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LEGAL STATUS OF BIBLE READING
AND RELIGIOUS INSTRUCTION
IN PUBLIC SCHOOLS

By

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LETTER OF TRANSMITTAL

DEPARTMENT OF THE INTERIOR,
OFFICE OF EDUCATION,
Washington, D. C., July, 1930.

SIR: The matter covered by this manuscript has grown out of controversies; yet it is not in itself controversial. At times there are arrayed on one side of a controversy those who sincerely believe that a reading or teaching of the Bible in the public schools will make for better citizenship; and on the other side are to be found those who believe a real adherence to the principle of complete separation of church and state requires excluding the Bible. These controversies in themselves tend to make perilous the paths of school executives, members of school boards, and State legislators. There are also reasons to believe that such controversies are merely cloaks for ancient prejudices, modern intolerances, or whims of youth who wish to disobey rules or defy properly constituted authority.

A study of the constitutions and statutes of the various States of the Union and the Supreme Court interpretations of them as they were pleaded in trials originating under different situations constituted part of the work done at American University by Mr. Keesecker in fulfilling the requirements for the degree of doctor of philosophy. Such parts of his study as seem to be helpful to school officials have been incorporated in this manuscript, which I now officially transmit to you with the recommendation that it be printed as a bulletin of the Office of Education.

Respectfully submitted.

WM. JOHN COOPER,
Commissioner.

The SECRETARY OF THE INTERIOR.

v

LEGAL STATUS OF BIBLE READING AND RELIGIOUS INSTRUCTION IN PUBLIC SCHOOLS

I. Aim and Scope

Office of Education Bulletin, 1923, No. 15, *The Bible in the Public Schools*, was published in response to a demand for information relative to the use of the Bible in public schools. Changes in recent years in respect to the legal status and current practice in regard to the use of the Bible in public schools, together with continued demand for information on this subject, has led to a more recent study and to this publication.

The aim here is to provide up-to-date information to answer the principal questions often propounded relating to the present legal status and current practice in respect to the use of the Bible in public schools in the various States.

It should be at once clear to the reader that this publication, like that of the previous bulletin above mentioned, is limited to the form of a statement of relative facts only. No argument is made for or against the use of the Bible in public schools or any other subject included herein; nor is any attempt made to prove or disprove the soundness of any judicial opinion quoted or cited. With respect to court decisions the analysis has included three propositions: (1) What facts gave rise to the case? (2) What relative questions were considered by the court? (3) How were the questions decided by the court?

The data contained herein are derived from a study of State constitutional and statutory provisions, court decisions, and a questionnaire to the several State departments of education.

II. Legal Developments Concerning Bible Reading in Public Schools

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." It has been well established by the Supreme Court of the United States that this amendment has reference to the powers exercised by the Government of the United States and not those of the States.¹ The Supreme Court of the United States has also held that "The Constitution makes no provision for protecting the citizens of the respective States

¹ *Ohio v. Dollison* 194 U. S. 447.

in their religious liberties; this is left to the State constitutions and laws; nor is there any inhibition imposed by the Constitution of the United States in this respect on the States."² The power to regulate Bible reading in the public schools of the several States does not appear among the powers granted by the Constitution of the United States to the Federal Government, and the Supreme Court of the United States has never rendered a decision on this subject. The tenth amendment to the Constitution of the United States provides that "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States, respectively, or to the people." Therefore, the legal status of Bible reading and religious instruction in the public schools of the several States depends upon the respective State constitutions, statutes, and decisions; and also upon whether or not they are regarded as sectarian instruction or influence.

Prior to the middle of the nineteenth century it appears that none of the supreme courts of the American Commonwealths were called upon to render a decision directly relating to Bible or religious instruction in public schools. From 1850 to 1900 six State supreme court decisions were rendered bearing on the subject—one for each decade from 1850 to 1890 and two from 1890 to 1900. Since 1900 eleven State supreme court decisions have been rendered concerning this subject—four from 1900 to 1910; two from 1910 to 1920; and five from 1920 to 1930.

In 1920 supreme court decisions of nine States were favorable to Bible reading in public schools and the supreme court decisions of three States were adverse to said reading; in 1930 the ratio remained unchanged, but the number of State supreme court decisions on the subject increased to 12 favorable and 4 adverse.

Prior to 1920 five States had enacted laws requiring Bible reading in public schools, viz., Massachusetts, 1826; Pennsylvania, 1913; Tennessee, 1915; New Jersey, 1916; and Alabama, 1919. Since 1920 similar laws have been enacted by six other States, viz., Georgia, 1921; Delaware and Maine, 1923; Kentucky, 1924; Florida and Idaho, 1925. In 1927 the State of North Dakota by legislative enactment required that the Ten Commandments be displayed in every public-school room by use of a placard.

III. Present Legal Status

Practically all of the States have constitutional or statutory provisions which expressly prohibit sectarian instruction or the teaching of religious doctrines or tenets in the public schools, and in all States such prohibition is either expressed or implied. It has been held that

² *Permoli v. New Orleans*, 3 Howard 589.

public funds can not be used for sectarian purposes, even in the absence of an express constitutional provision to that effect.³ The enforcement of this prohibition involves perplexing questions, chief of which are: What constitutes sectarian instruction? What is religious doctrine? Is the reading of a particular version of the Bible—as, for example, the King James translation—sectarian instruction and, therefore, prohibited? On these questions sharp and considerable controversy has been waged, reaching in more than a score of cases to the highest State courts for adjudication. The questions yet remain somewhat unsettled.

It may be said, however, that in 36 States, comprising 11 which require Bible reading, 6 which specifically permit it, and 20 in which it is generally construed as permissible, that Bible reading in public schools is generally not regarded as sectarian instruction or influence.

No constitution or legislative enactment of the American Commonwealths has specifically declared the Bible to be a sectarian book, or expressly prohibited its reading in public schools. Also no law requiring Bible reading in public schools has ever been held unconstitutional by the courts; although in 1929 the Supreme Court of South Dakota held a legislative enactment specifically permitting Bible reading without comment to be in conflict with the constitution of that State.

Bible reading in public schools is now expressly required by statute in 11 States (and by order of the Board of Education in the District of Columbia); it is specifically permitted by law in 5 States; and is generally construed as lawful in 20 of the 32 remaining States whose constitutions and statutes do not expressly require, permit, or forbid it. Bible reading in public schools is now held lawful by supreme court decisions of 12 States. Six of these decisions are found in States whose laws either require or specifically permit Bible reading, and 6 in States whose laws are silent on the subject.

Among the 12 States where Bible reading in public schools is generally regarded as unlawful, 4 State court decisions, 1 State attorney general's opinion, and 1 State superintendent's rule are adverse to said reading; and in 6 States Bible reading is excluded from public schools by general consent or implied prohibition. In all of these 12 States the constitutions and statutes are silent on the specific question of Bible reading. In these States it may be said that Bible reading in public schools is generally construed as sectarian instruction or influence, or an infringement of religious liberty and in conflict with their respective State constitutions.

The States whose laws are silent on Bible reading have furnished most of the State supreme court decisions on the subject. In these

³ *Millard v. Board of Education*, 13 N. E. 699; *State v. Schreve*, 59 L. R. A. 927.

Laws, decisions, and present practice relating to Bible reading in the public schools

State	Law requires Bible reading	Law specifically permits Bible reading	Bible reading impliedly permitted	State supreme court decisions		Bible reading prohibited	Attorney general or state school official rule on Bible reading	Secular instruction prohibited	Compulsory attendance at worship prohibited	Public funds for sectarian purposes prohibited	Present practice relating to Bible reading	
				Favorable to Bible reading	Adverse to Bible reading							
	1	2	3	4	5	6	7	8	9	10	11	12
Alabama	Yes						Yes	(7)	Yes	Yes	Required.	
Arizona				Yes			Yes		Yes	Yes	Prohibited.	
Arkansas				Yes		(1)	Yes		Yes	Yes	(1)	
California				Yes			Yes		Yes	Yes	Prohibited.	
Colorado				Yes					Yes	Yes	(9)	
Connecticut									Yes	Yes	"Probably 50 per cent."	
Delaware	Yes								Yes	Yes	Required.	
District of Columbia	Yes								Yes	Yes	Do.	
Florida	Yes								Yes	Yes	Do.	
Georgia	Yes								Yes	Yes	Do.	
Idaho	Yes								Yes	Yes	Do.	
Illinois					(16)	Yes 10	Yes 11		Yes	Yes	Prohibited. 11	
Indiana		Yes							Yes	Yes	Read in some schools.	
Iowa		Yes							Yes	Yes	Optional with teacher.	
Kansas		Yes							Yes	Yes	(12)	
Kentucky	Yes						Yes		Yes	Yes	Required.	
Louisiana	Yes						Yes		Yes	Yes	Prohibited. 11	
Maine	Yes						Yes		Yes	Yes	Required.	
Maryland	Yes						Yes		Yes	Yes	(14)	
Massachusetts	Yes			Yes					Yes	Yes	Required.	
Michigan				Yes 14					Yes	Yes	(17)	
Minnesota				Yes	Yes 13			(16)	Yes	Yes	"No data."	
Mississippi				Yes	Yes				Yes	Yes	(18)	
Missouri	(11) 9	Yes		Yes					Yes	Yes	Read in some districts.	
Missouri				Yes				(20)	Yes	Yes	Little if any Bible reading.	
Montana				Yes					Yes	Yes	(19)	
Nebraska				Yes	Yes		Yes		Yes	Yes	Prohibited.	
Nevada				Yes			Yes		Yes	Yes	Usually read.	
New Hampshire				Yes			Yes		Yes	Yes	Required.	
New Jersey	Yes						Yes		Yes	Yes	Prohibited.	
New Mexico							Yes 12 13		Yes	Yes	Prohibited. 12 13	
New York				Yes			Yes	(21)	Yes	Yes	Widely read. 14	
North Carolina				Yes			Yes		Yes	Yes	Read in few schools.	
North Dakota	(1)			Yes			Yes		Yes	Yes	(26) 17	
Ohio				Yes	Yes 17				Yes	Yes	Read without comment.	
Oklahoma				Yes		(17)			Yes	Yes		

States Bible reading has been regarded a matter to be determined at the discretion of the State or local school authorities; and the courts of a few States have taken the position that where the legislature has vested the administration of public education in school boards or other officials the courts were without authority to interfere with the regulation of such officials unless abuse of their authority were clearly shown. This position is clearly illustrated in the State of Ohio. Following the principle that it rests with the school authorities to determine what shall be taught in public schools, the Supreme Court of Ohio in 1872 sustained a school board rule prohibiting Bible reading; and in 1895 a court decision of common pleas (*Nessle v. Hum*, 1 Ohio N. P. 140) sustained a school board rule requiring Bible reading.⁴ The decisions of Maine, Minnesota, and Nebraska manifested a similar position.

IV. Laws Requiring Bible Reading

Alabama.—594. All schools in this State that are supported in whole or in part by public funds shall have once every school day readings from the Holy Bible.

595. Teachers in making monthly reports shall show on the same that they have complied with the preceding section, and superintendents of city schools in drawing public funds shall certify that each teacher under his supervision has complied with this and the preceding section.

596. Schools in the State subject to the provisions of this and the two preceding sections shall not be allowed to draw public funds unless the provisions of this and the two preceding sections are complied with, and the State superintendent of education is charged with the enforcement of the provisions hereof.—*Act No. 459, 1919 Laws.*

Delaware.—SEC. 1. No religious service or exercise, except the reading of the Bible and the repeating of the Lord's Prayer, shall be held in any school receiving any portion of the moneys appropriated for the support of public schools.

SEC. 2. In each public-school classroom in the State, and in the presence of the scholars therein assembled, at least five verses from the Holy Bible shall be read at the opening of such school, upon each and every school day, by the teacher in charge thereof: *Provided*, That whenever there is a general assemblage of school classes at the opening of such school day, then, instead of such classroom reading, the principal or teacher in charge of such assemblage shall read at least five verses from said Holy Bible, in the presence of the assembled scholars as herein directed.—*Ch. 182, 1923 Laws.*

SEC. 3. Any teacher or principal who shall fail to comply with the provisions of this act shall be subject to a penalty of twenty-five dollars

⁴ See p. 13.

(§25) for the first violation of this act; and for the second violation of this act his or her certificate shall be revoked by the proper authorities.—*Added by Ch. 179, 1925 Laws.*

District of Columbia.—SEC. 4. 1. Each teacher shall, as a part of the opening exercises, read, without note or comment, a portion of the Bible, repeat the Lord's Prayer, and conduct appropriate singing by the pupils.—*Ch. VI, By-Laws and Rules of the Board of Education of the District of Columbia, 1926. (Adopted in 1866.)*

Florida.—(SEC. 426-A.) SEC. 1. That all schools in this State that are supported in whole or in part by public funds, be, and the same are, hereby required to have once every school day readings in the presence of the pupils from the Holy Bible, without sectarian comment.

(SEC. 426-B.) SEC. 2. That teachers in making monthly reports shall show on the same that they have complied with this act, and county superintendents before drawing warrants on public funds shall ascertain that the payee thereof has complied with this act.—*Act No. 240, 1925 Laws.*

Georgia.—*Provided, however,* That the Bible, including the Old and New Testaments, shall be read in all the schools of this State receiving State funds, and that not less than one chapter shall be read at some appropriate time during each school day. Upon the parent or guardian of any pupil filing with the teacher in charge of said pupil in the public schools of this State or written statement requesting that said pupil be excused from hearing the said Bible read as required under this act, such teacher shall permit such pupil to withdraw while the reading of the Bible as required under this act is in progress. Such request in writing shall be sufficient to cover the entire school year in which said request is filed.—*Act No. 282, 1921 Laws.*

Idaho.—SEC. 1. That selections from the standard American version of the Bible, to be selected from a list of passages furnished from time to time by the State board of education, shall be read daily in all the public schools maintained and conducted by all the school districts of the State.

SEC. 2. That teachers employed in all such schools shall, at the opening of each morning session of such schools, read, without comment or interpretation, from 12 to 20 verses from the standard American version of the Bible, to be selected from a list of passages designated from time to time by the State board of education. The selection may be prepared in advance, but the textual reading shall be rendered from the Bible.

SEC. 3. The teachers shall not comment upon, interpret, or construe any of the passages or verses read. In response to questions from any pupil or pupils calling for commentary upon, or explanation, construction, or interpretation of any of the verses or passages read, the teacher

shall, without comment, refer the inquirer to his parents or guardian for reply.—*Ch. 35, Laws of 1925.*

Kentucky.—The teacher in charge shall read, or cause to be read, a portion of the Bible, daily, in every classroom or session room of the common schools of the State of Kentucky, in the presence of pupils therein assembled, and no child shall be required to read the Bible against the wish of his parent or guardian.

The failure of any teacher to conform to this act shall be cause for the revocation of his certificate in the manner provided by law.—*Ch. 59, Acts of 1924.*

Maine.—To insure greater security in the faith of our fathers, to inculcate into the lives of the rising generation the spiritual values necessary to the well-being of our and future civilizations, to develop those high moral and religious principles essential to human happiness, to make available to the youth of our land the book which has been the inspiration of the greatest masterpieces of literature, art, and music, and which has been the strength of the great men and women of the Christian era, there shall be, in all the public schools of the State, daily or at suitable intervals, readings from the Scriptures with special emphasis upon the Ten Commandments, the Psalms of David, the Proverbs of Solomon, the Sermon on the Mount, and the Lord's Prayer. It is provided further that there shall be no denominational or sectarian comment or teaching, and each student shall give respectful attention but shall be free in his own forms of worship.—*Ch. 166, 1923 Laws.*

Massachusetts.—SEC. 31. A portion of the Bible shall be read daily in the public schools without written note or oral comment; but a pupil whose parent or guardian informs the teacher in writing that he has conscientious scruples against it shall not be required to read from any particular version, or to take any personal part in the reading. The school committee shall not purchase or use in the public schools schoolbooks favoring the tenets of any particular religious sect.—*General Laws Relating to Education, Ch. 71, 1927. Enacted in 1826.*

New Jersey.—SEC. 173. No religious service or exercise, except the reading of the Bible and the repeating of the Lord's Prayer, shall be held in any school receiving any portion of the moneys appropriated for the support of public schools.

SEC. 174. In each public-school classroom in the State, and in the presence of the scholars therein assembled, at least five verses from that portion of the Holy Bible known as the Old Testament shall be read, or caused to be read, without comment, at the opening of such school, upon each and every school day, by the teacher in charge thereof: *Provided*, That whenever there is a general assemblage of school classes at the opening of such school day, then, instead of such classroom reading, the principal or teacher in charge of such assemblage

shall read at least five verses from said portion of the Holy Bible, or cause same to be read, in the presence of the assembled scholars, as herein directed.—*Ch. 263, 1916 Laws.*

Pennsylvania.—SEC. 3901. That at least 10 verses from the Holy Bible shall be read, or caused to be read, without comment, at the opening of each and every public school, upon each and every school day, by the teacher in charge: *Provided*, That where any teacher has other teachers under and subject to direction, then the teacher exercising this authority shall read the Holy Bible, or cause it to be read, as herein directed.

SEC. 3902. That if any school-teacher whose duty it shall be to read the Holy Bible or cause it to be read, as directed in this act, shall fail or omit so to do, said school-teacher shall, upon charges preferred for such failure or omission and proof of the same before the governing board of the school district, be discharged.—*Ch. 226, 1913 Laws.*

Tennessee.—1447a1. At least 10 verses from the Holy Bible shall be read or caused to be read, without comment, at the opening of each and every public school, upon each and every school day, by the teacher in charge: *Provided*, The teacher does not read the same chapter more than twice during the same session: *Provided*, That where any teacher has other teachers under and subject to direction, then the teacher exercising this authority shall read the Holy Bible, or cause it to be read, as herein directed.

1447a2. If any school-teacher, whose duty it shall be to read the Holy Bible, or cause it to be read, as directed in this act, shall fail or omit to do so, said school-teacher shall, upon charges preferred for such failure and omission and proof of the same before the governing board of the school, be discharged.

1447a3. Pupils may be excused from the Bible reading upon the written request of the parents.—*Ch. 102, 1915 Laws.*

V. Laws Specifically Permitting Bible Reading in the Schools

Indiana.—SEC. 147. The Bible shall not be excluded from the public schools of this State. [Bible reading implied.]—*Laws relating to the public-school system, 1927, p. 96.*

Iowa.—SEC. 4258. The Bible shall not be excluded from any public school or institution in the State; nor shall any child be required to read it contrary to the wishes of his parent or guardian.¹—*School Laws, 1925, p. 103.*

Kansas.—SEC. 165. No sectarian or religious doctrine shall be taught or inculcated in any of the the public schools of the city; but

¹ Construing this statute the Supreme Court of Iowa said: "It is a matter of individual option with school-teachers as to whether they will use the Bible in their schools or not, such option being restricted only by the provision that no pupil shall be required to read it contrary to the wishes of his parents or guardian; and said section is not in conflict with art. 1, sec. 3 of the constitution.—*Moore v. Monroe et al., 64 Iowa, 557.*

nothing in this section shall be construed to prohibit the reading of the Holy Scriptures.

SEC. 201. No sectarian doctrine shall be taught or inculcated in any of the public schools of the city; but the Holy Scriptures, without note or comment, may be used therein.⁶—*School Laws, 1923, pp. 49 and 59.*

Mississippi.—No religious test as a qualification for office shall be required; and no preference shall be given by law to any religious sect, or mode of worship; but the free enjoyment of all religious sentiments and the different modes of worship shall be held sacred. The rights hereby secured shall not be construed * * * to exclude the Holy Bible from use in any public school of this State.—*State Constitution, Art. III, sec. 18.*

North Dakota.—SEC. 1382. The Bible shall not be deemed a sectarian book. It shall not be excluded from any public school. It may, at the option of the teacher, be read in the school without sectarian comment, not to exceed 10 minutes daily. No pupil shall be required to read it or to be present in the schoolroom during the reading thereof contrary to the wishes of his parents or guardian or other person having him in charge.—*General School Laws, 1927, p. 93.*

Oklahoma.—SEC. 329. No sectarian or religious doctrine shall be taught or inculcated in any of the public schools of this State; but nothing in this section shall be construed to prohibit the reading of the Holy Scriptures.—*School Laws, 1925, p. 71.*

In 1929 the Supreme Court of South Dakota held that the statute specifically permitting Bible reading in public schools was an infringement of religious liberty and in conflict with the State constitution.

VI. State Supreme Court Decisions Favorable to Bible Reading in Public Schools⁷

MAINE

[*Donohoe v. Richards*, 61 Am. Dec. 256 (1854)]

Facts in the case.—The school committee had regularly prescribed the "Protestant version of the English Bible" to be used as a reading book in the public schools. All children of sufficient capacity to read therein were required to read the said version. The plaintiff, a pupil, from conscientious religious scruples refused to read in this book, and was therefore expelled, whereupon suit was brought to recover damages for malicious and unjustifiable expulsion.

Questions involved and how answered by the court.—(1) Are public-school committees, when acting in good faith in the discharge of their duty, liable for damage at the suit of the individual pupil expelled, even if the expulsion was erroneous?

Answer: No.

⁶ See *Billard v. Board of Education*, 69 Kans. 53, for a court decision sustaining the Kansas statute.

⁷ Presented in the order of time in which rendered.

(2) Do public-school committees have authority to select books to be used in public schools?

Answer: Yes.

(3) May they expel a pupil who conscientiously refuses to read in a book prescribed by them?

Answer: In answering this question in the affirmative, the court said: "If she (plaintiff) may decline to obey one requirement, rightfully made, then she may another, and the discipline of the school is at an end. It is for the (school) committee to determine what misconduct requires expulsion."

(4) May public-school committees adopt the English version of the Bible as a reading book and require all public-school children to read therein, notwithstanding the fact that such reading was an interference with the religious or conscientious belief of some of the pupils?

Answer: The court answered this in the affirmative. The following are excerpts from the decision:

"The Bible was used merely as a book in which instruction in reading was given. But reading the Bible is no more an interference with religious belief than would reading the mythology of Greece or Rome be regarded as interfering with religious belief or an affirmance of the pagan creeds. * * *

"Because Galileo and Copernicus and Newton may chance to be found in some prohibitive index, is that any reason why the youth of the country should be educated in ignorance of the scientific teachings of those great philosophers? If the Bible, or a particular version of it, may be excluded from schools because its readings may be opposed to the teachings of the authorities of any church, the same result may ensue as to any other book. If one sect may object, the same right must be granted to others. * * *

"A law is not unconstitutional because it may prohibit what a citizen may conscientiously think right, or require what he may conscientiously think wrong. The State is governed by its own views of duty. The right or wrong of the State is the right or wrong as declared by legislative acts constitutionally passed. It may pass laws against polygamy, yet the Mormon or Mohammedan can not claim exception from their operation of freedom from punishment imposed upon their violation, because they believe, however conscientiously, that it is an institution founded on the soundest political wisdom and resting on the sure foundation of inspired revelation * * *

"The conscientious belief of religious duty furnishes no legal defense to the doing or refusing to do what the State within its constitutional authority may require."

(5) Does adoption of the English Bible as a reading book by the school committees violate the constitutional guarantee, that "no subordination or preference of any sect or denomination to another shall ever be established by law"?

Answer: The court answered this in the negative, holding that the adoption by the school committee was not an act of the legislature.

"The choice is left entirely to the popular will. One set of town officers may make one selection, and another may make an entirely different one. The most unrestrained liberty of choice is given."

MASSACHUSETTS

[*Spiller v. Inhabitants of Woburn*, 94 Mass. 127 (1866)]

Facts in the case.—The superintending school committee of the town of Woburn passed an order that the schools of the town should be opened each morning with reading from the Bible and prayer, and that during the prayer the scholars should bow their heads. The order was subsequently modified so as to excuse any pupil from bowing the head when the parent requested it. The plaintiff (a patron of the school) refused to request such exemption and directed his daughter not to obey that part of the order, and she persistently refused to bow her head during prayers; whereupon she was excluded from school. Suit was filed to recover damages resulting from such exclusion.

Questions involved and how answered by the court.—(1) Is a school committee rule requiring daily Bible reading and prayer in public school lawful?

Answer: "The power of the school committee of a town to pass all reasonable rules and regulations for the government, discipline, and management of the public school under their general charge and superintendence is clear and unquestionable. * * * Equally clear it is that the committee of the town of Woburn did not exceed their authority in passing an order that the Bible should be read and prayer offered at the opening of the schools on the morning of each day."

(2) Is a school committee rule requiring public school children to bow their heads during prayer lawful if children whose parents so request are excused from so doing?

Answer: In answering this question in the negative, the court said: "It (the rule) did not compel a pupil to join in the prayer, but only to assume an attitude which was calculated to prevent interruption by avoiding all communication with others during the service. In the next place the regulation did not require a pupil to comply with that part of it prescribing the position of the head during prayer, if the parent requested a child to be excused from it."

OHIO

[Board of Education of Cincinnati v. Minor et al., 23 Ohio St. 211, 13 Am. Rep. 233 (1872)]

Facts in the case.—The Board of Education of Cincinnati adopted the following resolutions:

“Resolved, That religious instruction and the reading of religious books, including the Holy Bible, are prohibited in the common schools of Cincinnati, it being the true object and intent of this rule to allow the children of the parents of all sects and opinions, in matters of faith and worship, to enjoy alike the benefit of the common-school fund. * * *”

The second resolution expressly repealed a former rule of the said board, adopted in 1852, which required Bible reading at opening exercises. The court below granted an injunction against the enforcement of the resolution. The defendants, the board of education, appealed.

Questions involved and how answered by the court.—(1) “Do the laws of Ohio clothe the courts with power to interfere, either by injunction or mandate, to compel religious instruction and the reading of religious books in the public schools of the State?”

Answer: “If this power exists, it must be found in our State or Federal Constitution, or in statutes of the State enacted in conformity therewith * * *. We are referred to no provision of the Federal Constitution nor to any enactment of the State legislature conferring such a power.”

The court held that the legislature having placed the management of the public schools under the control of boards of education, the courts have no rightful authority to interfere by directing what instruction shall be given or what books shall be read therein. (See note at head of case reported in 13 Am. Rep. 233.)⁵

(2) Does the constitutional provisions, “Religion, morality, and knowledge * * * being essential to good government, it shall be the duty of the general assembly to pass suitable laws * * * to encourage schools and the means of instruction,” enjoin religious instruction in the schools? And does this injunction bind the courts, in the absence of legislation?

Answer: “We are unanimous in the opinion that both of these questions must be answered in the negative * * *”

“The fair interpretation seems to be, that true ‘religion’ and ‘morality’ are aided and promoted by the increase and diffusion of ‘knowledge’ on the theory that ‘knowledge’ is the handmaid of virtue,

⁵ In 1895 an Ohio court of common pleas held that “The court can not by injunction prevent the board of education from adopting and enforcing a rule requiring the reading of the Bible as part of the opening exercises of the school. It rests with boards of education to determine what instruction shall be given and what books shall be used in the public schools.” (Nessie v. Hum, 1 Ohio N. P. 140; also Education Bulletin, 1923, No. 15, p. 10.)

and that all three—religion, morality, and knowledge—are essential to good government.”

IOWA

[Moore v. Monroe, 64 Iowa 367, 20 N. W. 475 (1884)]

Facts in the case.—Teachers were accustomed to occupy a few minutes each morning in reading selections from the Bible, in repeating the Lord's Prayer, and singing religious songs. The plaintiff had two children in the school, but they were not required to be present during the time thus occupied. Plaintiff objected to such exercises, and requested that they be discontinued. The teachers and directors refused to discontinue the exercises.

Questions involved and how answered by the court.—(1) Do the exercises above stated make the school a place of worship and violate the constitution? (The legislature had provided that “The Bible shall not be excluded from any school or institution of this State.” The plaintiff insisted that this is unconstitutional, and that the exercises complained of make the school a place of worship.)

Answer: “For the purposes of the opinion it may be conceded that the teachers do not intend to wholly exclude the idea of worship. It would follow from such concession that the schoolhouse is, in some sense, for the time being, made a place of worship. But it seems to us that if we should hold that it made a place of worship within the meaning of the constitution, we should put a very strained construction upon it. The object of the provision, we think, is not to prevent the casual use of a public building as a place for offering prayer or doing other acts of religious worship, but to prevent the enactment of a law whereby any person can be compelled to pay taxes for building or repairing any place designed to be used distinctively as a place of worship. * * *

“So long as the plaintiff's children are not required to be in attendance at the exercises, we can not regard the objection as one of great weight.”

MICHIGAN

[Pfeiffer v. Board of Education of City of Detroit, 118 Mich. 560, 77 N. W. 250 (1898)]

Facts in the case.—Teacher read from a book known as Readings from the Bible. The respondent avers that “* * * while some of the passages in said book do relate to the power, goodness, and mercy of Almighty God, the said book is made up almost entirely of extracts from the Bible, emphasizing the moral precepts of the Ten Commandments, and which are intended merely to inculcate good morals—that is, our duty to each other—which ought to be understood and practiced by every good citizen, and concerning the fundamental principles of which the religious sects do not disagree.” It appears

that the teacher was not required to give instruction from the said book, except as is necessary for use as a supplemental textbook on reading; that no comment was made on anything in said book; that pupils were not required to listen to reading therefrom; that the reading occurred at the close of school sessions; and that by order of the board the teachers were required to excuse all pupils from being present at such reading whenever application was made therefor by their parents or guardians.

Questions involved and how answered by the court.—(1) "The precise question is * * * whether such reading of extracts from the Bible, at which reading pupils whose faith or scruples are shocked by hearing the passages read are not required to attend, constitutes the teacher a teacher of religion, or amounts to a restriction of civil or political rights or privileges of such students as do not attend upon the exercises." Or, does the reading above indicated diminish or enlarge the civil or political rights, privileges, and capacities of the individual on account of his religious opinion or belief, and therefore unconstitutional?

Answer: "I do not think it should be so held. * * * since the admission of this State into the Union, a period of more than half a century, the practice has obtained in all the State institutions of learning of not only reading from the Bible in the presence of students, but of offering prayer; that the textbooks used in the public schools * * * have contained extracts from the Bible, and numerous references to Almighty God and His attributes; and all this without objection from any source. These usages we may also take judicial notice of * * *. In a doubtful case, * * *. Would not this universal usage, extending over so long a period, be deemed decisive by everyone as a practical construction made by the administrative branch of government? * * *. The reading of extracts from the Bible in the manner indicated * * * without comment is not in violation of any constitutional provision."

NEBRASKA

[*State v. Scheve*, 65 Nebr. 853, 91 N. W. 846 (1902); 93 N. W. 169 (1903)].

Facts in the case.—The following exercises were conducted in public school: Passages of the King James Bible were selected and read daily by the teacher; "singing certain religious and sectarian songs (includ-

* In 1928 the Attorney General of Michigan was called upon to answer the following propositions:
- "Can a school board use public buildings either during school hours or at other times for giving courses in religious subjects, these courses being taught by use of textbooks that are probably sectarian in a technical sense, since they advance the claims of the Christian religion and stress the doctrines of the Protestant churches?"

"Can a school board use public funds to purchase or to aid in the purchase of such textbooks? Can it pay the salary of teachers giving such instruction? Can the time of the public-school pupils during school hours be devoted to such studies?"

The attorney general answered all these questions in the negative. (Biennial Report of Attorney General, Michigan, 1926-1928, p. 630.)

ing 'Jesus Lover of My Soul' and 'When He Cometh') and in offering prayer to the Deity according to the customs and usages of the so-called Orthodox Evangelical Churches of this country. The return of the writ admitted the foregoing recited facts, except that it denied that the exercises complained of were sectarian; but the teacher, who was produced as a witness, admitted that she regarded them as constituting religious worship, and that she conducted them solely for that reason. That they are correctly so described there can be no doubt."

Questions involved and how answered by the court.—(1) Do the exercises mentioned constitute religious worship and are they sectarian?

Answer: "That they possess all these features is a fact of such universal and familiar knowledge that the courts will take judicial notice of it without formal proof. * * * We do not think it wise or necessary to prolong a discussion of what appears to us an almost self-evident fact—that exercises such as are complained of by relator in this case both constitute religious worship and are sectarian in their character, within the meaning of the constitution."

(2) Is the mere reading of the Bible in public schools unlawful?

Answer: In 1903, upon overruling a motion for a rehearing of this case, the court made a statement which obviously modified its former position and held that mere Bible reading was not unlawful. A part of this statement follows (93 N. W. 169):

"It is said by Commissioner Ames that the morning exercises conducted by Miss Beecker (the teacher) constituted sectarian instruction. This conclusion is vigorously assailed, but, in our judgment, it is warranted by the evidence, and we adhere to it. The decision does not, however, go to the extent of entirely excluding the Bible from the public schools. It goes only to the extent of denying the right to use it for the purpose of imparting sectarian instruction. The pith of the opinion is in the syllabus, which declares that 'exercises by a teacher in a public school * * * in school hours, and in the presence of the pupils, consisting of the reading of passages from the Bible, and in the singing of songs and hymns, and offering prayer to the Deity, in accordance with the doctrines, beliefs, customs, or usages of sectarian churches or religious organizations, are forbidden by the constitution of this State.' * * * But the fact that the King James translation (of the Bible) may be used to inculcate sectarian doctrines affords no presumption that it will be so used. The law does not forbid the use of the Bible in either version in the public school. It is not prescribed either by the constitution or the statutes, and the courts have no right to declare its use to be unlawful because it is possible or probable that those who are privileged to use it will misuse the privilege. * * * The point where the courts may rightfully intervene, and where, they should intervene without hesitation, is

where legitimate use has degenerated into abuse. * * * Whether it is prudent or politic to permit Bible reading in the public schools is a question for the public-school authorities to determine, but whether the practice of Bible reading has taken the form of sectarian instruction in a particular case is a question for the courts to determine upon evidence. It can not be presumed that the law has been violated. The alleged violation must in every instance be established by competent proof. * * *

"The section of the constitution which provides that 'No sectarian instruction shall be allowed in any school or institution supported, in whole or in part, by public funds * * *,' can not be held to mean that neither the Bible, nor any part of it, * * * may be read in the educational institutions fostered by the State. We do not wish to be understood as either countenancing or discountenancing the reading of the Bible in the public schools. Even where it is an irritant element, the question whether its legitimate use shall be continued or discontinued is an administrative and not a judicial question. It belongs to the school authorities, not to the courts."

KANSAS

[Billard v. Board of Education, 69 Kans. 53, 76 Pac. 422 (1904)]

Facts in the case.—The legislature had provided: "No sectarian or religious doctrine shall be taught or inculcated in any of the public schools of the city; but nothing in this section shall be construed to prohibit the reading of the Holy Scriptures."

"The general opening exercises of the school consisted of repeating the Lord's Prayer, the Twenty-third Psalm, and reading selections from natural history * * * and occasionally singing a selection found in The Normal Music Course, Second Reader, Part 1. None of the pupils were required to take part in these exercises, but they were required to refrain from their regular studies and preserve order during such time. The time spent in repeating the Lord's Prayer and the Twenty-third Psalm occupied from two to three minutes; the entire general exercises occupying about 15 minutes." A patron complained that his son Philip, a student, was required to desist from studying and remain orderly during these exercises, and that he was conscientiously opposed thereto because such exercises were a form of religious worship. Thereafter Philip was excused from such exercises, and was permitted to enter 15 minutes after the regular school hour. For a time he so absented himself, but later entered the room with other pupils, and persisted in disobeying this rule. After repeated admonitions from his teacher and reproofs for his disobedience, and upon a positive refusal to obey, he was expelled until such time as he felt he could return and give obedience. The plaintiff made a written request to the board of education to permit his son to enter the schoolroom at

the regular hour, and that he be allowed to pursue his regular studies during the morning exercises. This request was refused.

Questions involved and how answered by the court.—(1) Is the use of the Bible excluded from public schools?

Answer: "There is nothing in the constitution nor statute which can be construed as an intention to exclude the Bible from the public schools. Section 2, articles 6, of the constitution, imposes upon the legislature the duty to encourage the promotion of intellectual, moral * * * improvement by establishing a uniform system of public schools. Every pupil who enters a public school has a right to expect, and the public has a right to demand of the teacher, that such pupil shall come out with a more acute sense of right and wrong, higher ideals of life, a more independent and manly character, a higher and truer moral sense of his duty as a citizen. * * * The system ought to be so maintained as to make this certain, The noblest ideals of moral character are to be found in the Bible. To emulate these is the supreme conception of citizenship. It could not, therefore, have been the intention of the framers of our constitution to impose the duty upon the legislature of establishing a system of common schools where morals were to be inculcated and exclude therefrom the lives of those persons who possessed the highest moral attainments."

(2) Was daily repetition of the Lord's Prayer and Twenty-third Psalm a form of religious worship, or sectarian instruction?

Answer: "An examination of the evidence convinces us, as it convinces the learned judge who tried the cause (below), that the exercises of which the plaintiff complained were not a form of religious worship, or the teaching of sectarian or religious doctrine. There was not the slightest effort on the part of the teacher to inculcate any religious dogma. She repeated the Lord's Prayer and the Twenty-third Psalm without response, comment, or remark."

KENTUCKY

[*Hackett v. Brooksville Graded School District*, 120 Ky. 608, 87 S. W. 792 (1905)]

Facts in the case.—Passages of the King James Bible were read and prayer offered in public school by teachers at the opening of school each morning. The prayer offered was 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."

The plaintiff's children and others who were conscientiously opposed to attending such exercises were not required to do so.

Questions involved, and how answered by the court.—(1) "Does the offering of prayer to God in opening a school, such as was offered in the Brooksville School, make that school a 'sectarian school'?"

Answer: "As neither the form nor the substance of the prayer complained of seems to represent any peculiar view or dogma of any sect or denomination, or teach them, or to detract from those of any other, it is not sectarian in the sense that the word is commonly understood, and as it was evidently intended in the (constitutional) section quoted. * * *

(2) *a.* "The main question, we conceive to be, is the King James translation of the Bible, or, for that matter, any edition of the Bible a sectarian book?"

b. Does mere reading of Bible without comment constitute sectarian instruction?

Answer: "The book itself, to be sectarian, must show that it teaches the peculiar dogmas of a sect, 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. * * * But the fact that the King James translation may be used to inculcate sectarian doctrines affords no presumption that it will be so used. The law does not forbid the use of the Bible in either version in the public schools * * * and the courts have no right to declare its use to be unlawful because it is possible or probable that those who are privileged to use it will misuse the privilege. * * * The point where the courts may rightly intervene and where they should intervene without hesitation, is where legitimate use has degenerated into abuse. (*State v. Scheve* (Nebr.), 93 N. W. 169.)

"We believe the reason and weight of the authorities support the view that the Bible is not of itself a sectarian book, and when used merely for reading in common schools, without note or comment by teachers, is not sectarian instruction; nor does such use of the Bible make the schoolhouse a house of worship."

TEXAS

[*Church et al. v. Bullock et al.*, 109 S. W. 115 (1908)]

Facts in the case.—The school trustees passed a resolution which sanctioned Bible reading, repeating of the Lord's Prayer, and the singing of appropriate songs "usually patriotic songs." Most of the teachers followed this practice. Pupils were invited to join in such exercises but were not compelled to do so. "The only requirement

made and enforced in the opening exercises of the school is that the pupils shall be present, and during the exercises behave in an orderly manner."

Questions involved and how answered by the court.—(1) "Did the exercises complained of convert the public schools into a sect, religious society, theological or religious seminary?"

Answer: "The word 'sect' is defined in the Standard Dictionary as 'a body of persons distinguished by particularities of faith and practice from other bodies adhering to the same general system.' The exercises detailed in the testimony did not show that these persons were associated together in any way whatever except in the character of a common public free school. * * * The school, under the evidence, did not come within the definition of a religious society * * *. The school was organized under the laws of the State * * * and * * * it would not be a theological or religious seminary because some acts of worship were performed there."

(2) Did the exercises mentioned make the public school "sectarian" within the meaning of the constitution?

Answer: "The school was not rendered sectarian within the meaning of the constitution by the exercises shown to have been indulged in by the teachers."

(3) Did the exercises convert the schoolroom into a place of worship within the meaning of the constitution?

Answer: "To hold that the offering of prayers, either the repetition of the Lord's Prayer or otherwise, the singing of songs, whether devotional or not, and the reading of the Bible, make the place where such is done a place of worship would produce intolerable results. * * * In fact, Christianity is so interwoven with the web and woof of the State government that to sustain the contention that the constitution prohibits reading the Bible, offering prayer, or singing songs of a religious character in any public building of the government would produce a condition bordering upon moral anarchy. The absurd and hurtful consequences furnish a strong argument against the soundness of the proposition. The right to instruct the young in the morality of the Bible might be carried to such extent in the public schools as would make it obnoxious to the constitutional inhibition, not because God is worshiped, but because by the character of the services the place would be made 'a place of worship.'"

The court of civil appeals in passing upon this case said:

"The laws of this State neither require nor forbid the use of the Bible in the public schools, and the court will not exercise its powers to declare its use unlawful, simply because there is apprehension that the school authorities may abuse its use by attempting to teach some sectarian or theological views or opinions of their own. (100 S. W. 1025.)

GEORGIA

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

Facts in the case.—The commissioners of the city of Rome, Ga., by ordinance directed the board of education to “require some portion of the King James version of the Bible, of either the Old or New Testaments, to be read and prayer offered to God in the hearing of the pupils of the public schools of the city of Rome, daily * * * and that such time shall be allowed and appointed for these exercises as will admit of their being conducted with order and impressiveness * * * and the reading shall be without comment. * * * Exemption from attendance on these readings and prayers shall be granted to any pupil or pupils whose parents or guardians shall present to the superintendent of schools request in writing for such exemption upon the ground of conscientious objections.” Protestants, Catholics, and Jews attended the schools. This is an action to compel the board of education to carry into effect the above ordinance.

Questions involved and how answered by the court.—(1) Is the above ordinance an interference with the constitutional liberty of religious conscience?

Answer: No. “It would require a strained and unreasonable construction to find anything in the ordinance which interferes with the natural and inalienable right to worship God according to the dictates of one’s own conscience. * * * ‘Reading the Bible is no more an interference with religious belief than would reading the mythology of Greece or Rome be regarded as interfering with religious belief or an affirmation of the pagan creeds.’ * * *”

(2) Would the operation of the ordinance result in using public money to aid “any church, sect, or denomination of religionists”?

Answer: No. On this question the court said: “The mere reading of extracts from the New Testament or the Bible in the public schools can not in any legitimate sense be considered as an appropriation of public moneys to the support or establishment of a system of religion or a sectarian institution. * * * The reading of the Scriptures in the public schools does not convert the school into a sectarian institution * * *”

“We hold that the ordinance of the city of Rome, requiring the board of education to have * * * reading of extracts from the Bible and prayers in the public schools of Rome, is not in conflict with the constitution of this State for any reasons assigned.”

COLORADO

[People v. Stanley, 255 Pac. 610 (March, 1927)]

Action.—Writ of error to district court which had refused to mandamus school board to revoke rule requiring Bible reading.

Facts in the case (recited in the writ).—A district school board had required, as a part of the morning exercises in each classroom, the reading of portions of King James version of the Bible without comment. Children of Roman Catholic faith withdrew during such reading. The school authorities thereupon ruled that no pupil might leave the room during the reading.

Questions involved and how answered by the court.—(1) Is the action above stated contrary to section 1 of the fourteenth admendment to the National Constitution which provides "nor shall any State deprive any person of life, liberty, or property without due process of law. * * *"

Answer: "The right of parents to have their children taught where, when, how, what, and by whom they may judge best are among the liberties guaranteed by section 1 of the fourteenth admendment of the United States Constitution."

(2) Does reading King James version of Bible constitute a preference to religious denominations?

Answer: No.

(3) Does requiring children, against the will of their parents or guardians, to attend Bible reading constitute a violation of the State constitution which provides that "No person shall be required to attend or support any ministry, or place of worship against his consent"?

Answer: The court held that Bible reading did not make school sectarian or place of worship.

(4) Does Bible reading in school deny children religious freedom?

Answer: No; if not required to attend.

(5) Does Bible reading in public school constitute expenditure of public money in aid of a sectarian purpose?

Answer: No.

(6) Does reading the King James Bible constitute teaching sectarian tenets and doctrines?

Answer: "That can not be true unless those parts of it which teach some sectarian doctrines are read; and the record does not show that such is the case. * * * Sectarian or not can not be determined of a book by how sects regard it. The decisive question is whether it teaches some doctrine peculiar to a sect. That part which does not is not sectarian. * * * It is said that the King James Bible is proscribed by Roman Catholic authority but proscription can not make that sectarian which is not actually so. * * * We conclude that the reading of the Bible without comment is not sectarian.

"When portions are read which are claimed to be sectarian, the courts will consider them."

(7) Does reading the King James Bible in public school create a religious test as a condition of admission to said school?

Answer: No.

(8) Is Bible reading in public school intolerant and a form of religious persecution?

Answer: "If those who do not like it can stay away and yet say to those who do like it, 'You shall not read it here,' who is intolerant? Are those who stay away persecuted?"

(9) Does Bible reading in public school discriminate against those who object though not required to attend?

Answer: No.

(10) Are sectarian and religious instruction synonymous?

Answer: "If we should say that sectarian means religious, we should bar not only the greatest of our poets, including Shakespeare and Milton, whose most inspiring passages have a religious basis, but the greatest of our orators, including Webster, Clay, and Lincoln. How then can the argument be sound that to avoid what is sectarian we must avoid reading any book containing any thing religious, that because some parts of the Bible are sectarian none can be read?
* * * Religious and sectarian are not synonymous."

MINNESOTA

Kaplan v. Independent School District of Virginia, 214 N. W. 18 (April, 1927)

Facts in the case.—The school board provided each schoolroom with a copy of the King James Bible; the superintendent made suitable selections from the Old Testament only, and of those selections a portion was read by teacher in the lower grades at the opening of school each morning. Where the parent of any pupil or any pupil objected to listening to such reading, he was permitted to retire from the room. Protestants, Catholics, Christian Scientists, and Jews were patrons of the school. The court below, after finding the above-stated facts, in substance declared:

"That the purpose of the defendant school board in having the Bible read * * * was to implant in the minds of the pupils higher moral ethical standards and a knowledge of the Bible and was not for the purpose of teaching the doctrines of any religious sect." And as a conclusion of law: "That the reading of the Bible in the public school does not constitute any infringement of the plaintiff's constitutional rights and is lawful. Thereupon the plaintiff appealed.

Questions involved and how answered by the court.—(1) Does the practice adopted as above stated "infringe any constitutional right of the appellant"?

Answer: "It is claimed that reading extracts from the Bible, as here done, is worship and converts the schoolhouse into a 'place of worship.' * * * We submit it to be a strained construction to hold that because the teacher reads a short extract from the Bible each day the schoolroom is converted into a place of worship. * * * Nor, except by a strained and narrow construction, can it be claimed that because the few minutes the teacher reads the extracts mentioned there is an expenditure of public funds forbidden by these provisions (of the constitution) * * * above quoted. * * *

"If textbooks may be used containing extracts from the Bible without violating the constitutional provisions, why may not selections therefrom be made by the school authorities? * * *

"As to the wisdom of the practice of reading extracts from the Bible, we do not desire to express an opinion, for that is left to the local school board. So long as no pupil is compelled to worship according to tenets of any creed, or at all, and no sectarian belief taught, courts should not hold that there is any violation of the constitutional guarantee of religious liberty."

The practice was sustained.

NOTE 1.—In 1880 the Supreme Court of Illinois held that a school board rule requiring Bible reading in public schools was lawful. (*McCormick v. Burt*, 95 Ill. 263, 35 Am. Rep. 163.) In 1910, however, the Supreme Court of Illinois reversed its former position and held that Bible reading in the schools constituted sectarian instruction and was unlawful. (*People v. Board of Education of Dist. 24*, 24 Ill. 334, 92 N. E. 251.) See page 27.

NOTE 2.—In 1924 the Supreme Court of California was called upon to pass upon the legality of using public funds to purchase copies of the Bible for use as a reference book in the public-school library. The following is a digest of the decision in this case:

[*Evans v. Selma Union High School District* (222 Pac. 801)]

Facts in the case.—The school board had adopted a resolution to purchase 12 copies of the King James Bible for the high-school library. A statute required boards of education "to exclude from school and school libraries all books, publications, or papers of a sectarian, partisan, or denominational character."

Questions involved and how answered by court.—(1) Is King James Bible a book of "sectarian, partisan, or denominational character" to the extent that it is excluded from the public-school library?

Answer: "In our opinion, for the reasons hereafter stated, it is clear that for reference and library purposes in the public schools it is not a book of the class prohibited by our statute.

"Indeed, there is nothing in our statutes aimed at religious works. To be legally objectionable they must be 'sectarian, partisan, or denominational in character.'

"It (the statute) makes the character of the book the test of whether it is 'sectarian,' not the authorship or the extent of its approval by different sects or by all. That the authors of religious books belong to a sect or church does not necessarily make their books of a sectarian character. Nor does the fact that the King James version is commonly used by Protestant churches and not by Catholics make its character sectarian. Its character is what it is, a widely

accepted translation of the Bible. What we have said of the King James translation is equally applicable to the Douai version * * * and neither is a book 'of a sectarian character' within the meaning of the statute relating to school libraries. Both are eligible to a place on the shelves of our public-school libraries for reference purposes. * * *

"The mere act of purchasing a book to be added to the school library does not carry with it any implication of the adoption of the theory or dogma contained therein, or any approval of the book itself, except as a work of literature fit to be included in a reference library.

"We are not required in this case to decide, nor are we to be understood as deciding, the question of whether or not the use of the Bible for class instruction amounts to the teaching of sectarian or denominational doctrine, nor to consider whether or to what extent its reading may be made a part of the exercises in the schools, without offending * * * the State constitution and statutes."

VII. State Supreme Court Decisions Adverse to Bible Reading in Public Schools

WISCONSIN

[State ex rel. Weiss v. District Board, 86 Wis. 177, 44 N. W. 967 (1890)]

Facts in the case.—The school authorities had provided that the Bible may be used as a textbook; and certain teachers in public school selected and read daily to the pupils portions of the King James Bible. Children opposed to such reading were not required to attend during its reading. The petitioners requested the district board of education to discontinue Bible reading, but the board refused to do so. Suit was then brought to compel them to discontinue Bible reading.

Questions involved and how answered by the court.—(1) Does the use of the Bible as a textbook in public school constitute sectarian instruction?

Answer: "In considering whether such reading of the Bible is sectarian, the book will be considered as a whole; because the whole Bible, without exception, has been designated as a textbook * * *.

"The courts will take judicial notice of the contents of the Bible, that the religious world is divided into numerous sects, and the general doctrines maintained by each sect. * * * The doctrines of one of these sects which are not common to all others are sectarian. * * *

"The instruction becomes sectarian when it * * * inculcates doctrine or dogma, concerning which the religious sects are in conflict. This we understand to be the meaning of the constitutional prohibition * * *. In view of the fact already mentioned, that the Bible contains numerous doctrinal passages, upon some of which sect is based, and that such passages may reasonably be understood to inculcate the doctrines predicated upon them, an affirmative answer seems unavoidable. * * * We do not know how to frame an argument in support of the proposition that reading thereof (Bible) in the district schools is not * * * sectarian instruction. * * *

"For the reasons above stated, we can not doubt that the use of the Bible as a textbook in the public schools, and the stated reading thereof in such schools, without restriction, 'has a tendency to inculcate sectarian ideas,' and is sectarian instruction, within the meaning and intention of the constitution and statute."

(2)-May textbooks founded upon fundamental teachings of the Bible, or which contain extracts therefrom, be used in public schools?

Answer: "It should be observed, in this connection, that the above views do not * * * banish from the district schools such textbooks as are founded upon the fundamental teaching of the Bible, or which contain extracts therefrom. * * * There can be no valid objection to the use of such matter in the secular instruction of the pupils. Much of it has great historical and literary value, which may be thus utilized without violating the constitutional prohibition. It may be used also to inculcate good morals—that is, our duties to each other—which may and ought to be inculcated by the district school."

(3) Does reading the Bible as a textbook in public school constitute religious worship?

Answer: "We must hold that the stated reading of the Bible in the public schools as a textbook may be 'worship' within the meaning of the clause of the constitution under consideration. If, then, such reading of the Bible is worship, can there be any doubt but what the schoolroom in which it is so statedly read is a 'place of worship,' within the meaning of the same clause of the constitution? * * * The mere fact that only a small fraction of the school hours is devoted to such worship, in no way justifies such use, as against an objecting taxpayer * * *"

(4) Does reading the Bible in public school result in compulsory attendance at and support of place of worship?

Answer: "Under our statutes the children of the relators, between certain ages, were bound to attend some public or private school for a certain period each year. * * * In the case of a poor man incapable of educating his children at private expense, they are 'compelled to attend' such school without the consent of themselves or their parents, notwithstanding it is, in a limited sense, a place of worship; and in the case of men of property it might impose an unauthorized burden. This, we understand, is prohibited by the clause of the constitution we are considering."

(5) Does reading the Bible in public school result in the drawing of money from the State treasury for religious instruction?

Answer: "If the stated reading of the Bible in the schools as a textbook is not only, in a limited sense, worship, but also instruction, as it manifestly is, then there is no escape from the conclusion that it is religious instruction; and hence the money so drawn from the State treasury was for the benefit of a religious school within the meaning of the constitution."

(6) Does the use of the Bible as a textbook in public school violate the rights of conscience?

Answer: "A Mormon may believe that the practice of polygamy is a religious duty; yet no court would regard his conscience in that behalf for a moment, should he put his beliefs into practice, * * * it may safely be said; and nothing further need be said upon the subject, than that when a man's conscience coincides with the law, and he obeys its dictates, he will be protected."

ILLINOIS

[*People v. Board of Education of District 24* (1910),¹⁰ 24 Ill. 334, 92 N. E. 251]

Facts in the case.—The following exercises were conducted daily during school hours in the public school: Teachers read to pupils selections made by them from King James Bible; the Lord's Prayer, as found in said Bible, was recited audibly in concert under direction of teachers; and "sacred hymns," including "Grace Enough For Me," were sung in concert by the pupils, who were required to stand while singing. During reading of Bible and reciting of Lord's Prayer the pupils were required to rise in their seats, fold their hands, and bow their heads, and from time to time certain pupils had been asked to explain the meaning of certain passages of Scripture read.

Questions involved and how answered by the court.—(1) Are such exercises sectarian and in violation of the right of "free exercise and enjoyment of religious profession and worship"?

Answer: "The exercises mentioned * * * constitute worship. They are the ordinary forms of worship usually practiced by Protestant Christian denominations. Their compulsory performance would be a violation of the constitutional guaranty of the free exercise and enjoyment of religious profession and worship. One does not enjoy the free exercise of religious worship who is compelled to join in any form of religious worship. * * *

"The wrong arises, not out of any particular version of the Bible, or form of prayer used * * * or the particular songs sung, but out of the compulsion to join in any form of worship."

(2) "Is the reading of the Bible in the public schools sectarian instruction?"

Answer: "The Bible, in its entirety, is a sectarian book as to the Jews and every believer in any religion other than the Christian religion, and as to those who are heretical or who hold beliefs that are not regarded as orthodox. Whether it may be called sectarian or not, its use in the schools necessarily results in sectarian instruction. * * *. The petition avers that selected portions of the Bible have been read by teachers, without averring what portions, so that it does not appear whether or not the portions so read involved

¹⁰ See note 1 on p. 24.

any doctrinal or sectarian question. No test suggests itself to us, and perhaps it would be impossible to lay down one, whereby to determine whether any particular part of the Bible forms the basis of or supports a sectarian doctrine. Such a test seems impracticable.

* * * The State is not, and under our constitution can not be, a teacher of religion. * * * The school, like the Government, is simply a civil institution. * * *

"In our judgment the exercises mentioned in the petition constitute religious worship and the reading of the Bible in the school constitutes sectarian instruction." ¹¹

LOUISIANA

[Herold et al. v. Parish Board of School Directors et al., 136 La. 1034, 68 So. 116 (1915)]

Facts in the case.—A local school board had adopted a resolution requesting principals and teachers to open daily sessions of the public schools "with readings from the Bible, without note or comment, and, when the leader is willing to do so, the Lord's Prayer shall be offered." No particular version of the Bible was designated. The plaintiffs in this case were two Jews and one Catholic, all taxpayers. They alleged that such exercises infringed the freedom of religious worship and resulted in discrimination on account of religion and were therefore unconstitutional.

Questions involved and how answered by the court.—(1) Was the request of the board equivalent to a command?

Answer: Yes.

(2) "Does the resolution under consideration interfere with the natural rights of these plaintiffs to worship God, or to have their children worship God, according to the dictates of their consciences, or does it give a preference to Christians, and discriminate against Jews?"

Answer: "The reading of the New Testament as the Word of God infringes on the religious scruples of the Jews. The discrimination against them, and the inequality of rights and privileges, are manifest by such requirements. * * * The subjection by school authorities of Jewish children to Christian worship is forbidden by the Constitution."

On this point the court employed the following language, taken from *Cooley on Taxation*, 197:

"The more enlightened opinion of the present day denies the duty (to teach religion in the public schools) and affirms that any step in that direction is in greater or less degree a species of persecution of those who are not favored, and therefore incompetent, in any county whose political institutions are based upon the principles of equality before the law. Religious instruction is, therefore, referred to the voluntary action of the people."

¹¹ See note on p. 24.

The defendants claimed that the teachers might have excused from attendance on such exercises the plaintiffs' children and others of similar beliefs, if so requested by the students or their parents. In answer to this the court said: "And excusing such children on religious grounds, although the number excused might be very small, would be a distinct preference in favor of the religious beliefs of the majority, and would work a discrimination against those who were excused. The exclusion of a pupil under such circumstances puts him in a class by himself; it subjects him to a religious stigma; and all because of his religious belief. Equality in public education would be destroyed by such act."

The court held the resolution of the school board unconstitutional.

SOUTH DAKOTA

[State ex rel. Finger v. Weedman et al., 226 N. W. 348 (1929)]

Facts in the case.—In 1925 the school board ordered that the Bible be read or the Lord's Prayer be repeated, without sectarian comment, in all the schools. Passages of the King James version of the Bible were read, or the Lord's Prayer was repeated, daily by the teachers as an opening exercise. No sectarian comment was made. A dozen or more children of Roman Catholic faith refused to attend said exercises and were for that reason expelled. They were not allowed to return to school, except on condition that they sign a written apology and agreement to comply with all school regulations, including respectful attention to Scripture reading or other opening exercises.

Questions involved and how answered by the court.—Do Protestants have the right "to read their translation of the Bible and conduct their form of worship in the common schools, and to compel the Catholic children to attend such services over the objections of their parents?"

Holding of the court.—"On the broad constitutional ground of an infringement of religious liberty, we must hold such action unlawful." The court took judicial notice of the fact that the King James version of the Bible was acceptable to Protestants and not to Catholics.

In respect to religious education the court said, "under our system of government, religious teaching is committed to individuals and religious organizations not supported by the State. * * *"

"The State as an educator must keep out of this field and especially is this true in the common schools, where the child is immature, without fixed religious convictions, and the parents' liberty of conscience is the controlling factor and not that of the pupil. In institutions of higher learning the parents' right becomes less, and the conscience of the pupil may become the controlling factor."