

Secular Instruction. Public Schools, Theology In. Christmas Exercises, Public Schools.

It is not violative of the provisions of the Constitution to permit the use in schools of songs or literature, even though based upon the fundamental teachings of the Bible, provided they are used only for secular instruction or entertainment.

Helena, Montana, Dec 21, 1907.

Hon. William E. Harmon,
Supt. Public Instruction,
Helena, Montana.

Dear Sir:—

We are in receipt of your request for an opinion upon the proposition submitted to you by the Superintendent of Schools of the City of Helena, which is as follows:

“It is maintained that Christmas exercises in the public schools at which songs or literary selections are used which contain Christian sentiments, or in which any reference is made to Christmas day in connection with the birth of Christ, are held in violation of the law; and it is further alleged that the use of all such material be eliminated from the schools at Christmas or at any other time of the year, on the ground that such use constitutes denominational or sectarian teaching.”

The proposition submitted is stated in very general terms and a general statement to the effect that the law is not violated by such practices

would be a complete answer to the proposition submitted, but such reply would give no information as to the principles governing cases of this kind, or the decisions of the courts of last resort, which must be our guide until the Supreme Court of Montana has passed upon the proposition.

Section 9, Art. 11 of the State Constitution provides in part:

“Nor shall attendance be required at any religious services whatsoever, nor shall any sectarian tenets be taught in any public educational institution of the State.”

Section 1863 of the Political Code is merely a statutory enactment for the purpose of carrying into effect these provisions of the State Constitution.

That sectarian instruction is forbidden in public schools is beyond dispute, but the principal question involved is what constitutes sectarian instruction? The prohibiting language used in the State Constitution is that quoted above.

Teaching doctrines or beliefs respecting theology of any description, whether religious or irreligious, is sectarianism; but using books in the public schools, either as text books or for mere entertainment or special exercises, the teaching of which is founded upon, or gives instruction in the fundamental principles of the doctrines of morality and virtue, truth and honesty, charity and generosity, is not teaching “sectarian tenets” or conducting “religious services” within the meaning of the constitution. For such principles are recognized and endorsed by all sects; nor would the fact that such a book recognized the existence of a Supreme Being be sufficient to bar its admission to the public schools. Nor would declamations, essays or songs relative to the biography, philosophy, claims or demands of Moses, Jesus, Confucius, or Mohammed, necessarily be sectarian, for such declamations, essays, and songs, are for general information or entertainment, and not for the purpose of giving instruction on the subject of theology.

Questions similar to the one here involved have been considered by courts of last resort, and we take occasion here to refer to some of these decisions.

In *State vs. District Board*, 76 Wis. 177; 20 Am. State. Reps. 41, the principal question involved was whether the reading of the Bible in the public schools without any comment thereon was sectarian instruction. The court in the course of its discussion defined the terms “Religious Sect” and “Sectarian Instruction” and expressed its views with reference thereto in the following language:

“It should here be said that the term ‘religious sect’ is understood as applying to people believing in the same religious doctrines, who are more or less closely associated or organized to advance such doctrines and increase the number of believers therein. The doctrines of one of these sects which are not common to all others are sectarian; and the term ‘sectarian’ is, we think used in that sense in the constitution. * * *

We come now to the more direct consideration of the merits

of the controversy. The term 'sectarian instruction in the Constitution, manifestly refers exclusively to the instruction in religious doctrines, and the prohibition is only aimed at such instruction as is sectarian; that is to say, instruction in religious doctrines which are believed by some religious sect and rejected by others. Hence to teach the existence of a Supreme Being of infinite wisdom, power and goodness; and that it is the highest duty of all men to adore, obey and love Him, is not sectarian, because all religious sects so believe and teach. The instruction becomes sectarian when it goes further, and inculcates doctrine or dogma concerning which the religious sects are in conflict. This we understand to be the meaning of the constitutional prohibition."

The courts then discussed at some length the many questions involved, and although it reached the conclusion that the reading of any version of the bible in the public schools was violative of the provisions of the Constitution forbidding sectarian instruction, yet, it further said:

"It should be observed in connection that the above rules do not as counsel seem to think they may, banish from the district schools such text books as are founded upon the fundamental teachings of the bible, or which contain extracts therefrom. Such teaching and extracts, ornate our school literature, are important elements in its value or usefulness. Such text books are in the school for secular instruction, and rightly so, and the Constitutional prohibition of sectarian instruction does not include them, even though they may contain passages from which some inference of sectarian doctrine might possibly be determined."

Since the decision in the Wisconsin case above referred to was rendered, the identical question therein involved was considered by the Supreme Court of Kentucky, and under similar constitutional provisions the Kentucky Court reached the conclusion that the reading of a version of the bible in the public school was not sectarian instruction. The court in considering the question used the following language:

"The book itself, to be sectarian, must show that it teaches the peculiar doctrines 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 or mechanical composition of the book, nor the use of it, but its contents, that give it its character. Appellant's views seems to be that the church is the custodian and interpreter of the Bible and God's word. From that it is supposed that any Bible not put forth by authority of a church claiming that prerogative is sectarian. The question is not whether the version used is canonical or apocryphal. That question does not at all enter into the matter. Otherwise it would inevitably lead to the state that any book not favored by some-

church authority, or which may be supposed by it to be hostile to its teachings, would be sectarian. In that way the authority of a church could largely control the course of study in public schools by using its Bull against certain scientific or moral treatises as being atheistic or heretic. The very mischief aimed at by the framers of the Constitution, and by the people adopting it, would thus be accomplished, viz, the interference in matters of State by the Church."

Hackett vs. Brooksville Graded School Dist., 87 S. W. 792.

In the Hackett case the court cited and reviewed the decisions of many other courts relative to the proposition as to what constitutes sectarian instruction in the public schools, from which it appears that the trend of modern decision is to the effect that even the reading of the Bible itself in public schools is not sectarian instruction, provided no comment is made thereon, and that the pupils are not required to attend during the exercises.

See also Hysong vs. Gallitzin School 164 Pa. State 729; 44 Am. State Reps. 632.

You are therefore advised that it is not violative of the provisions of the Constitution to permit the use in schools of songs, or literature, even though based upon the fundamental teachings of the Bible, provided they are used only for secular instruction or entertainment.

Yours very truly,

ALBERT J. GALEN,
Attorney General.