

COLLEGES: State college or university may establish
RELIGION: courses, a division or department of religion
SCHOOLS: for the purpose of teaching about religion
as distinguished from the teaching of religion.
The courses offered, as well as all courses of the institution,
both in plan and practice must maintain strict religious neutrality
as defined by the courts.

Opinion No. 313-1968

November 21, 1968



Mr. E. C. Curtis
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Missouri State College
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Dear Mr. Curtis:

This opinion is issued in response to your request for an official ruling. You submit the outline of a proposed Department of Religion to be established at Southwest Missouri State College and request our opinion regarding the constitutionality of the proposal.

This office has previously ruled upon a similar proposal (Opinion 157, Traywick, 6/25/63, copy enclosed). We reaffirm the ruling of Opinion 157. However, some additional comment may assist in the understanding and application of that opinion.

Our discussion must be limited to legal principles applicable to the proposal as a whole and not to the approval or disapproval of the particular courses in the Department of Religion proposal. Whether or not a particular college course violates constitutional standards can only be determined in the concrete. The determination cannot be made merely from course titles and outlines of proposals. All the particular facts would need to be weighed and evaluated. The course content, purpose, text, manner of presentation, etc. would all affect the determination. Opinions of this office can appropriately deal only with questions of law. The opinion procedure is not an appropriate means for resolving factual questions. Therefore, we must limit our ruling to the legal questions presented and the legal principles which would be applicable to particular situations.

Mr. E. C. Curtis

It is our view that a state college or university may establish a Department of Religion for the purpose of teaching about religion as distinguished from the teaching of religion. The courses offered within such department, as well as courses offered in any other department of the institution, must be conducted with religious neutrality. Neutrality forbids not only governmental preference of one religion over another, but also preference of religion over nonreligion. Neutrality requires the state not to favor religion; it equally requires the state not to be the adversary of religion, Everson vs. Board of Education, 330 U.S. 1, 18; Torcaso vs. Watkins, 367 U.S. 488, 495.

Although in borderline cases there may be a "delicate, almost imperceptible line between the permissible and the impermissible", there are some clear landmarks by which a lawful course may be plotted. We shall endeavor to outline the judicially established guides.

1. The curriculum of public education must not include any religious ceremony or exercise. Religious exercises in government schools and colleges such as devotional Bible reading or prescribed prayers are in violation of the Establishment Clause of the First Amendment of the United States Constitution. Abington School District vs. Schempp, 374 U.S. 203; Engel vs. Vitale, 370 U.S. 421. Our state Supreme Court has also held unlawful the conducting of religious exercises or religious instruction in the public schools, Harfst vs. Hoegen, Mo., 163 SW2d 609; Berghorn vs. Reorganized School District No. 8, Mo., 260 SW2d 573.

2. Neither public funds nor public facilities may be used to support instruction of any religion. Our State Constitution expressly prohibits the use of public funds to support instruction in any religion. Article I, Section 7 and Article IX, Section 8, Harfst, supra, Berghorn, supra. Long ago the Missouri Supreme Court held a public school district could not build and furnish a school building for the purpose of teaching Sunday School religion classes. Dorton et al vs. Hearn, 67 Mo. 301 (1878).

3. To regard every involvement of religion with government and public education as unconstitutional is erroneous. Simple observation demonstrates that there cannot be in every respect an absolute separation of religion and government. Religion is an inseverable element of American life and society. In the words of the Court, "We are a religious people whose institutions presuppose a Supreme Being," Zorach vs. Clauson, 343 U.S. 306, 313. " * * * The history of man is inseparable from the history of religion" Engel, supra at 434.

Justice Jackson in Illinois ex rel McCollum vs. Board of Education, 333 U.S. 203, stated,

Mr. E. C. Curtis

" . . . I think it remains to be demonstrated whether it is possible, even if desirable, . . . to isolate and cast out of secular education all that some people may reasonably regard as religious instruction. Perhaps the subjects such as mathematics, physics or chemistry are, or can be, completely secularized. But it would not seem practical to teach either practice or appreciation of the arts if we are to forbid exposure of youth to any religious influences. Music without sacred music, architecture minus the cathedral, or painting without the scriptural themes would be eccentric and incomplete even from a secular point of view * * * The fact is that, for good or for ill, nearly everything in our culture worth transmitting, everything which gives meaning to life, is saturated with religious influences, derived from paganism, Judaism, Christianity--both Catholic and Protestant--and other faiths accepted by a large part of the world's peoples."

Apart from its religious significance, the Bible is a writing of unquestionable moral, historical and literary importance. Regardless of their theological views and teaching, Abraham, Christ and Luther all shaped the course of western civilization. Perhaps the most pointed demonstration of the inseparability of religion and American government are the historical events and religious-political theories which produced the First Amendment. It was a religious people who ordained this Great Principle of Freedom of Religion.

4. Public education may include instruction about religion. Dicta pronouncements of the United States Supreme Court in the Schempp and Engel cases, which were quoted at length in our Opinion 157-63, clearly state that public education may include courses of study such as comparative religion, history of religion, relation of religion to civilization, literary and historical qualities of the Bible so long as these courses are objectively presented as a part of the secular education program.

Subsequent to our 1963 ruling, the Supreme Court of Washington passed upon a college English literature course dealing with the literary features of the Bible. The Court held that neither the Federal nor State constitutional provisions prohibiting government established religion or the use of public money in support of religion were violated. Calvary Bible Prebysterian Church et al vs. Board of Regents University of Washington, Wash., 436 P2d 189 (1967).

We think the constitutional test (perhaps over simply stated)

Mr. E. C. Curtis

is: Religion may be the subject of public education, but not the end.

5. Regardless of the title or plan of a particular course, it must be taught in practice with religious neutrality. One need not teach about religion to violate the First Amendment. The historian in his treatment of the Inquisition or the Reformation may inject sectarian views. The biologist discussing evolution may urge his own religious beliefs. The sociologist discussing control of population may offend certain religious opinions. All such practices would be unlawful. Indoctrination or proselyting in sectarian and religious views is just as constitutionally objectionable if done as part of a history, literature or other secular course. On the other hand, an objectively pursued course does not become constitutionally objectionable merely because it includes as a subject for study religious ideas, literature, persons or events.

Public educators when dealing with courses which involve religion directly or indirectly should exercise the utmost caution and discretion to present the subject matter with religious neutrality. To proffer personal opinions as absolute facts is intellectually dishonest and academically objectionable. When the subject is religion, such practices are in addition unconstitutional.

6. The primary effect test. In Schempp, supra, the Court expressed the following test for distinguishing between forbidden involvements of the state with religion and those involvements permitted under the Establishment Clause, l.c. 222,

"The test may be stated as follows: what are the purpose and the primary effect of the enactment? If either is the advancement or inhibition of religion then the enactment exceeds the scope of legislative power as circumscribed by the Constitution. That is to say that to withstand the strictures of the Establishment Clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion."

The Court has continued to apply this test. Board of Education vs. Allen, ___ U.S. ___, 20 LEd 2d 1060 (1968).

We note that the courses in the curriculum outline enclosed with your letter of request deal predominately with Christian religions. There is no course offering dealing with non-Judaeo-Christian religions. We also note that the faculty is to be composed of those "trained in the discipline of religion" apparently to the exclusion of other disciplines such as literature, history,

Mr. E. C. Curtis

etc. We do not say that these facts violate the Constitution. We merely call to your attention that these, if combined with other facts, may raise questions as to whether or not religious neutrality is maintained.

CONCLUSION

It is the opinion of this office that a state college or university may establish courses, a division or Department of Religion for the purpose of teaching about religion as distinguished from the teaching of religion. The courses offered (as well as all courses at the institution) both in plan and practice must maintain strict religious neutrality as defined by the courts.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Louis C. DeFeo, Jr.

Yours very truly,

NORMAN H. ANDERSON
Attorney General

Enc. Opinion No. 157
Traywick, 6/25/63