the following:

> . . . . 'reading, without comment, of a chapter in the Holy Bible and/or the use of the Lord's Prayer.' . . .

In speaking for the Court Mr. Justice Clark (joined in concurring opinions by Justices Douglas and Brennan, with only Justice Stewart in dissent) said:

> Once again we are called upon to consider the scope of the provision of the First Amendment to the United States Constitution which declares that 'Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof . . .' These companion cases present the issues in the context *of state action* requiring that schools begin each day with readings from the Bible. While raising the basic questions under slightly different factual situations, the cases permit of joint treatment. In light of the history of the First Amendment and of our cases interpreting and applying its requirements, we hold that the *practices at issue and the laws requiring them* are unconstitutional under the Establishment Clause, as applied to the states through the Fourteenth Amendment. (Emphasis added.)

The Court's opinion clearly declares as unconstitutional those statutory or regulatory practices or provisions, including those contained in KRS 158.170, which require the reading of the Bible or praying in a religious or devotional context as a part of a regular school program.

In fact, so unequivocal and comprehensive is the language chosen by the Court in *Abington* and *Murray* that it is evident that the reach of the Establishment Clause of the First Amendment is such as to prohibit our common schools—through the action, direction or instigation of the Commonwealth's boards, officers, agents or employees—from the utilization of any devise which would impose upon any student the necessity of exercising even a voluntary choice between participating in, attending or absenting himself from a place in which devotional Bible reading, or prayer, is being conducted as a part of the school's regular program.

The answer, therefore, to the numbered first, second, fifth, sixth and seventh questions set out above is in the affirmative: the practices proposed and proscribed.

Questions numbers 3 and 4 raise the Question of the effect of the Establishment Clause on the Free Exercise Clause. (Your other numbered questions relate solely to state action, as distinguished from private or "voluntary" action on the part of pupils.) For the purposes of this opinion, reading of the Bible, or praying, aloud by volunteer pupils in regular classroom situations, in which the other members of the class are either required to be in attendance or are permitted to absent themselves during the conduct of such practices. It is my opinion that *Abington* and *Murray* clearly prohibit such practices. That which is "voluntary" to one segment of a school's pupils, and meets with its approbation, may be found to be in violation of the conscience, religious beliefs and rights of another segment, as protected by the Free Exercise Clause from those intrusions proscribed by the Establishment Clause. Such practices would fall within the prohibition contained in the test laid down by Justice Clark in the *Abington* and *Murray* cases.

> . . . . That is to say that to withstand the strictures of the Establishment Clause *there must be a secular purpose and a primary effect that neither advances nor inhibits religion.* . . . (Emphasis added.)

The practice outlined above is unconstitutional, as being within the context of state action (see the *Abington* case, supra, and *McCollum* v. *Ed. of Education*, 333 U.S. 203, 92 L. Ed. 649) through the utilization of compulsory attendance laws and the school system's machinery to impose a situation in which a pupil must elect to remain or absent himself to avoid obviously religious exercises. Such practices would of necessity-bearing in mind the discipline maintained in classrooms-involve the authority and prestige of the school system through the teacher. The individual student may engage in private prayer or in reading the Bible in the presence of other pupils only in such a manner as not to come into conflict with the requirements of the First Amendment. The Court has proscribed such practices when participation is imposed by the school system on any of its pupils.

As Justice Roberts said in speaking for the Court in *Cantrell* v. *Connecticut*, 310 U.S. 296, 84 L. Ed. 1213, p. 1218:

> . . . The constitutional inhibition of legislation on the subject of religion has a double aspect. On the one hand, it forestalls

> compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand it safeguards the free exercise of the chosen form of religion. Thus the Amendment embraces two concepts,—freedom to believe and freedom to act. The first is absolute but, in the nature of things, the second cannot be . . .

Your eighth question is answered in the negative by the Court, subject to the tests and criteria hereinbelow set forth:

> In addition, it might well be said that one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization. It certainly may be said that the Bible is worthy of study for its literary and historic qualities. Nothing we have said here indicates that such study of the Bible or of religion, *when presented objectively as part of a secular program of education* may not be effected consistent with the First Amendment . . . (Mr. Justice Clark, page 22; emphasis added.)

Indeed, as Mr. Justice Jackson said in his concurring opinion in the McCollum case, U333.S. 203, 92 L. Ed. 649, p. 671:

> . . . Perhaps subjects such as mathematics, physics or chemistry are, or can be, completely secularized. But it would not seem practical to teach either practice or appreciation of the arts if we are to forbid exposure of youth to any religious influence. Music without sacred music, architecture minus the cathedral, or painting without the scriptural themes would be eccentric and incomplete, even from a secular point of view. Yet the inspirational appeal of religion in these guises is often stronger than in forthright sermon. Even such a 'science' as biology raises the issue between evolution and creation as an explanation of our presence on this planet. Certainly a course in English literature that omitted the Bible and other powerful uses of our mother tongue for religious ends would be pretty barren. And I should suppose it is a proper, if not an indispensable, part of preparation for a worldly life to know the roles that religion and religions have played in the tragic story of mankind. The fact is that, for good or for ill, nearly everything in our culture worth transmitting, with religious influences, derived from paganism, Judaism, Christianity—both Catholic and Protestant—and

other faiths accepted by a large part of the world's peoples. One can hardly respect a system of education that would leave the student wholly ignorant of the currents of religious thought that move the world society for a part in which he is being prepared.

But how one can teach, with satisfaction or even with justice to all faiths, such subjects as the story of the Reformation, the Inquisition, or even the New England effort to found 'a church with a Bishop and a State without a King,' is more than I know. It is too much to expect that mortals will teach subjects about which their contemporaries have passionate controversies with the detachment they may summon to teaching about remote subjects such as Confucius or Mohammed. When instruction turns to proselyting and imparting knowledge becomes evangelism, it is, except in the crudest cases, a subtle inquiry.

* * * * * * * * * * *

The task of separating the secular from the religious in education is one of magnitude, intricacy and delicacy. . . .

The test in this case, as in the variety of situations contemplatable in connection with your questions 3 and 4 as worded, must rest in each instance on the facts at hand and the *bona fides* with which the particular classes are conducted. As Mr. Justice Clark said in the *Abington* and *Murray* opinion:

> . . . The test may be stated as follows: what are the purpose and the primary effect 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 *withstand the strictures of the Establishment Clause there must be a secular legislative purpose, and a primary effect that neither advances nor inhibits religion* . . . (Emphasis added.)

Or, as Justice Douglas said in his concurring opinion (p. 4):

> . . . . What may not be done directly may not be done indirectly lest the Establishment Clause become a mockery.

In other words, that which the legislature may not do directly, the Commonwealth may not do indirectly through any of its agencies, boards, officers or employees. The prohibition against the conduct of religious or devotional exercises through such a reading of the Bible in our common school system is not circumvented by the designation of such activities as "classes.'

As is apparent from the foregoing the answers to questions of the nature which you have posed, and the practices and programs which they contemplate must, in each instance, depend in the final analysis upon the facts at hand. Should similar questionable practices come to your attention, please do not hesitate to advise and we will review the matter accordingly.

APPENDIX E

A COPY OF THE OPINION OF ROBERT MATTHEWS, ATTORNEY GENERAL OF KENTUCKY, MADE ON FEBRUARY 7, 1964, IN RESPONSE TO QUESTIONS ON PRAYER AND BIBLE READING IN THE PUBLIC SCHOOLS

Statement by Robert Matthews:

In issuing this opinion this morning, it certainly is not my intention to "stir up" the controversy raised by the 1963 Supreme Court decisions. Yet, certainly I will not shirk my responsibility in advising public officials—in this instance school officials—on problems raised by these particular court decisions.

We have on hand in this office numerous inquiries, some even here at the time I assumed the office of Attorney General. These indicate that school authorities certainly wish to follow the law, but some confusion exists concerning what it now is. For example, even time-honored practices such as baccalaureate exercises and the saying of "grace" before lunch have been questioned.

In issuing this opinion today, I hope that some of this confusion can be alleviated and the guidelines established so that school authorities as far as possible can make their own determination in light of local district practices.

ROBERT MATTHEWS
ATTORNEY GENERAL

COMMONWEALTH OF KENTUCKY

OFFICE OF THE ATTORNEY GENERAL

FRANKFORT

February 7, 1964

Honorable Harry Sparks
Superintendent of Public Education
Department of Education
Frankfort, Kentucky

OAG 64-111

Dear Dr. Sparks:

This is responsive to your recent letter wherewith you enclosed a request from Mr. Charles F. Clark, Superintendent of Schools in Floyd County, Kentucky, which, in essence, seeks a clarifying opinion on the general subject of prayer and Bible reading in the public school system of Kentucky.

This office, by previous opinion (OAG 63-790), following the Supreme Court decisions of *Abington v. Schempp* and *Murray v. Curlett,* 374 U.S. 203, 10 L. Ed. 2d 844 (1963), declared KRS 158.170, required Bible reading statute, unconstitutional. The same opinion advises that a state or school requirement that a prayer be recited in the school room unconstitutional. I reaffirm this opinion, and advise that in light of the above Supreme Court decisions, KRS 158.170 is unenforceable. Any provision, state or public school, making mandatory the recitation of a prayer or reading of the Bible during school hours is violative of the Federal Constitution as interpreted by the Supreme Court in the above-styled cases.

Since the issuance of that opinion, numerous requests have come to this office questioning certain practices now being carried on in the public school system and their possible continuance in light of the Supreme Court's decisions. In this opinion we will respond to those inquiries and also establish guide-lines which we hope will be of assistance to you, other public school officials in the state, PTA officers and other persons with responsibility in these fields.

The Federal Constitution, as interpreted finally by the United States Supreme Court, is the law of the land; Supreme Court decisions must be followed. The difficulty now lies in the field of practices not specifically covered by the particular court decisions involved. Instilled in children must be respect for the law. The constitutional requirements of separation of church and state must be recognized and followed. In addition, the requirement of the First Amendment to the Constitution prohibiting the establishment of a religion by law must be observed.

On the other hand, however, school authorities cannot exhibit a hostility towards religion, because the instillation of such a hostile attitude towards religion in the young minds of school children would be just as violative of the "neutral" position required by the Constitution. (See *Zorach v. Clauson,* 342 U.S. 306, 96 L. Ed. 2d 954 (1952), and the concurring opinion of Justice Brennan in the Abington case, supra.)

In light of the above, let us now turn to specific instances brought to the attention of this office. Superintendent Charles B. Grow of the Kentucky School for the Deaf at Danville has inquired as to the legality of the practice under which his students are afforded religious training. Except for the traditional school holidays at Christmas, Easter and Thanksgiving, these students are in residence at the school seven days a week, nine months a year. Sunday School

classes are conducted on the school premises by faculty members, but no pupil will be required to attend these religious services. Lessons taught at the Sunday School are non-denominational and non-sectarian. Catholic pupils do attend the Catholic Church in Danville and receive instructions there, but as Superintendent Grow points out, it is extremely difficult to commuicate with deaf students and, as a result, all church organizations in the Danville area have a very real problem in trying to provide religious training and instruction to the students.

Required school policy or legislative enactment is subject to the following test. As Mr. Justice Clark stated for the majority in the *Abington* and *Murray* cases, supra:

> . . . the test may be stated as follows, what are the purposes and primary effect of the enactment (required school policy.) If either is the advancement or inhibition of religion, then the enactment exceeds the scope of legislative power as circumscribed by the constitution. (Brackets added.)

It is the opinion of this office, in light of the above, that religion would be inhibited at the school for the deaf if the children on a voluntary basis were not afforded the opportunity of religious instruction on Sunday on the school premises. Practically speaking, they can secure it nowhere else. The communication problem denies access at the local Sunday Schools. Therefore, it is the opinion of this office that non-sectarian non-denominational religious instruction can continue to be given on a voluntary basis on Sunday at the school by teachers employed by the school.

From an analysis of the *Zorach* case, supra, and the case of *McCollum v. Board of Education of School District No. 71, Champaign County, Illinois, et al,* 33 U. S. 203, 92 L. Ed. 649 (1948), the constitutional prohibition applies, in essence, to practices in public school buildings involving scheduling during classroom hours. A compulsory attendance law, of course, places children in such a position for a certain length of time.

In our opinion, the utterance of prayers or the reading of the Bible can continue in PTA meetings and voluntary Bible classes held without the regular school hours or school curriculum. KRS 162.050 authorizes school property to be used by

> . . . any lawful public assembly of educational, religious, agricultural, political, civic, or social parties . . .

while school is not in session. The Supreme Court decisions have not affected the validity of this legislative enactment; and, therefore,

religious groups or civic groups, and voluntary school associations using such practices as Bible devotionals and prayer recitations can continue to follow these practices. Students certainly may attend these types of meetings and, in our opinion, even organize on a voluntary basis devotional sessions in which prayer or Bible reading is utilized, so long as such sessions do not conflict in any manner with regularly scheduled classes conducted on the school premises within the regular scheduled hours. If school authorities were to prevent such occurrences, then, in effect, public authorities would be disclosing a hostility towards religious expressions and foregoing the neutrality required by the Federal Constitution.

Certainly the continuance of baccalaureate exercises is approved. Attendance at such functions is voluntary.

Even within the school program, I would think proper a period of meditation to be established or continued, if you and the public school authorities thought beneficial a program to strengthen the moral and spiritual values in this, oft described, secular society of ours. Justice Brennan in his concurring opinion in the Abington and Murray cases, supra, spoke with approval of the

> . . . observance of a moment of reverent silence at the opening of class . . .

In our opinion, nothing objectionable would be found in a student, during a period of meditation, voluntarily or spontaneous saying a prayer, silent or vocal. Probably the same freedom would not extend to the teacher because he is cloaked with the mantle of school authority and his act could be construed as one of school sponsorship. Referring to Superintendent Clark's inquiries, I would advise that under the Supreme Court decisions the missionaries who make periodic visits to the schools in Floyd County and conduct religious services during regular scheduled periods would be precluded from continuing such practices. However, the school board could make available school buildings before or after regular scheduled classes for such services and students could attend on a voluntary basis. So far as recesses and lunch periods are concerned, if children have complete freedom during these times and some voluntarily attend some types of service conducted by these missionaries upon the school premises, nothing objectionable can be seen in this. If a district is utilizing portions of the lunch period to meet the six-hour school work requirements of KRS 158.060, then this time would not be available. If the religious services were conducted after school hours, we see no objection to the altering of school bus scheduling so long as the

child has available transportation homeward, regardless of attendance or non-attendance at a particular religious exercise. However, school expenditures could not be appreciably increased to accomplish this. I can visualize parents providing transportation for children attending these services, or car pools being formed, or related solutions appearing.

Certainly the children may continue to say grace before lunch in the schools, and the Nativity scene at Christmas can continue so long as no religious significance is attached thereto. As a basis for this latter observance, I would point out that the Nativity scene portrays the occurrence of an event which is historical in nature. See *Lawrence v. Buchmueller*, 243 N. Y. S. 2d 87 (1963) approving a Nativity scene on school grounds.

In this opinion an attempt has been made to cover this multitude of questions presented both to this and your office. Knowing personally the inherent resources of school authorities, I feel that beneficial aims can be accomplished relating to the moral and spiritual development of young minds while the state and school officials maintain a neutral position required by the Federal Constitution, i. e., neither favoring nor showing hostility to religion.
OAG 63-790 is modified and amplified to the extent herein disclosed.

Sincerely yours,
Robert Matthews
Attorney General

APPENDIX F

A LIST OF SCHOOL DISTRICTS USED IN RESEARCHING THIS STUDY

County Districts That Received Questionnaires

1. Adair County
2. Allen County
3. Anderson County
4. Ballard County
5. Barren County
6. Bath County
7. Bell County
8. Boone County
9. Bourbon County
10. Boyd County
11. Boyle County
12. Bracken County
13. Breathitt County
14. Breckinridge County
15. Bullitt County
16. Butler County
17. Caldwell County
18. Calloway County
19. Campbell County
20. Carlisle County
21. Carroll County
22. Carter County
23. Casey County
24. Christian County
25. Clark County
26. Clay County
27. Clinton County
28. Crittenden County
29. Cumberland County
30. Daviess County
31. Edmonson County
32. Elliott County
33. Estill County
34. Fayette County
35. Fleming County
36. Floyd County
37. Franklin County
38. Fulton County
39. Gallatin County
40. Garrard County
41. Grant County
42. Graves County
43. Grayson County
44. Green County
45. Greenup County
46. Hancock County
47. Hardin County
48. Harlan County
49. Harrison County
50. Hart County
51. Henderson County
52. Henry County
53. Hickman County
54. Hopkins County
55. Jackson County
56. Jefferson County
57. Jessamine County
58. Johnson County
59. Kenton County
60. Knott County
61. Knox County
62. Larue County
63. Laurel County
64. Lawrence County
65. Lee County
66. Leslie County
67. Letcher County
68. Lewis County
69. Lincoln County
70. Livingston County

71. Logan County
72. Lyon County
73. Madison County
74. Magoffin County
75. Marion County
76. Marshall County
77. Martin County
78. Mason County
79. McCracken County
80. McCreary County
81. McLean County
82. Meade County
83. Menifee County
84. Mercer County
85. Metcalfe County
86. Monroe County
87. Montgomery County
88. Morgan County
89. Muhlenberg County
90. Nelson County
91. Nicholas County
92. Ohio County
93. Oldham County
94. Owen County
95. Owsley County
96. Pendleton County
97. Perry County
98. Pike County
99. Powell County
100. Pulaski County
101. Robertson County
102. Rockcastle County
103. Rowan County
104. Russell County
105. Scott County
106. Shelby County
107. Simpson County
108. Spencer County
109. Taylor County
110. Todd County
111. Trigg County
112. Trimble County
113. Union County
114. Warren County
115. Washington County
116. Wayne County
117. Webster County
118. Whitley County
119. Wolfe County
120. Woodford County

Independent Districts That Received Questionnaires

1. Anchorage
2. Ashland
3. Augusta
4. Barbourville
5. Bardstown
6. Beechwood
7. Bellevue
8. Benton
9. Berea
10. Bowling Green
11. Burgin
12. Campbellsville
13. Carrollton
14. Catlettsburg
15. Caverna
16. Central City
17. Cloverport
18. Corbin
19. Covington
20. Danville
21. Dawson Springs
22. Dayton
23. Earlington
24. East Bernstadt
25. Elizabethtown
26. Eminence
27. Erlanger
28. Fairview

29. Falmouth
30. Ferguson
31. Frankfort
32. Ft. Thomas
33. Fulton
34. Georgetown
35. Glasgow
36. Greenup
37. Greenville
38. Harlan
39. Harrodsburg
40. Hazard
41. Henderson
42. Hopkinsville
43. Irvine
44. Jackson
45. Jenkins
46. Leitchfield
47. Lexington
48. Liberty
49. London
50. Louisville
51. Ludlow
52. Lynch
53. Mayfield
54. Maysville
55. Middlesboro
56. Monticello
57. Mt. Sterling
58. Murray
59. Newport
60. Owensboro
61. Paducah
62. Paintsville
63. Paris
64. Pikeville
65. Pineville
66. Providence
67. Raceland
68. Ravenna
69. Richmond
70. Russell
71. Russellville
72. Science Hill
73. Scottsville
74. Shelbyville
75. Silver Grove
76. Somerset
77. Southgate
78. S. Portsmouth
79. Stanford
80. Van Lear
81. Walton-Verona
82. West Point
83. Williamsburg
84. Williamstown