CONSTITUTIONAL LAW:
SCHOOLS:

A public school board may not allow the use of public school property by the Ministerial Alliance to conduct religious training.

OPINION NO. 265

October 30, 1969

FILED
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Honorable Ronald Reed, Jr.
Representative - 81st District
2602 Francis Street
St. Joseph, Missouri 64501

Dear Mr. Reed:

This opinion is issued in response to your request for an opinion. You inquire:

> "Is it legal to grant usage of public school classrooms once per week to conduct religious training on a non-denominational basis by the Ministerial Alliance after the regular day session terminates?"

In Dorton v. Hearn, 67 Mo. 301 (1878), the Missouri Supreme Court held that the board of directors of a school district could not authorize the use of a school building for a Sunday school. The following language of the opinion illustrates the reasoning of the Court. l.c. 302:

> "A corporation, . . . is not only restricted from making contracts forbidden by its charter, but can only make those which are necessary to effectuate the purposes of its creation. It is not pretended that any direct authority is given in the school law justifying or authorizing the action of the board in this case, nor has it any connection with the object for which the house was built. . . ."

It appears, therfore, that public school classrooms cannot be used for religious training in the absence of statutory authority.

Subsection 2 of Section 177.031, RSMo Supp. 1967, provides as follows:

> "The school board having charge of the schoolhouses, buildings and grounds appurtenant thereto may allow the free use of the houses, buildings and grounds for the free discussion of public questions or subjects of general public interest, for the meeting of organizations of citizens, and for any other civic, social and educational purpose that will not interfere with the prime purpose to which the houses, buildings and grounds are devoted. If an application is granted and the use of the houses, buildings or grounds is permitted for the purposes aforesaid, the school board may provide, free of charge, heat, light and janitor service therein when necessary, and may make any other provisions, free of charge, needed for the convenient and comfortable use of the houses, buildings and grounds for such purposes, or the school boards may require the expenses to be paid by the organizations or persons who are allowed the use of the houses, buildings and grounds. All persons upon whose application, or at whose request, the use of any schoolhouse, building, or part thereof or any grounds appurtenant thereto, is permitted as herein provided, shall be jointly and severally liable for any injury or damage thereto which directly results from the use, ordinary wear and tear excepted.

The legislature first authorized the use of public school property for non-public school purposes in 1881. It is interesting to note that this occurred shortly after the decision in Dorton v. Hearn, 67 Mo. 301 (1878), showed the need for express legislative authorization. Laws 1881, p.202, provided as follows:

> "'Nothing in this section shall be so construed as to prevent the use of any school house for religious, literary or other public purposes, when such use shall be demanded by a majority of the voters of such district, . . .'"

After the addition of language by Laws 1891, p. 215, this provision read as follows:

> "Nothing in this section shall be so construed as to prevent the use of any schoolhouse for religious, literary or other

> public purposes, or for the meeting of any farmer or labor organization or society for educational purposes, . . . when such use shall be demanded by a majority of the voters of such district. . . ."

The provision was amended again in 1909, but the authorized purposes remained the same. Laws 1909, p. 770, section 28.

Significant changes were made, however, in 1915. House Bill No. 392, amended Section 10784 of the Revised Statutes of 1909, which included the above quoted language, as amended by the Laws of 1909, so that it read as follows:

> ". . .The board of directors, or board of education, having charge of the school houses, buildings and grounds appurtenant thereto, may allow the free use of such houses, buildings and grounds for the free discussion of public questions or subjects of general public interest, for the meeting of organizations of citizens, and for such other civic, social and educational purposes as will not interfere with the prime purpose to which such houses, buildings and grounds are devoted: . . ." Laws 1915, p. 382.

With minor changes, the authorized purposes remain the same as those set forth in 1915. Section 177.031 (2), RSMo Supp. 1967.

From 1881 until 1915, religious purposes were expressly mentioned as an authorized use of public school property. The reference to religious purposes was dropped in 1915. It is logical to assume, therefore, that the legislature intended in 1915 to revoke the authority previously given to allow the use of public school property for religious purposes.

Such a construction of Section 177.031 avoids the difficult questions of state and federal constitutional law that would arise if public school property were used for religious purposes. See Zorach v. Clauson, 343 U.S. 306 (1952); McCollum v. Board of Education, 333 U.S.203 (1948); Special District for Education and Training of Handicapped Children v. Wheeler, 408 S.W.2d 60 (1966); Berghorn v. Reorganized School District No. 8, 364 Mo. 121, 260 S.W.2d 573 (1953); McVey v. Hawkins, 364 Mo. 44, 258 S.W.2d 927 (1953); Harfst v. Hoegen, 349 Mo. 808, 163 S.W.2d 609 (1941). Indeed, the 1915 amendment may have been motivated by the constitutional problems raised by the use of public school property for religious purposes.

CONCLUSION

It is the opinion of this office that a public school board may not allow the use of public school property by the Ministerial Alliance to conduct religious training.

Yours very truly,

John C. Danforth

JOHN C. DANFORTH
Attorney General