SCHOOLS: Use of public funds in aid of sectarian institutions void.

May 7, 1936.

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Hon. Crosby C. Johnson,
Prosecuting Attorney,
Caldwell County,
Hamilton, Missouri.

Dear Sir:

This department wishes to acknowledge receipt of your request for an opinion under date of April 29th, as follows:

> "I have been requested to submit the following question to you for your opinion:-
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> "St. Rita's is a parochial school maintained by the Catholic Church in Clinton County, at Cameron, and a part of the school is a high school. Clinton County adjoins Caldwell County, and a student residing in one of the common school districts in Caldwell County has been attending the St. Rita's high school this current school year. I understand that no arrangements were entered into between this common school district and the high school, or school authorities conducting this high school, for this student to attend. The Directors of this common school district are now being asked by St. Rita's to pay from the district funds tuition for this student. Can they legally pay from the school funds tuition for a student attending such a parochial school?"

Section 9270q, Missouri Statutes Annotated (Laws of Missouri, 1935, Section 16, page 351), reads in part as follows:

> "The board of directors of each and every school district in this state that does not maintain an approved high school offering work through the twelfth grade shall pay the tuition of each and every pupil resident therein who has completed the work of the highest grade offered in the school or schools of said district and attends an approved high school in another district of the same or an adjoining county, or an approved high school maintained in connection with one of the state institutions of higher learning, where work of one or more higher grades is offered."

What is meant by an "approved high school" as used in the above section? Does same include private as well as public schools?

In the case of In re Estate of Ryan, 156 S. W. 759, l. c. 761, 174 Mo. App. 202, the court said:

> " * * * it is the duty of the court, in construing statutes, to interpret particular words by reference to the context so as to effectuate the intention of the lawmakers as reflected by the entire enactment, if such may be fairly ascertained, rather than to declare the precise meaning of the word standing alone."

In examining the context, we find the following sections of the Revised Statutes of Missouri, 1929, which leads us clearly to the conclusion that what the Legislature had in mind was public schools and not private schools.

Section 9447 authorizes the State Superintendent of Schools to classify the "<u>public high schools in the state</u>" as follows:

> "The state superintendent of public schools shall have authority to classify the public high schools in the state

> into first, second and third classes, and shall prescribe minimum courses of study for each class: * * * "

And Section 9448 authorizes the State Superintendent to inspect and approve them, as follows:

> "For the purpose of classifying high schools and having their work accredited by higher educational institutions, the state superintendent of public schools shall, in person or by deputy, inspect and examine any high school making application for classification, and he shall prescribe rules and regulations governing such inspection and examinations, and keep complete record of all inspections, examinations and recommendations made. He shall, from time to time, publish lists of classified high schools: Provided, he may drop any school in its classification, if, on reinspection or re-examination, he finds that such school does not maintain the required standard of excellence."

However, should there still be any question as to whether "approved high schools" as used in Section 9270q, supra, included private as well as public schools, these doubts are dispelled by the following constitutional provision and cases interpreting same.

Article XI, Section 11, of the Constitution of Missouri provides as follows:

> "Neither the General Assembly nor any county, city, town, township, school district or other municipal corporation, shall ever make an appropriation or pay from any public fund whatever, anything in aid of any religious creed, church or sectarian purpose, or to help to support or sustain any private or public school, academy, seminary, college, university or other institution of learning controlled by any religious creed, church or sectarian denomination whatever; nor shall any grant or donation of personal property or real estate ever be made by the

> State, or any county, city, town or other municipal corporation, for any religious creed, church or sectarian purpose whatever."

We have been unable to find any Missouri cases construing the above constitutional provision, and hence we must look to states having similar constitutional provisions for interpretation.

In the case of Synod of Dakota v. State, 2 S. D. 366, 50 N. W. 632, l. c. 635, the court said:

> "* * * the framers of our state constitution intended to guard with zealous care the funds of the state, counties, and municipalities, collected from taxes imposed upon all the members of the community, composing the various religious sects, from being appropriated for the benefit of or to aid any one or more sectarian schools or institutions, or in fostering or building up any one or more sects within the state. The policy of prohibiting the use of funds belonging to all for the benefit of one or more religious sects has been adopted in most of the states. No one, we think, can mistake the intention of the framers of the constitution, as expressed in these various sections of that instrument, to prohibit in every form, whether as a gift or otherwise, the appropriation of the public funds for the benefit of or to aid any sectarian school or institution. What, then, constitutes benefit or aid? Webster defines 'benefit' to mean 'whatever contributes to promote prosperity; * * * add value to property; advantage; profit.' 'To aid' is defined by the same author 'to support, either by furnishing strength or means to help to success.' The demand of plaintiff is for money due for the tuition of a class of students alleged to have been instructed under a contract with the board of education. Would not the payment of this demand be for the benefit of or to aid the university? Is not the tuition received from every student for the benefit of or to aid the school, to support, to strengthen, it? Do not such institutions depend mainly

> upon the tuition fees of students they can obtain for their support? But the learned counsel for plaintiff strenuously contends that the sum due plaintiff will not be contributed for the benefit of or to aid the university, but in payment for services rendered the state, or to its students, in preparing them for teaching in the public schools. This contention, while plausible, is, we think, unsound, and leads to absurd results. If the state can pay the tuition of 25 students, why may it not maintain at the institution all that the institution can accommodate, and thereby support the institution entirely by state funds? The theory contended for by counsel would, in effect, render nugatory the provisions of the constitution, as the claim that the appropriation was made as compensation for services rendered could be made in all cases. This theory, carried out to its legitimate results, would enable any one leading sect to control the schools, institutions, and funds of the state, as it could claim it was rendering services for the funds appropriated. It was undoubtedly to prevent such possible results that these provisions were inserted in the constitution. It matters not how much consideration has been given by services rendered, the language is emphatic and unqualified that no money shall be given or appropriated for the benefit of or to aid any sectarian school, society, or institution. The paying of the tuition of pupils in the Pierre University to the plaintiff in this case will, in our opinion, be for the benefit of or to aid such school or institution, and is clearly within the prohibition of the constitution."

And in the case of Bennett v. City of La Grange, 153 Ga. 428, 112 S. E. 482, l. c. 485, the court said:

> "By a law of that state the territorial board of education was authorized to designate private universities, colleges, and academies in which instruction should be given to pupils in the methods of teaching, and in pursuance of this law the board of education contracted with Pierre

University, a Presbyterian institution, for the instruction of a class of students in pedagogy. The Supreme Court of South Dakota held that the prohibition in the Constitution of that state against the appropriation of money or other property to aid any sectarian school applied to all appropriations to such schools, whether made as a donation or in payment for services rendered the state by such school, and that the contract between the board of education and this Presbyterian university was void because in conflict with the above provision of the Constitution of that state. Synod of Dakota v. State of South Dakota, 2 S. D. 366, 50 N. W. 632, 14 L. R. A. 418. A school connected with an orphan asylum controlled by officers of the latter who were Sisters of Charity of the Roman Catholic Church in which religious instruction is given to Roman Catholic children is a sectarian institution within the constitutional provision against using public funds for 'sectarian purposes.' State v. Hallock, 16 Nev. 373. The inhibition of section 3, art. 8, of the Illinois Constitution, against any payment from public funds in aid of any sectarian institution prohibits payment by Cook county for the tuition and maintenance of dependent girls, committed by the county court, under the law of that state, to the Chicago Industrial School for Girls, a corporation which places the girls committed to it in certain institutions under the control of the Roman Catholic Church, and to which institution such payments would in fact go. Cook County v. Chicago Industrial Schools for Girls, 125 Ill. 540, 18 N. E. 183, 1 L. R. A. 437, 8 Am. St. Rep. 386. In the case last cited the Supreme Court of Illinois held that--

"'Money paid to a school in consideration for services rendered, and not as a mere gratuity, is none the less an aid to the school, and is therefore within the constitutional inhibition against the use of public funds to aid sectarian schools.'

"Counsel for defendants in error strongly rely upon the case of Dunn v. Chicago Industrial School for Girls, 280 Ill. 613, 117 N. E. 735, L. R. A. 1918B, 207, in which the Supreme Court of Illinois held that--

"'The payment to the Chicago Industrial School for Girls, an incorporated Catholic school (under the control and management of the Roman Catholic Church), by Cook county, of an amount less than the actual cost of clothing, medical care, and attention, and education and training in useful arts and domestic science for the maintenance, etc., of Catholic girls committed thereto by the Juvenile Court Act, * * * is not in violation of the provision of the Illinois Constitution which prohibits "any appropriation or payment, from any public fund whatever, of anything in aid of any church, or sectarian purpose."'

"We cannot agree with the conclusion reached by the Supreme Court of Illinois in this case. The argument by which the court reached its conclusion therein is not satisfactory. This argument is based on the facts that in the preamble to the Constitution of Illinois expression is given to the gratitude of its people for the religious liberty which they had been permitted to enjoy, that the Constitution of Illinois declared for the 'free exercise and enjoyment of religious profession and worship, without discrimination,' and that the Constitution provided that property used exclusively for religious purposes may be exempted from the burden of taxation. The court further says that the people of that state, not only did not declare hostility to religion, but regarded its teachings and practices as a public benefit, which might be equaled to the payment of taxes. The court further says that it was not the intention of the Constitution that institutions to which wards of the state might be committed should be absolutely divorced from religion or religious teaching. The court further put its decision upon the ground that this school received less than

the cost of the training of the girls committed to its care, and therefore it did not amount to giving aid to the school. The court likewise undertook to distinguish the case it then had under consideration from that of County of Cook v. Chicago Industrial School for Girls, supra. The distinction drawn between the two cases is that it did not appear in the former case that the school was getting less than the cost of the service it rendered to the county of Cook.

"The reasoning of the Supreme Court of Illinois in Dunn v. Chicago Industrial School for Girls, supra, does not appeal to us. It is true that the Constitution of Illinois does not declare hostility to religion. So the Constitution of Georgia does not declare hostility to religion. The Constitution of Illinois declares in favor of religious liberty; so does the Constitution of Georgia. The Constitution of Illinois exempts property used for religious purposes from taxation; so does the Constitution of Georgia. But both Constitutions declare against giving aid to sectarian schools and institutions. When the state selects a sectarian institution of learning, and commits to such institution its wards, for whose maintenance and education it pays, it gives the most substantial aid to such an instituion. On the same principle the state could undertake to educate all its children in such sectarian institution, and pay them for the education of its children in such institution rather than in public schools and public institutions of learning. Any such course would be giving the most valuable aid to such sectarian schools and institutions.

"So, when the city of La Grange made the contract with the Salvation Army, by which the latter, a sectarian institution, assumed the care of the poor of that city, although at actual cost, this was giving a great advantage and the most substantial aid to the Salvation Army in the prosecution of its benevolent and religious purposes. The giving of loaves and fishes is a powerful instrumentality in the successful prosecution of the work of a sectarian institution. So we are of the opinion that the taking of money from the public treasury of the city of

> La Grange, in payment to the Salvation Army for its care of the poor of that city, amounts to the taking of money from its treasury, directly and indirectly, in aid of this sectarian institution, in violation of this provision of the Constitution of Georgia."

And in the case of Williams v. Stanton Common School District, 191 S. W. 507, l. c. 514 (withdrawing former opinion, 172 Ky. 133, 188 S. W. 1058), the court said:

> "It may be true, and we are not disposed to doubt it, that the plan under which these two institutions operated was very beneficial to the children enrolled in the graded school, and that under its operation they derived moral as well as educational advantages that could not be secured if the graded school were conducted as an independent institution entirely free from the control or supervision of Stanton College or its public spirited president. But no odds how beneficial to the graded school or children the scheme may have been, it cannot be doubted that it was opposed to the spirit of the laws, and its invalidity is not to be condoned because the trustees of the graded school and a majority of the patrons of the school approved it. If it had the approval of all the patrons and all the children, it would yet be open to the condemnation that it was in violation of the Constitution as well as antagonistic to the public policy of the state. The trustees seem to have had the impression that because the arrangement was a good thing for the graded school, no one else should question its propriety, but the trustees of graded schools should not forget that these schools, as well as all common schools, are state, not local, institutions, and the people of the whole state are concerned in everything that affects any one of them either for good or evil.
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> "To authorize the validity of this arrangement here in question would be to encourage the creation of other like arrangements be-

tween other graded and common schools and other sectarian institutions, and presently we would have the common schools here and there throughout the state operated in connection with that denominational school that happened to have the largest influence and membership in the particular community where the union was made. That such a course would surely create deep and bitter resentment and dissatisfaction among many people and in many parts of the state, and result in lasting injury to the common school system, must be admitted when thought is given to the religious sentiments and prejudices entertained by large numbers of our people that manifest themselves in many different forms of expression.

"One phase of this strong sectarian sentiment finds ample and wide-spread illustration in the well-known fact that there are thousands of good men and women who will not send their children to any school that is controlled by or under the influence of a denominational institution or church that teaches doctrines or indulges in forms of worship that do not meet their approval. To compose this uneasy spirit that was abroad in the land, to quiet the conscientious scruples of those justly opposed to forced contributions in aid of sectarian institutions, and save the common school from denominational criticism and attack, the prohibition against the union of church and school found voice in the organic law, and its pronouncement must be scrupulously adhered to so that no parent anywhere in the state may have it to say, as did one of the plaintiffs in this case, that he would not patronize the common school in his neighborhood because it was under the control of religious body whose tenets or practices he could not accept.

"The common school, however humble its surroundings or deficient its curriculum, is the most valuable public institution in the state, and its efficiency and worth must not be impaired or destroyed by entangling it in denominational or sectarian alliances. As an independent, nonsectarian unit, it is en-

> titled to the sincere and energetic support of all the people of the state, as well as to the hearty good will of all classes, irrespective of their religious views or church affiliations, and this on account of the inestimable blessing it confers on thousands of girls and boys in affording them the only opportunity for acquiring an education that could come within their reach; and if it is to live and grow in usefulness and strength, as it will surely do, the spirit of the Constitution must pervade its life and leave no man to say it has lost its carefully builded and jealously protected undenominational and nonsectarian character. This school system derives its support from the communicants of all churches, without being subservient to any of them, and its integrity and its safety depend on a strict adherence to the principle of separation of church and school, not only according to the letter, but to the spirit, of the Constitution.
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> "Having these views, and to make clear and certain our determination to preserve the spirit of the Constitution in its efforts to keep separate church and school, we not only hold that it is a violation of the Constitution to appropriate any part of the common school fund, 'in aid of any church, sectarian or denominational school,' but equally unlawful for the trustees of any common or graded common school or educational institution, supported in whole or in part by public funds raised by taxation or dedicated to common school purposes, to enter into any contracts, agreements, or arrangements through or under which such school or educational institution may be brought directly or indirectly under the influence, control, or supervision of any denominational or sectarian institution or school."

An examination of the cases leads us to the conclusion that the weight of authority is to the effect that a contract between a state, county, city, school district or other political subdivision and a sectarian institution, whereby the former agrees to pay the latter for services rendered or expenditures incurred thereunder, is within the meaning of the

constitutional provision inhibiting the use of public funds in aid of sectarian institutions and void.

In the instant case the claim for tuition by St. Rita's is not even supported by a contract with the board of directors of the school district, and we are therefore of the opinion that payment of tuition to the parochial school of school funds would be within the meaning of Article XI, Section 11, of the Missouri Constitution prohibiting the use of public funds in aid of sectarian institutions and void.

Respectfully submitted,

WM. ORR SAWYERS,
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney General.

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