

RELIGION:
SCHOOLS:
CONSTITUTIONAL LAW:
TEACHING OF RELIGION:
STATE COLLEGES:

It is permissible for regular faculty members to teach academic courses about religion as a part of the curriculum of a state supported college.

Opinion No. 157

June 25, 1963



Dr. L. E. Traywick
President
Southwest Missouri State College
Springfield, Missouri

Dear Dr. Traywick:

At your request and on behalf of the Board of Regents of Southwest Missouri State College, the attorneys for the Board of Regents have requested an opinion of this office with regard to a proposed plan of the Board of Regents to establish a Department of Religion at Southwest Missouri State College. They have also requested our opinion regarding authority of the college to offer academic courses such as literature of the Bible, comparative religions, religious ethics, etc., as a part of the curriculum of the college to be taught by regular faculty members.

A page and one-half outline of the proposed plan for the Department of Religion was enclosed with the opinion request and reference was made to an opinion of this office dated August 4, 1950, and addressed to President Roy Ellis, Southwest Missouri State College, Springfield, Missouri.

We first quote the conclusion of said opinion of August 4, 1950, which was as follows:

"In view of the decision of the Supreme Court of the United States in *McCullum v. Board of Education*, it is the opinion of this department that the teaching of Bible and religious education courses at the Southwest State College at Springfield, as currently approved by the Board of Regents and contained in the college catalogue, is unlawful because it violates

the 'establishment of religion' clause of the First Amendment to the Constitution of the United States."

We emphasize that this opinion was based exclusively upon the provisions of the Constitution of the United States and upon the decisions of the Supreme Court of the United States cited therein.

We now call your attention to the very recent decisions of the Supreme Court of the United States dealing with this subject and rendered subsequent to the previously mentioned 1950 opinion of this office: Engel v. Vitale, 370 U.S. 421; School District of Abington v. Schempp and Murray v. Board of School Commissioners of Baltimore, decided by the Supreme Court of the United States on June 17, 1963, and not yet officially reported.

In answer to your question concerning the teaching of academic courses by regular faculty members as a part of the curriculum of the college, we refer you to the recent case of School District of Abington v. Schempp and quote portions of that decision as follows.

Mr. Justice Clark in delivering the opinion of the Court said:

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

Mr. Justice Brennan, in his concurring opinion, said:

"* * *The holding of the Court today plainly does not foreclose teaching about the Holy Scriptures or about the differ-

ences between religious sects in classes in literature or history. Indeed, whether or not the Bible is involved, it would be impossible to teach meaningfully many subjects in the social sciences or the humanities without some mention of religion. To what extent, and at what points in the curriculum religious materials should be cited, are matters which the courts ought to entrust very largely to the experienced officials who superintend our Nation's public schools. They are experts in such matters, and we are not. We should heed Mr. Justice Jackson's caveat that any attempt by this Court to announce curricular standards would be 'to decree a uniform, rigid and, if we are consistent, an unchanging standard for countless school boards representing and serving highly localized groups which not only differ from each other but which themselves from time to time change attitudes.' * * *"

Mr. Justice Goldberg, with whom Mr. Justice Harlan joined, in his concurring opinion said:

"* * * And it seems clear to me from the opinions in the present and past cases that the Court would recognize the propriety * * * of the teaching about religion, as distinguished from the teaching of religion, in the public schools.
* * *"

We feel that these quotations from the Schempp case are dispositive of your question concerning the teaching of academic courses by regular faculty members as a part of the curriculum of the college.

With regard to the question concerning the establishment of a Department of Religion, we call your attention to the fact that in the Schempp case there were two trials in that the Supreme Court remanded the original case for further proceedings, but in spite of this Mr. Justice Stewart began his dissenting opinion as follows:

"I think the records in the two cases before us are so fundamentally deficient as to make impossible an informed or responsible determination of the constitutional issues presented. Specifically, I cannot agree that on these records we can say that the Establishment Clause has necessarily been violated. * * *"

Mr. Justice Stewart would remand both cases for further hearings.

We call this to your attention to emphasize that any decision on this question must necessarily depend upon a determination and adjudication of the actual facts of the case. This determination must be a judicial determination as Mr. Justice Goldberg said at the beginning of his concurring opinion:

"As is apparent from the opinions filed today, delineation of the constitutionally permissible relationship between religion and government is a most difficult and sensitive task, calling for the careful exercise of both judicial and public judgment and restraint. * * *"

Mr. Justice Goldberg further stated:

"The singular sensitivity and concern which surround both the legal and practical judgments involved impel me, however, to add a few words in further explication, while at the same time avoiding repetition of the carefully and ably framed examination of history and authority by my Brethren. * * *

"* * *To be sure, the judgment in each case is a delicate one, * * *."

Mr. Justice Brennan in his concurring opinion said:

"* * *The case shows how elusive is the line which enforces the Amendment's injunction of strict neutrality, while manifesting no official hostility toward religion--a line which must be considered in the cases now before us. * * *"

Mr. Justice Brennan further stated:

"The line between permissible and impermissible forms of involvement between government and religion has already been considered by the lower federal and state courts. * * * Moreover, it may serve to suggest that the scope of our holding today is to be measured by the special circumstances under which these cases have arisen, and by the particular dangers to church and state which religious exercises in the public schools present. * * *."

CONCLUSION

These quotations show that there is a delicate, almost imperceptible line between the permissible and the impermissible practices, between the teaching of religion pedagogically and the teaching of religion for religion's sake, between the teaching of religion as a part of civil morality or history and the teaching of religion as a sectarian doctrine. Lines have been drawn by the Supreme Court of the United States in these decided cases on the basis of facts adduced in extensive hearings and extensive judicial proceedings.

It would be impossible of me to render an opinion upon the legality of a proposed plan without the benefit of judicially established facts and particularly when such a plan is still in a nebulous process of formation and is subject to drastic and instantaneous change in both form and substance.

Under the circumstances, I can do no more than call your attention to these recent opinions of the Supreme Court of the United States and suggest that the ultimate authority for the legality of any proposed plan would be a decision by a proper judicial tribunal based upon judicially ascertained facts.

Yours very truly,


THOMAS F. EAGLETON
Attorney General