

### Parochial Schools—Schoolhouses.

A schoolhouse may not be used for parochial school purposes.

Miss May Trumper,  
Superintendent of Public Instruction,  
Helena, Montana.

June 11, 1927.

My dear Miss Trumper:

You have requested my opinion in regard to the right to use school buildings for summer parochial schools and ask whether such use is in violation of section 9 of article XI of the constitution of Montana.

The part of this section to which reference is made reads as follows:

“Nor shall any sectarian tenets be taught in any public educational institution of the State.”

It is my opinion that the above quoted language has reference solely to teaching by instructors paid by the state or some of its local subdivisions, and was not intended as a prohibition against the use of a school building for occasional religious meetings or Sunday school purposes. The question of the use of a school building for religious meetings is one on which courts of different states are divided. There are a number of states, including Illinois, Indiana, Iowa and Nebraska in which it has been held that a schoolhouse may be used for religious meetings when such meetings will not interfere with the school work.

In other states, however, among which are Kansas, Missouri and Pennsylvania, it has been held that such use may not be made of a school building where anyone objects. The reasoning of the courts in the latter states is best stated in the case of *Spencer versus School District*, 15 Kan. 259; 22 American Reports, 268, where the court said:

“We are fully aware of the fact that all over the state the schoolhouse is, by general consent, or at least without active opposition, used for a variety of purposes other than the holding

of public schools. Sabbath schools of separate religious denominations, church assemblies, sometimes political meetings, social gatherings, etc., are held there. Now, none of these can be strictly considered among the purposes for which a public building can be erected, or taxation employed. But it often happens, particularly in our newer settlements, that there is no other public building than the schoolhouse, no place so convenient as that. The use for these purposes works little damage. It is used by the inhabitants of the district whose money has built it, and used for their profit or pleasure. Shall it be said that this is illegal? Doubtless, if all in the district are content, no question will ever be raised; and, on the other hand, if a majority object, the use for such purposes will cease. It is only when the majority favor, and a minority object, that the courts are appealed to. That minority may be but a single individual; may be influenced by spite or revenge, or any other unworthy motive; but, whatever the motives which prompt the litigation, the decision must be in harmony with the absolute right of all. It seems to us that upon well-settled principles the question must be answered in the negative. The public schoolhouse cannot be used for any private purposes. The argument is a short one. Taxation is invoked to raise funds to erect the building; but taxation is illegitimate to provide for any private purpose. Taxation will not lie to raise funds to build a place for a religious society, a political society, or a social club. What cannot be done directly cannot be done indirectly. As you may not levy taxes to build a church, no more may you levy taxes to build a schoolhouse and then lease it for a church. Nor is it an answer to say that its use for school purposes is not interfered with, and that the use for the other purposes works little, perhaps no immediately perceptible, injury to the building, and results in the receipt of immediate pecuniary benefit. The extent of the injury or benefit is something into which the courts will not inquire. "The character of the use is the only legitimate question."

In the case of *Nichols v. School Directors*, 93 Ill. 61; 34 American Reports, 160, a statute authorized school directors to grant the temporary use of a schoolhouse for religious meetings and Sunday school. It was contended that this statute violated, among others, a constitutional provision "that no person should be required to support a place of worship against his consent. The court said:

"In what manner, from the holding of religious meetings in the schoolhouse, complainant is going to be compelled to aid in furnishing a house of worship and for holding religious meetings, as he complains in his bill, he does not show. We can only imagine that possibly at some future time he might, as a taxpayer, be made to contribute to the expense of repairs, rendered necessary from wear and use of the building in the holding of religious meetings. A single holding of a religious meeting in the schoolhouse might in that way cause damage in some de-

gree to the building, upon the idea that continual dropping wears away stone, but the injury would be inappreciable. As respects any individual pecuniary expense which might be in this way involved, we think that consideration may be properly disposed of under the maxim, 'De minimis,' \* \* \*."

It will be observed that the opinion in this latter case disregards the injury on the ground that the amount of damages is insignificant. In this respect the argument admits a technical violation of constitutional rights.

If religious meetings may not be held in a schoolhouse by reason of the fact that taxation is invoked to raise funds to erect the building and not to provide for any private purpose, then a school building may not be used for parochial school purposes.

It is therefore my opinion that school buildings may not be used for parochial school purposes.

Very truly yours,

L. A. FOOT,

Attorney General.