CONSTITUTIONAL LAW:
STATE COLLEGES:
SCHOOLS:

A state college or university does not violate constitutional provisions by giving credit for course taught by representative of religious denomination, so long as university premises or facilities are not used.

October 6, 1969

OPINION NO. 337

FILED
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Honorable Thomas D. Graham
State Representative
122nd District
312 East Capitol Avenue
Jefferson City, Missouri 65101

Dear Representative Graham:

This official opinion is issued in response to your request in which you ask for an opinion on certain questions relating to the constitutionality of provisions for religious instruction in state colleges and universities.

You present the following three situations:

1. A denomination maintains facilities adjacent to a state college at which it teaches bible and religious courses. The teachers are employed by and answerable to the employing denomination. The college will give academic credit for the course if it approves of the subject matter and the instructor.

2. The situation is the same as in (1), but the institution permits the use of its classrooms for purposes of instruction.

3. Same situation as in (2), except that the course is sponsored and the instructors are employed by an interdenominational body rather than by a single denomination.

We are of the opinion that situation (1) presents no constitutional infirmities, but that the use of classrooms and facilities is of very doubtful validity under the applicable state and federal constitutional provisions. In this regard we see no basis for distinguishing between a single denomination and a use by an interdenominational group.

The applicable constitutional provisions are as follows:

a. The First Amendment to the Constitution of the United States, providing that no law may be enacted "respecting the establishment of religion, or prohibiting the free exercise thereof; . . ."

b. Missouri Constitution, Article I, Section 5, providing as follows:

> "That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; that no human authority can control or interfere with the rights of conscience; . . ."

c. Missouri Constitution, Article I, Section 6, providing as follows:

> "That no person can be compelled to erect, support or attend any place or system of worship, or to maintain or support any priest, minister, preacher or teacher of any sect, church, creed or denomination of religion;. . ."

d. Missouri Constitution, Article I, Section 7, providing as follows:

> "That no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect or denomination of religion, or in aid of any priest, preacher, minister or teacher thereof, as such; and that no preference shall be given to nor any discrimination made against any church, sect or creed of religion, or any form of religious faith or worship."

e. Missouri Constitution, Article IX, Section 6, providing that the income of the seminary fund,

> ". . .shall be faithfully appropriated for maintenance of the state university, and for no other uses or purposes whatsoever."

f. Missouri Constitution, Article IX, Section 8, specifies that no appropriations may be made,

> ". . . in aid of any religious creed, church or sectarian . . . denomination whatever; . . ."

We assume that the courses you refer to are taught in a manner consistent with the dogma of the sponsoring denomination. We also assume that the college or university authorities examine the courses and the credentials of the instructors only for the purpose of satisfying themselves that the courses have sufficient intellectual content to be acceptable for college credit. It, of course, would be necessary that the authorities show no discrimination against any denomination or sect offering a course. We also assume that the courses present academic instruction and that they are not ceremonial observances or worship services.

The giving of academic credit is a matter for the discretion of the college authorities. Prior opinions of this office express the opinion that there is no general inhibition of instruction in religion in state colleges and universities.

(See Opinion No. 157, 6-25-63 and Opinion No. 313-1968, enclosed.) Those opinions indicated certain restrictions when the courses are taught by members of the college faculty. In your first example, however, it would appear that there is no expenditure of public funds and no use of public facilities. We see no reason why colleges and universities could not give credit for such instruction, if they in their judgment feel that the courses have sufficient academic content to justify the granting of credit. We perceive no reason why a college could not permit the transfer of credits earned in a theological seminary, or give credit for an independent study project which deals with a purely religious subject. The mere granting of credit does not amount to the establishment of religion or to a prohibited form of aid, within the meaning of the applicable constitutional provisions.

The cases of Engel v. Vitale, 370 US 421, 8 L. ed. 2d 601, 82 SC 1261, (1962) and Abingdon Township v. Schemp, 374 US 203, 10 L. ed. 2d 844, 83 SC 1560, (1963) are not in point on the question of granting academic credit. The former involved the validity of a simple "interdenomonational" prayer, and the latter of prayer and "ceremonial bible reading," in public school classrooms. In both cases the student was presented with the choice of participating in the exercise or of making a conspicuous withdrawal. We understand from your inquiry that the courses presented by the denominational instructors would be purely elective. The Court in the Abingdon case, moreover, drew a clear distinction between religious observance and teaching about religion.

Nor would the religious instruction at denominational expense offend against the holdings in Harfst v. Hoegen, 349 Mo. 808, 163 SW 2d 609 (1942) and Berghorn v. Reorganized School District No. 8, 364 Mo. 121, 209 SW 2d 573 (1953). These cases involved the operation of public school facilities in accordance with the interests of a particular denomination. Nothing of this sort is presented by your example.

In your second and third inquiries, however, another question is presented. This is whether a state college or university may permit the use of its classrooms for religious instruction by instructors selected by religious denominations. We gather that this connotes a regular use through a school term or school year, and therefore, we do not have to consider the validity of isolated or occasional use of school facilities by religious groups. We feel that the regular use of classrooms in this way constitutes a degree of aid which is inconsistent with the state constitutional provisions and quite possibly with the federal also.

The federal case of Illinois ex. rel McCollum v. Board of Education of School District No. 71, 333 US 203, 92 L. ed. 2d 649, 68 SC 461, (1948) may be read in such a way as to indicate that any use of public classrooms for religious teaching is prohibited by the First Amendment. That case invalidated a "released time" program by means of which public school pupils were directed to sessions conducted in public school classrooms by such denominations as chose to sponsor instruction. The Court also emphasized the use of the school's compulsory attendance machinery as a ground for invalidating the plan, so that the opinion does not necessarily turn on the use of classrooms.

The point does not have to be concluded with the federal cases, however, for the Missouri constitutional provisions are very broad and the courts have construed them strictly against aid to religion in any form. See Harfst v. Hoegen, supra,

Berghorn v. Reorganized School District No. 8, supra, McVey v. Hawkins, 364 Mo. 44, 258 SW 2d 927 (1953), holding that transportation of private school pupils was not a proper use of funds designated for the purpose of maintaining free public schools; Special District for the Education and Training of Handicapped Children of St. Louis County, Missouri, v. Hubert Wheeler, 408 SW 2d 60 (1966), holding that public school funds may not be used for the purpose of providing special classes in private school buildings.

There is no doubt that the regular use of a classroom is an item of value, and that the permission for such use constitutes the giving of a thing of value. This is so even though it may be argued that the state enjoys a net saving if religious denominations contribute teaching services which would otherwise be the responsibility of the college or university. When public money is appropriated to provide and maintain buildings, the use of the buildings by religious teachers would appear to be an indirect use of public funds for religious purposes within the meaning of Article I, Section 7. At the very least it must be said that such a use of public classrooms would be subject to challenge under the provisions of the federal and state constitutions.

There is no basis for distinguishing between "denominational" and "interdenominational" instruction. This is clear from Engel v. Vitale and Abingdon Township v. Schemp, supra. Those cases stand for the proposition that aid to religion in general or preference to religion as against non-religion, is within the constitutional inhibition. See also Illinois ex. rel McCollum v. Board of Education, supra.

CONCLUSION

1. There is no constitutional violation if a state college or university gives academic credit for a course in religious instruction, presented by teachers selected by a religious denomination, in facilities maintained by the denomination, with the college or university having the right to approve the credentials of the teacher and the subject matter of the course as a condition of giving credit.

2. The use of state college or university classrooms for such a course in denominational religious instruction, on a regular and continuing basis, constitutes an aid to religion, and the indirect use of public funds in aid thereof, within the meaning of Article I, Section 7 of the Missouri Constitution.

3. With regard to conclusion #2, it makes no difference whether the course is presented by a single denomination or by an interdenominational association.

The foregoing opinion, which I hereby approve, was prepared by my Special Assistant, Charles B. Blackmar.

Yours very truly,

JOHN C. DANFORTH
Attorney General

Encl. No. 313, 11-21-68, Curtis
No. 157, 6-25-63, Traywick