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State Constitutions and Statutes

DESPITE THE SENATE DEFEAT in 1876 of the Blaine Amendment, the movement for prohibiting sectarian instruction in the public schools and forbidding state support of parochial schools was too powerful to be ignored. During the period just prior to and following the Civil War, most states were including in their constitutions prohibitions concerning the use of tax revenue for sectarian purposes in both public and parochial schools. In 1876, the Congress of the United States passed a law requiring all states admitted to the Union after that date to have irrevocable provisions in their constitutions that guaranteed religious freedom and the establishment of a public school system free from sectarian control.¹

It would appear, however, that the United States Supreme Court's ruling in *Coyle v. Smith* would make such a provision unenforceable by Congress once the state has been officially admitted.² There, the court held that states, after being admitted to the Union, were on a basis of equality with all other states, and that restrictions placed

upon them by Congress as conditions for admission, could not include matters normally considered to be completely under a state's jurisdiction.

Even before the 1876 federal requirement, states entering the Union around the middle of the nineteenth century had anticipated the need for such provisions and included them in their constitutions. Wisconsin, which became a state in 1848, has provisions covering these subjects which are fairly representative of this voluntary tendency:

The right of every man to worship almighty God according to the dictates of his own conscience shall never be infringed; nor shall any man be compelled to attend, erect, or support any place of worship . . . nor shall any control of or interference with the rights of conscience be permitted, or any preference be given by law to any religious establishment or modes of worship.³

Another section provides that the legislature shall set up common schools, "and no sectarian instruction shall be allowed therein."⁴

EARLY STATE CONSTITUTIONS

The Revolutionary War constitutions of the original thirteen states illustrate the close affiliation and cooperation between church and state which existed at that time. Some of their more outstanding features are noteworthy here as demonstrating no real antagonism, for the most part, toward the use of public funds for sectarian education.⁵

The Delaware Constitution of 1776 required an officeholder to profess his faith in Christianity and a belief in the validity of the Old and New Testaments. While it did not exclude Roman Catholics it did exclude Jews and other non-Christians. At the same time it provided that the

state could not establish one religious sect in preference to another.

The Georgia Constitution of 1777 also required that members of the state legislature be of the Protestant religion. It did, however, provide that all persons should have free exercise of religion, and need not support any teachers, "except those of their own profession."

The New Hampshire Constitution of 1776 said nothing about religion, but the one which went into operation in 1784 required officeholders to be of the Protestant faith. It also empowered the legislature to authorize the municipalities to provide at their own expense for the support of Protestant teachers of "piety, religion and morality."⁶ At the same time it provided that no Christian sect would be established by law.

The New Jersey Constitution of 1776 excluded Roman Catholics from elective offices, but required that there be no establishment of religion, and no preference shown to any Protestant sect by the State.

The constitution adopted by North Carolina in 1776 also required officeholders to be Protestants. It prohibited the establishment of religion and the compulsory attendance or support of the "building of any house of worship."

The Massachusetts Constitution of 1780 contained a Declaration of Rights which was largely the work of John Adams.⁷ While it prohibited the establishment of any sect and granted all Christians equal protection under the law, it also provided for the public support of Protestant teachers of "piety, religion and morality, in all cases where such provision shall not be made voluntarily."⁸

The New York Constitution of 1777 after making some barbed remarks about the "spiritual aggression and intoler-

ance" of "wicked priests," goes on to grant the "free exercise and enjoyment of religious profession and worship without discrimination or preference." In spite of this, the Episcopal church still retained special privileges until a legislative act of 1784 put an end to them.

The constitution adopted by Pennsylvania in 1776 required a Christian oath and belief in both Testaments as prerequisites for holding public office. However, it stressed religious freedom, and placed Christian sects on an even footing by forbidding the compulsory support of any place of worship.

The state of Rhode Island did not immediately adopt a constitution during the Revolutionary era, but remained under its Colonial charter of 1663. This prohibited an establishment of religion and granted religious freedom to all Christians. It was this that made Rhode Island the most tolerant of the original thirteen states toward religious diversities, but here too, the religious freedom of Jews and non-Christians was restricted.

South Carolina's first constitution of 1776 contains no Bill of Rights and makes no reference to religion or religious freedom. But the Constitution of 1778 is exceptionally clear-cut in providing for the establishment of the Protestant religion. However, it refers to no specific denomination. Only Protestants could hold seats in the state legislature, and a belief in God was required of all voters. Article XXVIII contains the most detailed provisions to insure a Protestant state of any constitution in the history of the United States.⁹

The Vermont Constitution of 1777 contains a Bill of Rights which is devoted to religion and which closely resembles the Pennsylvania Constitution of 1776. It provides that no one can be compelled to support a place of worship

against his will, and unlike the previously mentioned constitution of Pennsylvania states that no Protestant can be deprived of his civil rights due to his religious sentiments. (The Pennsylvania constitution made no reference to Protestantism.) Section XLI of this Vermont document also provided for the public encouragement and protection of religious societies incorporated for the advancement of religion and learning.

Furthermore, the Vermont Supreme Court held in 1961 that merely because public funds were expended to an institution operated by a religious enterprise, this did not establish the fact that the proceeds were used to support the religion professed by the recipients.¹⁰

The struggle for religious freedom and disestablishment in Virginia is too complex to be covered in this cursory review. It must suffice to say that the Anglican church was the established church here in 1776, and continued to be preferred until the active opposition of men such as Madison and Jefferson in 1785 resulted in the "Bill for Establishing Religious Freedom" which prohibited such public aid to religion.¹¹

The Congregational church was the established church in Connecticut until the beginning of the nineteenth century. During this period it was extremely influential and received many special privileges. The Constitution of 1818 put an end to all this and stands somewhat as a guidepost in the drive that later was to influence all the states in restricting the use of public funds to sectarian schools. Following the adoption of this constitution a strong movement to divorce the public schools from the influence of the Congregational church developed in Connecticut. The article of particular importance to this study states in part:

It being the right and duty of all men to worship the Supreme Being, the Great Creator and Preserver of the Universe, in the mode most consistent with the dictates of their consciences; no person shall be compelled to join or support, nor by law be classed with, or associated to any congregation, church or religious association. . . . And each and every society or denomination of Christians in this State, shall have and enjoy the same and equal powers, rights and privileges; and shall have power and authority to support and maintain the Ministers or Teachers of their respective denominations, and to build and repair houses of public worship, by a tax on the members of their respective societies only . . .¹²

While Kentucky did not become a state until 1792, its constitution is notable for a Bill of Rights (Article XII) drafted by Thomas Jefferson, which is illustrative of the tendency of all the states in the nineteenth century to prohibit the use of public funds for sectarian purposes. It states:

3. That all men have a natural and indefeasible right to worship Almighty God according to the dictates of their consciences; that no man of right can be compelled to attend, erect, or support any place of worship, or to maintain any ministry against his consent; that no human authority can in any case whatever control or interfere with the rights of conscience; and and that no preference shall ever be given by law to any religious societies or modes of worship.
4. That the civil rights, privileges, or capacities of any citizen shall in no ways be diminished or enlarged on account of his religion.¹³

Formalizing the Principle of Church-State Separation

In his monumental study of church-state relations in the United States, Stokes dates the constitutional guarantees of religious freedom in the United States from 1833. From this date on, he believes, the complete legal separation between church and state had been won. However, the National Educational Association in its study of sectarian influences in the public schools, has concluded that prior to the Civil War,

few states specifically prohibited the use of public funds for sectarian education.¹⁴ It would appear that the great drive by the states to stop the use of public funds for sectarian purposes by constitutional and statutory provisions reached its crest following the Civil War.

New states entering the Union after 1870, when touching on religious liberty and public support of sectarian instruction in their constitutions, usually adopted a form similar to those of Connecticut or Kentucky mentioned above. The theory of those constitutional enactments was summed up by Cooley, in his five conditions for religious liberty. He pointed out that constitutions should prohibit the passage of laws:

- (1) respecting the establishment of religion.
- (2) compelling support by taxation or otherwise of religious instructions.
- (3) compelling attendance upon religious worship.
- (4) restraining the free exercise of religion according to the dictates of one's conscience.
- (5) restraining the expression of religious beliefs.¹⁵

PRESENT CONSTITUTIONAL PROVISIONS

Today, all states but Vermont¹⁶ have constitutional provisions prohibiting the expenditure of public funds, or at least school funds for sectarian purposes.¹⁷ While there is considerable variation in the phraseology of these provisions, they are capable of being arranged in a rough categorical order according to their decreasing order of scope.¹⁸ First, there are the provisions which prohibit the use of public funds for any sectarian purpose or institution.¹⁹ Secondly, there are the state constitutional provisions which prohibit the use of public funds for sectarian²⁰ or non-state-controlled schools.²¹ Finally, there are provisions which prohibit the

use of *public school* funds for sectarian²² or other than public school purposes.²³

A more specific breakdown of state constitutional provisions prohibiting the use of public and school funds for sectarian purposes is possible and establishes seven generic types. They are: (1) public school funds may not be used for any purpose other than for the support of common schools; (2) no public grants or appropriation of money, property, or credit can be made to any institution not under the states' exclusive control; (3) no public appropriation may be made for any sectarian purpose, institution, or society; (4) no state aid may be granted to educational institutions controlled by a sectarian denomination; (5) no state aid may be extended to sectarian schools; (6) no state aid may be granted to private schools; (7) no public appropriation may be made for any school in which sectarian doctrines are taught.²⁴

A similar policy has been formally adopted by Congress for the District of Columbia. This statute states:

It is hereby declared to be the policy of the Government of the United States to make no appropriation of money or property for the purpose of founding, maintaining, or aiding by payment for services, expenses, or otherwise, any church or religious denomination, or any institution or society which is under sectarian or ecclesiastical control; and no money appropriated for charitable purposes in the District of Columbia, shall be paid to any church or religious denomination, or to any institution or society which is under sectarian or ecclesiastical control.²⁵

New Hampshire has a rather unique constitutional provision which might be noted. Part I, Section 6 of its constitution permits public support of Protestant teachers of religion, piety, and morality and at the same time is tempered by a provision guaranteeing the freedom of conscience. It explains:

As morality and piety, rightly grounded on evangelical principles will give the best and greatest security to government, and will lay, in the hearts of men, the strongest obligations to due subjection; and as the knowledge of these is most likely to be propagated through a society by the institution of the public worship of the Deity, and of public instruction in morality and religion; therefore, to promote those important purposes, the people of this state, have a right to empower and do empower, the legislature to authorize, from time to time, the several towns, parishes, bodies corporate, or religious societies within this state to make adequate provisions, at their own expense for the support of and maintenance of public teachers of piety, religion, and morality. *Providing notwithstanding* that the various towns shall have the exclusive right of electing their own public teachers. And no person of any one particular sect or denomination shall ever be compelled to pay towards the support of the teacher or teachers of another persuasion, sect, or denomination.

This provision was adopted in 1784, and the litigation in which it played a part does little to aid us in ascertaining its intent. However, it might be noted that a New Hampshire Statute of 1819 took all power to build meeting halls and to support religious teachers from the towns where it had been placed by a statute of 1791, and conferred it upon religious societies. Any religious sect as well as any denomination of Christians was authorized to form such a society.²⁶ This constitutional provision has further been held to protect the rights of conscience of Roman Catholics as well as Protestants,²⁷ and to permit tax exemptions to a Catholic girls' school.²⁸ There is, however, no litigation involving Bible-reading exercises or related programs in New Hampshire.

The Model State Constitution and Religious Freedom

It might be interesting at this point to note how the Model State Constitution prepared by the Committee on

State Government of the National Municipal League handles this subject. Two sections deal specifically with it:

Section 110. *Freedom of Religion.* No law shall be passed respecting the establishment of religion, or prohibiting the free exercise thereof.

Section 111. *Appropriations for Private Purposes.* No tax shall be levied or appropriation of public money or property be made, either directly or indirectly, except for a public purpose, and no public money or property shall ever be appropriated, applied, donated, or used directly or indirectly, for any sect, church, denomination, or sectarian institution. No public money or property shall be appropriated for a charitable, industrial, educational or benevolent purpose except to a department, office, agency or civil division of the state.²⁹

It is clear from the foregoing that the states' constitutions almost universally oppose sectarian instruction in the public schools and public aid to any type of sectarian establishment. What is not clear is what specific practices constitute sectarian teaching. Kansas, for example, has a provision in its constitution which states that no religious sect or sects shall ever control any part of the public or University funds.³⁰ But in *Billard v. Board of Education*, the Supreme Court of that state held that this provision did not prohibit Bible reading.³¹

STATUTES PROHIBITING SECTARIAN INSTRUCTION AND INFLUENCE

A host of state statutes prohibit sectarian instruction or influence in the public schools. These seemingly might prevent Bible reading in these schools, but in many cases they did not. Twenty-four states have enacted legislation prohibiting sectarian instruction in public schools in one form or another.³²

The approach of the statutes varies. The very general type is illustrated by the Kansas statute, which states in part, "No sectarian doctrines shall be taught or inculcated in any public schools of the city . . ." ³³ However, this particular law does not forbid Bible reading, since the next portion states, ". . . but the Holy Scriptures, without note or comment may be used therein." The other type of statute prohibiting sectarian instruction is much more specific, and deals particularly with books used in the school. Nevada's statute exemplifies this approach.

No books, tracts, or papers of sectarian or denominational character shall be used or introduced in any school established under the provisions of this act; nor shall any sectarian or denominational doctrines be taught therein. ³⁴

From this it is apparent that the states want to keep the public school fund free from encroachment by parochial schools, and to prevent sectarian instruction of any sort that is aided by public funds. The National Education Association in its survey concluded that the least protected states regarding the use of public money for sectarian purposes were Maine, North Carolina, and New Jersey. ³⁵ It might be noted that two of these states are segments of the old Puritan Commonwealth and one is part of the so-called "Bible Belt."

The states' constitutions are unclear as to what particular practices constitute sectarianism. And a most paradoxical issue confronting the states in the sectarian practices problem is the position of Bible reading. The problem has been summed up by one investigator in a series of questions that must be answered before a state policy can be inaugurated in this field: "Is Bible reading sectarian instruction? If so, is it prohibited by the principle of sepa-

ration; (or) is Bible reading nonsectarian religious instruction? If it is, does it come under the ban of 'multiple establishment' of religion?"³⁶

The majority of states, as we shall see, tended to regard Bible reading without comment, as nonsectarian religious or moral instruction. The states which permitted Bible reading seem not to have considered that this represents a form of "multiple establishment" of religion which was meant to be prohibited by the separation theory expounded by the framers of the First Amendment.³⁷

STATUTES REGARDING BIBLE READING

Before the Supreme Court's ruling in 1963, a total of thirty-seven states permitted Bible reading in their public schools. At least thirteen of them arrived at this policy through the process of judicial interpretation. No state constitution prohibits Bible reading as such, and in all but one state the final decision as to the legality of the practice ultimately rested in the hands of the state judiciary. Only Mississippi's state constitution is explicit in regard to Bible reading. The section relating to religious liberty states, "The rights hereby secured shall not be construed to . . . exclude the Holy Bible from use in the public schools of the state."³⁸

Though only Mississippi provides constitutionally for Bible reading, a number of states provide for Bible reading through statutes. Twelve states, as well as the District of Columbia, have statutes requiring that the Bible be read.³⁹ The Pennsylvania law, however, was declared unconstitutional in 1959 by a federal district court and this decision was upheld in a rehearing by the same court in 1962, even though the law had meanwhile been amended by the Pennsylvania legislature to make Bible reading in the public

schools discretionary.⁴⁰ On appeal, the Pennsylvania law was declared unconstitutional in 1963 by the U.S. Supreme Court in the *Schempp* case.⁴¹

The state statutes authorizing Bible reading in the public schools take two principal forms. The first and more generalized form is exemplified by an Alabama statute which states: "All schools in this state which are supported in whole or in part by the public funds shall have once every school day reading from the Bible."⁴²

The more specific form which a number of states use is illustrated by an Arkansas statute:

Every teacher or other person in charge shall provide for the reverent daily reading of a portion of the English Bible without comment in every public tax supported school up to and including every high school in the State, in the presence of the pupils; and prayer may be offered or the Lord's Prayer repeated; PROVIDED, any pupil shall be excused from the room on the written request of a parent or guardian.⁴³

The next section provides the punishment to be meted out for the violation of the above section. The first offense of omission on the part of an instructor is punishable by a twenty-five-dollar fine, the second results in the automatic termination of the teaching contract.

The specific type of statute such as the one cited above pays particular attention to two factors which are at the heart of most judicial battles over this question. These laws provide first, that the Bible must be read without note or comment, and second, those students who feel that their rights of conscience might be violated are allowed to absent themselves from the room in which the reading is taking place, upon presenting a written request from their parents or guardians. Nine of the states which permit Bible reading also stipulate that no note or comment may accompany such

reading, and seven states include provisions which allow pupils who have conscientious objections to such reading to leave the room during this time.⁴⁴

It might be noted that several courts holding Bible reading to be legal have added that they would not have so ruled had the reading been compulsory.⁴⁵

Problems of Practice

A practical problem created by these laws has apparently been overlooked by the legislatures; that is, the question of which version of the Bible should be used. The laws are not specific on this. They merely speak of using "the Bible," "the Holy Bible," or the "English Bible," except for Maryland and Pennsylvania where the Douay Version is also permitted. Antagonism, however, usually results because Roman Catholics and Jews object to the use of the King James Version in fulfilling the Bible-reading requirement.

Choosing among Bibles is no minor problem. Notwithstanding the fact that some courts have taken the position that there is no difference between them,⁴⁶ the King James Version and the Douay Version of the Bible are not "essentially" the same, nor are they regarded as such by their partisans. Roman Catholics regard the King James Version, which excludes the so-called Apocryphal books upon which the theory of purgatory and other points of dogma important to Catholic theology is based, as incomplete and misleading. To Jewish children, any reading of the New Testament which deals with Jesus as the Messiah, gives the lie to their beliefs, and contradicts the teaching in their homes.⁴⁷ What version of the Bible to select has continually vexed educators and justices charged with the duty of determining and carrying out the intent of these legislative enactments.

The type of rationalization necessary to explain selections may be seen in a brief look at the rationale of a Penn-

sylvania case. This court felt that the "difference in emphasis or alleged mistreatment (resulting from a choice of either the King James or the Douay Version of the Bible) is an ecclesiastical matter, outside the scope of decision by civil government." It also pointed out that these are not matters for a judicial court to consider, for while the King James Version has been described as a nonsectarian book because it is used by many sects, the Douay Version has been held to be sufficiently similar to the King James Version to be used in the public schools.⁴⁸

If the version to be used is, as the court has said, in the field of ecclesiastical affairs, and thus outside the realm of civil government, it might be asked where civil government gets the right to legislate on Bible reading in the first place? There is evidence to show that Madison and Jefferson would have denied any implied right such as this which allows civil government to legislate on religious matters,⁴⁹ and no one today has come up with an answer to how this may be done and still avoid sectarian disputes resulting from actions such as this.

Of the eleven states having laws requiring Bible reading (Alabama, Arkansas, Delaware, Florida, Georgia, Idaho, Kentucky, Maine, Massachusetts, New Jersey, Tennessee) and the District of Columbia, all but Idaho are on the eastern seaboard or in the South. In the eastern seaboard area, this possibly illustrates the pervasiveness of Colonial customs regarding religious instruction in the public schools; in the South, the importance of the Evangelist movement. Another point of interest is that seven of the twelve states also have laws prohibiting the teaching of sectarian religion in their public schools. With the exception of the Massachusetts statute, all of these laws are recent, having been passed since 1913.

Six states have statutes which permit but do not require

that the Bible be read in their schools: Indiana, Iowa, Kansas, North Dakota, Pennsylvania, and Oklahoma.⁵⁰ Prior to 1929, South Dakota was in this list, but in that year the provisions permitting Bible reading were declared unconstitutional by its courts.⁵¹ The specific passage was deleted from the South Dakota Code.

Statutes *permitting* Bible reading have generalized and specific approaches as do the state statutes *requiring* Bible reading. The generalized approach is illustrated by the Indiana statute which says simply, "The Bible shall not be excluded from the public schools of the state."⁵² A more comprehensive version sometimes used is illustrated by an Iowa provision:

The Bible shall not be excluded from any public schools or institutions in the state, nor shall any child be required to read it contrary to the wishes of his parent or guardian.⁵³

From conversations with several ex-public school students of these states, I have the impression that Bible reading is not always practiced in the states where it is permitted (but not required) by statutes.

Before being declared unconstitutional by the United States Supreme Court, Bible reading was permitted in nineteen states,⁵⁴ although no constitutional or statutory provision specifically providing for the practice existed. It was permitted either because the school boards and instructors believed it was not prohibited by state law and the taxpayers of the state condoned the practice, or because some citizen objected to it in court, and the state courts found it legal under the state's constitutional provisions.

In fourteen of these states it might be said that Bible reading was condoned, but in the five remaining states, Michigan, Colorado, Texas, Minnesota, and New York, the

courts ruled that this practice was legal, even in the absence of specific permissive provisions. While court decisions which take a favorable view of Bible reading will be discussed in greater detail in the next chapter, it might be noted here that in states where statutory provisions existed which permitted or required Bible reading, and where litigation arose concerning the constitutionality of those provisions, the high courts of eight states, Kentucky, Kansas, Iowa, Massachusetts, Maine, New Jersey, Tennessee, and Georgia, found this to be a valid exercise of state power.

Summary

In summary, we find that, prior to the invalidation of such programs by the U.S. Supreme Court in 1963, thirty-seven states required, permitted, or condoned Bible reading in the public schools. Only one, Mississippi, had a specific provision in its constitution to this effect. Eleven states have statutes requiring Bible reading. Six states have statutes which permit, but do not require Bible reading. Six states, in the absence of statutory provisions, have court decisions which permitted Bible reading and which were equally binding. Fourteen states permitted Bible reading in the absence of any provisions whatsoever, and this practice was never challenged in the courts.

Obviously, then, despite the multitudinous state constitutional and statutory provisions forbidding sectarian instruction and public support of sectarian schools, the great majority of states did not feel that Bible reading came under these bans. In only eleven states was Bible reading felt to be sectarian instruction and, hence, illegal.⁵⁵ It will be remembered that *no state* has a constitutional or statutory provision forbidding Bible reading as such. Therefore, the conclusions regarding the illegality of Bible read-

ing have resulted from judicial decisions in eight of the eleven states: Illinois, Louisiana, Nebraska, Ohio, South Dakota, Washington, Pennsylvania, and Wisconsin. In the remaining three states where the practice was held to be illegal, the people responsible for educational policy generally regarded Bible reading as being prohibited by either constitutional or statutory provisions.⁵⁶ An Arizona statute provides:

Any teacher who shall use any sectarian or denominational books, or teach any sectarian doctrine, or conduct any religious exercises in his school, or who fails to comply with any provision of this chapter, shall be guilty of unprofessional conduct, and the proper authority shall revoke his certificate.⁵⁷

While no court case has ever been brought to interpret this statute, the authorities in Arizona feel that this section appears to prohibit Bible reading since it specifically mentions "religious instruction."⁵⁸ It should be remembered, however, that many of the proponents of Bible reading argued that such programs were not religious or sectarian instruction, and the courts of a number of states have agreed with them.

California's position is indeterminate. The California Constitution has a section which provides:

No public money shall ever be appropriated for the support of any sectarian or denominational school or any school not under the exclusive control of the officers of the public schools; nor shall any sectarian or denominational doctrines be taught or any instruction thereon be permitted directly or indirectly in any of the public schools of the state.⁵⁹

An additional statute to this effect in California's School Code says, "No publication of a sectarian, partisan, or denominational nature must be used or distributed in any

school, or be made a part of any school library . . ."⁶⁰ The educational policy formulators in this state have felt for a long time that these provisions effectively prohibited Bible-reading exercises in the public schools.⁶¹ The Supreme Court of California, however, in *Evans v. Selma High School*, concluded that these provisions did not prohibit the school board from purchasing Bibles to add to the school library, so long as these were not to be used for school-sanctioned Bible-reading exercises.⁶²

But in the 1953 legislative session in California, twenty-one members of the California Assembly introduced Assembly Bill No. 682, which would authorize Bible-reading exercises in the public schools.⁶³ Several sections of the proposed legislation are noteworthy:

- 8301. As an aid to moral instruction in the public schools of California it shall be the policy of the Education Department to permit the reading of selected portions of the Bible.
- 8302. In each class or grade in the public schools selections from the Bible, from both the Old and New Testaments, from any recognized translation thereof, may be read aloud daily, or at other intervals, without sectarian application.
- 8303. The Department of Education shall authorize and publish a Syllabus of Graded Bible Readings which shall be made available to all public schools . . .
- 8305. Any exemption of pupils from such readings shall be arranged by the local school board.⁶⁴

Following a series of unfavorable reports issued by several educator organizations, final action on the bill was delayed pending further study. (See Chapter 7 for a full discussion of this problem.)

The Nevada constitution, while it forbids sectarian control and instruction in a general manner,⁶⁵ is not as

specific on these matters as the California constitution. Nevada's educators relied upon a statute that forbids the use of "sectarian or denominational books, tracts, etc.,"⁶⁶ for their belief that Bible reading was illegal. This question was never litigated, but authorities felt that the constitution and statutes of Nevada prevented the practice of Bible reading in that state.⁶⁷

Montana is an enigma in regard to Bible reading in the public schools. It has not been included in any of the foregoing groups, although there is no evidence that Bible reading is practiced in Montana public schools. There is no evidence of any statutory provisions touching upon the subject of Bible reading, and no litigation exists specifically covering this topic. The National Education Association in its survey further reports that the State Superintendent of Education for Montana did not reply to its questionnaire inquiring whether the Bible was read in the schools.⁶⁸ The constitution of Montana contains rather specific prohibitions against public support of sectarian schools or instruction.

No appropriations shall be made for charitable, industrial, educational, or benevolent purposes to any person, corporation, or community not under the absolute control of the state, nor to any denominational or sectarian institution or association.⁶⁹

Peripheral Problems

A number of peripheral examples of state practices favoring Bible reading should be noticed. While Bible reading has been primarily a Protestant-sponsored phenomenon, it has been noted that in Louisiana, Roman Catholic instruction is sometimes conducted in the public schools by church officials.⁷⁰ It would seem a reasonable assumption

that the reading of the Douay Bible is part of such instruction. In Alabama and Texas, high school credit is given for a course in Bible study. In Texas, however, the course must be taught from the point of view of literature rather than religion.⁷¹ This practice has been attempted in other states, but in Washington, for example, the state's supreme court held that this violated the provision of the state constitution forbidding sectarian control and instruction in the public schools.⁷²

The use of specific portions of the Bible is permitted by the statutes of some states. The Lord's Prayer is permitted by statute in Delaware, Maine, and New Jersey public schools.⁷³ Mississippi and North Dakota have statutes which permit the teaching of the Ten Commandments.⁷⁴ The North Dakota law, as a matter of fact, requires that the Ten Commandments be displayed in every classroom.

The practical difficulties facing an educational system allowing such things as instruction in the Ten Commandments and repetition of the Lord's Prayer have been summed up by Moehlman. He points out that the motive behind such plans may be laudable, but the practice may result in educational chaos, since there are several versions of the Lord's Prayer and the Ten Commandments, depending upon which Bible is used and to which religious denomination one belongs.⁷⁵ The primary purpose behind contemporary educational theory is to aid democracy by stressing the homogeneous nature of all Americans, regardless of religion or color.⁷⁶ Forcing someone else's version of the Lord's Prayer, the Ten Commandments, or the Bible upon a child is hardly calculated to achieve this end.