



standards as to length of school year, length of day, subjects to be taught, and teacher qualifications. Teacher certification is required, except for courses in religion and other subjects not taught in the public schools. State law in Washington allows persons of "unusual competence" to teach, if they are supervised by certified teachers.

- o The Vermont legislature, following efforts by its state board to require teachers certification, made it clear it could not do so, and also strengthened its child abuse laws in order to narrowly focus on actual problems, rather than to sweepingly subject all private educators to regulation.
- o In mid-1982 the Arizona legislature determined to permit home instruction, so long as the child shows academic progress, as indicated by test scores or an impartial professional evaluation.
- o Louisiana exempted schools which receive no local, state or federal funds from most reporting requirements.
- o Arizona, Oregon, and North Carolina require testing of the children, to help provide assurance that they are being educated.
- o Teacher certification is the mechanism used in Washington, although it reduces flexibility for private education alternatives and precludes instruction by a parent in most cases.

#### Policy Questions

Policy makers contemplating a change in state compulsory education laws need to ask the following questions before deciding on a course of action.

- o Should compulsory attendance laws carry criminal sanctions against parents honestly acting in the best interests of their children?
- o Are the children educated in unapproved settings acquiring what they need for good citizenship and self-sufficiency?
- o What are the long-range implications of large segments of the population insulating themselves from the mainstream of society -- in this case, by avoiding state-approved education for their children?

- o Are private schools havens for those wishing to avoid integration?
- o Do existing consumer protection laws assure that parents are evaluating small nontraditional schools on the basis of adequate and correct information?
- o What are the political implications of the growing exodus from public schools, when local school districts depend on state aid based on enrollment or attendance?

### Policy Implications

Organizations and individuals urging more flexible compulsory education laws argue that this is required to preserve the free exercise of religion. These groups argue that parents know what is best for the child. They include those participating in nontraditional options, fundamentalist Christians, more traditional private schools and, to some extent, organizations and individuals concerned with civil liberties. The national ACLU, for example, in its Policy #71A, states: "We believe that, in the interest of parental right to choose an alternative to public education, [home instruction with safeguards, such as approval of curriculum or testing of the child] . . . should be extended to all jurisdictions because the state's interest in assuring minimum levels of education does not extend to control of the means by which that interest is realized."

Organizations and individuals urging retention or adoption of stricter requirements for private education generally argue that these regulations are needed to assure the best interests of the child, and to prevent balkanization of society. These groups include teachers' organizations and public school administrators.

### Resources

American Civil Liberties Union, Policy Guide, 1981/1982, at pp. 113-113a.

Cooper, Bruce and Donald McLaughlin. "The Latest Word on Private School Growth," paper presented to the American Educational Research Ass'n., New York, March, 1982.

Hazard, William, "The Flight from the Public Schools: Myth or Reality?" presented at ECS, Special Advanced Leadership Program Services Seminar for Legislators, July 31, 1980.

Statistics of Public Elementary and Secondary Day Schools,  
National Center for Educational Statistics, Fall 1970 and  
Fall 1970 and Fall 1978.

Nordin, Virginia and William Lloyd Turner. "More Than  
Segregation Academies: The Growing Protestant  
Fundamentalist Schools," Phi Delta Kappan, February, 1980.

Lines, Patricia M. "State Regulation of Private Education,"  
Phi Delta Kappan, October, 1982.

Lines, Patricia M. "Private Education Alternatives and State  
Regulation," Education Commission of the States, Law and  
Education Center, Pub. no. LEC-82-3, March, 1982, 42 pp.  
\$3.00/copy + \$1.50 postage and handling.

Popham, James. "Teaching Skill Under Scrutiny," Phi Delta  
Kappan, vol. 52, no. 10, June 1971, pp. 599--602.

Weaver, Roy, et al. "Home Tutorials vs. The Public School in  
Los Angeles," Phi Delta Kappan, Dec. 1980.

---



# ecs issuegrams

A service of THE EDUCATION COMMISSION OF THE STATES

*ISSUEGRAMS are summary reports on major education issues written for state leaders. They include background information, analysis of differing views, lists of sources and references - all written for busy readers. Each is updated periodically.*

## Issuegrams currently available:

1. Research Findings on Effective Teaching and Schools
2. Achievement Trends in the Arts
3. Collective Bargaining Issues Continue
4. Adult Learning: A Major Trend
5. Low-Cost School Improvement
6. Achievement in Mathematics and Science
7. Testing for Teacher Certification
8. Energy Education: Another Passing Fad?
9. How Well Can Students Read and Write?
10. Special Education and the Law
11. State Programs of School Improvement
12. Compulsory Schooling and Nontraditional Education
13. Education for Economic Growth
14. The Four-Day School Week
15. Setting Up Blue Ribbon Commissions
16. Student Achievement in Public and Private Schools
17. Information Society Challenges Education
18. School Programs To Prevent Drug Abuse
19. Tuition Tax Credits
20. Student Minimum Competency Testing

## Issuegrams available March 1, 1983:

21. State Budget Incentives for Quality Improvement (Postsecondary Education)
22. State Licensure/Authorization
23. Recruitment, Selection and Retention of Teachers
24. Teacher Shortages
25. School Finance Equalization
26. School Finance Reform
27. School Finance Litigation
28. Programs for Special Populations
29. State Education Roles and Missions
30. State K-12 Governance Structures
31. The State Legislative Voting Process in Education
32. Block Grant Implementation
33. Prayer in the Schools
34. Curriculum and the First Amendment
35. Sex Equity in Education
36. Legal Issues in Education Testing
37. Student Skills for a Technology Economy
38. State Strategic Planning for Technology
39. Migrant Education
40. Program Review in Postsecondary Education

*It is the policy of the Education Commission of the States to take affirmative action to prevent discrimination in its policies, programs and employment practices.*

Please turn page for ordering information.

*from Van Ness*

COMMENTS ON  
HOUSE BILL #357  
and  
SENATE BILL # 361

The subject at hand has to do with House Bill #357, currently before the Legislature, and a Senate Bill with identical language for which I have no number at the present time.

This is an act relating to the regulation of religious schools.

The First Amendment to the U.S. Constitution says, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;" With these words, the First Amendment guarantees a separate church and state. Historically, this has meant that the church was not subject to the state, nor was the state subject to the church.

The First Amendment also guarantees "free exercise of religion." Our nation has repeatedly recognized the value of this most important clause and has resisted infringement of First Amendment rights of the citizenry.

It is also true that the language of the Constitution of the State of Alaska provides similar liberties to those spoken to in the Constitution of the United States.

At the outset of these remarks, it should be noted that it is the responsibility of the church to provide buildings and equipment that meet reasonable regulations for fire, life safety, health, and sanitation when they are equally and fairly applied to all.

One of the reasons for the presentation of the proposed legislation has to do with some language found in the Constitution of the State of Alaska. That language reads as follows:

ARTICLE VII. HEALTH, EDUCATION, AND WELFARE.

Section 1. The Legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions. Schools and institutions so established shall be free from sectarian control. No money shall be paid from public funds for the direct benefit of any religious or other private educational institution.

We have no quarrel with the language set forth in the paragraph above excerpted from the Constitution of the State of Alaska. However, since the provision is made that the public school system of the State of Alaska shall be free from sectarian control, we believe it follows reason and logic that the church-operated schools of the State of Alaska should be free from state control.

For this reason, we have addressed the importance of certain changes that need to be made in the present structure of the Alaska Statutes that would bring present law into line with the provision of the Federal and State Constitutions.

Our special concern has to do with the impact of present law and the resultant regulations that could be written under the umbrella of the existing language.

While we have stated above that we have no quarrel with the right of the State to require reasonable fire, life safety, health, and sanitation standards, we would never submit to the inspection of personnel, programs, finances, records, curricula, etc., since this is clearly a violation of the First Amendment, and cannot be permitted by the local church.

For these and other reasons, we have proposed an Amendment to Section 1. A.S. 14.07.020(8).

In this Amendment, we have addressed the fact that it is our sincere conviction that neither the Department of Education nor the Department of Health and Social Services has the constitutional right to general supervision over our pre-elementary schools, nor over the educational component of our nurseries.

We have also offered an Amendment to Section 2. A.S. 14.30.010(b)(i).

One of the reasons why we have suggested the addition of paragraph (D) has to do with the requirements set forth in paragraph (C). You see, it is our policy to regularly measure the progress of our students in our church-operated schools through the use of national achievement tests, and we would have no problem with making that information available to anybody on a request basis. However, since the Constitution says that no law shall be made concerning the establishment of religion, we simply believe that the State has no right to REQUIRE that information. So, we have proposed paragraph (D) as an amendment to that section.

One of the questions that has been raised with regard to paragraph (D) is as follows: "If paragraph (D) should become law, what assurance do we have that some 'fly-by-night' type church such as the Jim Jones syndrome or the Moonies won't pop up and start what they would call a church-operated school?"

Quite honestly, we don't have any assurance that that wouldn't happen. However, there are some reasons why I believe it would not happen. One of the reasons why I would question that a "Jim Jones" church or a "Moonies" church would start a school is simply that it is not as lucrative an operation as that which generally interests them. They are usually looking for ways to get their hands on large amounts of money as quickly as they can with a minimum of work involved.

The operation of a school involves a great deal of hard work, dedication, consecration, and plain, old-fashioned elbow grease!

Church-operated schools must function in a free-market society, and they simply must produce what they claim to produce, or the parents will take their children elsewhere.

My second response to the original question would be as follows: It is our understanding that laws should be made for the benefit of and the protection of the majority of the people. While it is true that there is the possibility that some church like the Jim Jones, Moonies, or Universal Life Church people might start a school under the provision of paragraph (D), why would the Legislature of the State of Alaska wish to continue to impose an unconstitutional burden on the many churches in the State of Alaska who are doing a great job in the field of private education because it was afraid a possible small minority might start an educational program that would be undesirable?

Why would the Legislature want to take away the liberties of the many because it feared the abuses of a few?

Section 3 has been amended by the Department of Law as a housekeeping measure to bring it into line with the rest of the proposed legislation in this bill.

The next item under consideration is Section 14.45.030. Once again, this is a matter where we believe constitutional liberties are being abrogated. While it is a fact that we would have no problem providing this information on a request basis in cooperation with the State Department of Education, we are convinced that it should not be required by law in order to maintain the true separation of church and state.

The last amendment proposed in this bill is found in A.S. 44.27.020(1).

This amendment is proposed in order to maintain the separation of church and state. Present law says that the Department of Education shall administer the State's program of education at the elementary, secondary, and adult levels. What we are

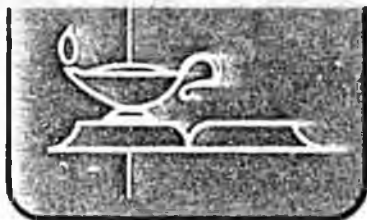
saying in our proposed amendment is simply that the State Department of Education does not have the right to administer the church's programs of education, since the State neither founded nor funded our church educational programs.

Respectfully submitted,

---

Paul E. Glover

4/18/83  
PEG:hm



# CHRISTIAN SCHOOL COMMENT

©

Vol. 13

More than 140,000 Copies Sold Monthly

No. 8

## WHAT EVERY PARENT SHOULD KNOW ABOUT THE ASSOCIATION OF CHRISTIAN SCHOOLS INTERNATIONAL

by Dr. Paul A. Kienel, Executive Director  
Association of Christian Schools International

The Association of Christian Schools International (ACSI) is a non-profit service organization serving Bible-centered Christian schools and colleges. It is the largest association of Christian schools in the world with a membership of 1,933 schools and a combined student enrollment of 337,554. Over the past five years, ACSI membership has nearly doubled in size. The annual cost of school membership is \$3.00 per student payable on October 1. Most schools include this small amount in their annual student registration fee. As a parent, you need to know about the wide variety of services offered by ACSI that directly benefit your Christian school and ultimately your child or children in the school.

### LEGAL/LEGISLATIVE SERVICES

Over the past five years, ACSI has raised and spent more than \$400,000 to preserve your school's religious freedom. We have had major struggles with the U.S. Department of Labor and the IRS. There have been several important victories but the struggle continues. Last week, for example, I met with U.S. Department of Education leaders in Washington, D.C. to discuss guidelines on how state departments of education can work cooperatively with Christian schools instead of attempting to control them. Next week I fly to Washington, D.C. again to meet with U.S. Department of Labor officials. We will attempt to reverse a decision made by the previous U.S. Secretary of Labor under the Carter Administration that claimed Christian school teachers are secular employees subject to government agency control. In the past ACSI has organized parent and teacher letter-writing campaigns to the White House and members of Congress on various issues. The results have been important to your school and your children.

### CONVENTIONS AND CONFERENCES

Another service of ACSI is to encourage the spiritual and professional growth of your school's staff through ACSI conventions and conferences. Your child's teacher comes away from these meetings with fresh insight and inspiration for his or her ministry in the classroom. The ACSI staff of 42 people work year-round preparing for these meetings. More than 20,000 teachers, administrators and board members will attend the seventeen ACSI conventions held in the United States and Canada this year. ACSI also conducts similar programs in other countries.

### ACCREDITATION AND CERTIFICATION

Under the capable leadership of ACSI's president, Dr. Roy Lowrie, Jr., the association offers a quality program of school accreditation and teacher and administrator certification. These professional services are designed to raise the spiritual and academic levels of our schools and to provide testimony to all, including government agencies, that the Christian school community has its own forms of

professional recognition. Dr. Lowrie is also the editor of *Christian School*, a professional journal for Christian school teachers and board members. It is provided free of charge to teachers in ACSI member schools.

### STUDENT ACTIVITIES

Approximately 25,000 Christian school students participate annually in ACSI student activities. I am referring to speech meets, spelling bees, choir festivals, science fairs, art festivals, sporting events, piano festivals, academic meets, band festivals, cheerleader camps and student leadership conferences. Each of these events is designed to inspire leadership qualities and communication skills so that students will be effective in sharing Jesus Christ with others.

### PROFESSIONAL COUNSEL

ACSI personnel are located in twelve offices throughout the country. They are available to offer counsel and information to Christian schools in the United States and Canada. The ACSI regional directors are competent leaders in the Christian school movement. Pray for them as they travel thousands of miles each year on behalf of ACSI member schools.

### PROFESSIONAL BOOKS

ACSI publishes many books and manuals for parents, administrators, board members, teachers, school secretaries and students. The association also publishes a monthly teacher placement list, an annual directory of member schools and colleges, regional newsletters and our professional journal, *Christian School*. This flow of vital information is important to the quality of education in your child's Christian school. Without the strong flow of written communication provided by ACSI, the Christian school movement would soon lose its cohesive thrust.

### REDUCED INSURANCE RATES

ACSI insurance programs return more than one million dollars a year to its member schools and colleges via savings in premiums and worker's compensation rebates. Many schools more than offset the annual cost of ACSI membership with savings from the group insurances offered through ACSI.

Finally, the most important thing parents should know about ACSI is that everyone who is a part of the association is vitally concerned about children and young people. The 42 staff members, the 26 people who serve on the ACSI Board and scores of others who assist with ACSI programs are all born-again believers in Jesus Christ. We are strongly committed to quality Christ-centered education. Along with the staff of your fine Christian school, we have devoted our lives to the task of inspiring the next generation to be followers of Jesus Christ. □

CHERI C. JACOBUS  
ATTORNEY AT LAW  
1348 CRESCENT AVENUE  
ANCHORAGE, ALASKA 99504

SB 261 AND HB 357

Summary of the Legislation

SB 261 and HB 357 deal exclusively with private church schools and schools operated by religious organizations and, as amended, are modeled after the legislation adopted by North Carolina in 1979 and by West Virginia in 1982 to remedy church-state constitutional conflicts. These laws, if enacted by the Legislature, would establish requirements that must be met by private religious schools in order for parents whose children attend them to satisfy the compulsory education law. They would also exempt pre-elementary and nursery programs operated by religious organizations from the supervision of the Departments of Education and of Health and Social Services. The purpose of these bills is to remedy existing church-state constitutional conflicts by protecting the guaranteed religious freedom of church schools in Alaska and, at the same time, to balance the state's interest in assuring that each child receives a good education.

This legislation only covers schools, pre-elementary programs or nursery programs operated by a church or other nonprofit religious organization exempt from federal taxation and not receiving state or federal funding. These are constitutionally protected groups and activities.

More specifically, church schools (or denominational schools as defined in the proposed legislation) would be required to maintain attendance and immunization records. Since current compulsory education laws make parents liable for their children's failure to attend school, these bills, as amended, would require the parents to file statements with the public school authorities to establish their children's attendance at a church sponsored private school. By placing the requirement on the parent, the bills avoid the constitutional problems created by the state's excessive entanglement in religious activities. The school would also be required to operate on a regular schedule, at least nine calendar months per year, and to be subject to reasonable fire, health, and safety regulations.

To ensure that children attain certain minimum educational standards, each religious school would be required to administer a nationally standardized test to students in the first, third, sixth and ninth grades and to make the school results available for the Department of Education. This would satisfy the state's interest in compulsory education and still avoid the constitutional problem of excessive state entanglement in religion.

Any church school that satisfied all the requirements of AS 14.45 would be exempt from any additional provision of law

relating to education except those requirements of law relating to fire, health, and safety.

### Constitutional Requirements

The changes set out in SB 261 and HB 357, as amended, are required to correct existing Alaskan laws which run afoul of the constitutional mandate requiring the states to avoid excessive entanglement in religious activities. The state's right to impose minimum requirements on private religious schools is very limited, because these religious activities are protected by the First Amendment of the United States Constitution and its identical counterpart in the Alaska Constitution, Art. I, sec. 4.<sup>1</sup>

Schools operated by churches or by nonprofit religious organizations are quite different from other private schools. They enjoy a constitutionally protected status.

"Church operated schools are generally integral parts of their sponsoring churches. Their superintendents are generally pastors or assistant pastors of the sponsoring churches; their teachers are generally members; and their doctrinal stances are generally set by the sponsoring churches."<sup>2</sup>

Federal and state courts recognize that operating a church school is an integral part of the free exercise of religion.<sup>3</sup> For many churches, it is in fact the ministry of the church. Because

<sup>1</sup> E.g., Kentucky State Bd. for Elem. & Secondary Education v. Rudasill, 589 S.W.2d 877 (Ky. 1979), cert. den., 446 U.S. 938 (1980); Wisconsin v. Yoder, 406 U.S. 205 (1972); Lemon v. Kurtzman, 403 U.S. 602 (1970); Pierce v. Society of Sisters, 268 U.S. 510 (1925).

<sup>2</sup> "State Regulation of Private Religious Schools in North Carolina -- A Model Approach," 16 Wake Forest Law Review 405, 431-32 (1980).

<sup>3</sup> See, e.g., NLRB v. Catholic Bishop, 99 S. Ct. 1313 (1979) (Catholic parochial schools are founded for religious reasons and religious doctrine is pervasive); Surinach v. Pesquera de Busquets, 604 F.2d 73 (1st Cir. 1979) (private Catholic schools are an integral part of the Catholic Church and as such "involve substantial religious activity and purpose"); Hunt v. McNair, 413 U.S. 734, 743 (1973) ("[R]eligion is so pervasive that a substantial portion of [religious school] functions are subsumed in the religious mission."); Lemon v. Kurtzman, 403 U.S. 602, 616 (1971) ("[T]he parochial schools constituted 'an integral part of the religious mission of the Catholic Church'. . . In short, parochial schools involve substantial religious activity and purpose.").

church operated schools clearly come within the First Amendment free-exercise clause, their activities are constitutionally protected as fundamental rights.<sup>4</sup>

In the area of First Amendment individual liberties, any state legislation that burdens parents', childrens', or a church's free exercise of religious beliefs is unconstitutional unless, the state can demonstrate "a compelling state interest in the regulation of a subject within the state's constitutional power to regulate." Sherbert v. Verner, 374 U.S. 398, 403 (1963).

To establish the existance of a compelling state interest, it is not enough for the state to merely show that a rational relationship exists between a colorable state interest and the proposed regulation. According to Sherbert, "[o]nly the gravest abuses, endangering paramount interests, give occasion for permissible limitation."

More importantly, the state must demonstrate that it is using the least burdensome method for addressing the compelling state interest. The current law violates this mandate, because the legislative goals can be achieved with less burdensome methods. SB 261 and HB 357, as amended, use North Carolina and West Virginia laws as models and are less burdensome while still accomplishing legislative goals.

Eventhough SB 261 and HB 357, as amended, would create two classes of private schools and treat them differently, these bills would not violate the Equal Protection clause of the Fourteenth Amendment. According to established legal principles<sup>5</sup>, the equal protection guarantee of the Fourteenth Amendment does not take from the state legislatures all power to classify persons or objects. The state may classify persons for the purpose of legislation. Classification is an inherent right and power of the legislature.

The important issue for these proposed bills is whether the distinction between private schools operated for profit and private schools operated by churches is based on a real and substantial difference between the two classes. Clearly, there is a substantial difference. The decision of the legislature to recognize its limited ability to regulate church schools is based on a constitutional distinction between the two classes. Church schools are in a protected class, enjoying the protection of the First Amendment. Private schools are not.<sup>6</sup>

<sup>4</sup> Ibid.

<sup>5</sup> 16A Am Jur 2d, Constitutional Law, §746, et. seq.

<sup>6</sup> In addition, it must noted that the motivations for operating

In the area of religious freedom and expression, the Constitution demands neutrality. The government cannot demonstrate a hostility toward religion or religious activity. The mere fact that the government specifically exempts religious groups from complying with certain laws does not violate the Constitution. For example, federal law clearly creates two classes when it exempts the property and income of religious organizations from federal taxation. These two classes parallel the two classes which would be created by SB 261 and HB 357, as amended. The Supreme Court held this was proper legislation in Walz v. Tax Commission, 397 U.S. 664,669 (1970). The Supreme Court found that neither the purpose nor the effect of such exemption was to advance or inhibit religion. It was "benevolently neutral."

The distinction between private schools operated for profit and those operated by churches is real and parallels distinctions created by the federal tax laws. Therefore, there is no violation of equal protection guarantees.

In summary, the present law violates both the United States Constitution and the Alaska Constitution. SB 261 and HB 357, as amended, balance the state's interest in ensuring that each child receives a good education with the fundamental right to religious freedom and should be adopted.

a private school for profit and a school operated by a church are entirely different.

\* Section 1. AS 14.07.020 (8) is amended to read:

(8) in cooperation with the Department of Health and Social Services, exercise general supervision over public and private pre-elementary schools and over the educational component of nurseries as defined in AS 47.35.080 (4) excluding pre-elementary schools and nurseries operated by a church or other nonprofit religious organization that is exempt from federal taxation provided the program does not receive state or federal funding; pre-elementary schools in this paragraph means schools for children ages three through five years when the schools' primary function is educational;

\* Section 2. AS 14.30.010 (b)(1) is amended to read:

(1) is provided an academic education comparable to that offered by the public schools in the area, either by

(A) attendance at a private school in which the teachers are certificated according to AS 14.20.020;

(B) tutoring by personnel certificated according to AS 14.20.020; [OR]

(C) except as provided in (D) of this paragraph, attendance at a private school in which the average student proficiency is not less than the average proficiency found in the public schools in the area as measured by national achievement tests; the department with assistance from representatives of the private schools shall promulgate regulations defining the subject areas to be tested and the minimum average scores to be achieved;  
or

(D) attendance in an educational program operated by a church or other nonprofit religious organization that is exempt from federal taxation provided the program does not receive state or federal funding and provided that the church or other nonprofit religious organization elects to comply with the provisions of AS 14.45;

\* Section 3. AS 14.45.015 is added to read:

Sec. 14.45.015. POLICY. In conformity with the fundamental right to freedom of religion guaranteed by the constitutions of the United States and of Alaska, it is the public policy of the State in the matters of education by religious organizations that the state shall not control or interfere with the rights of conscience or with religious liberty. The State further finds that there is no compelling reason to interfere with this fundamental right.

\* Section 4. AS 14.45.020 is repealed.

\* Section 5. AS 14.45.025 is added to read:

AS 14.45.025. STANDARDIZED TESTING REQUIREMENTS. Each school operated by a church or other nonprofit religious organization that is exempt from federal taxation and does not receive state or federal funding and that has elected to comply with this chapter shall administer, at least once in each school year, a nationally standardized test or other nationally standardized equivalent measurement selected by the chief administrative officer of such school, to all students enrolled or regularly attending grades one, three, six and nine. The nationally standardized test or other equivalent measurement selected must measure achievement in the areas of English grammar, reading, spelling and mathematics. Each school shall make and maintain records of the results achieved by its students. For one year after testing, all records shall be made available to the parents at the principal's office, and the school composite test results shall be made available at all reasonable times for annual inspection by a duly authorized representative of the State of Alaska.

\* Section 6. AS 14.45.030. is amended to read:

Sec. 14.45.030. ATTENDANCE AND ANNUAL REPORTS REQUIRED.

(a) Teachers and others in charge of private [OR DENOMINATIONAL] schools not operated by a church or other nonprofit religious organization that is exempt from federal taxation and does not receive state or federal funding and that has elected to comply with AS 14.45 shall make regular monthly attendance reports and annual reports to the commissioner in the same manner as teachers and superintendents in the public schools.

(b) The enrollment and attendance of a child in a school operated by a church or other nonprofit religious organization that is exempt from federal taxation and does not receive state or federal funding shall be filed with the local public school superintendent by the parent, guardian or other person in charge or control of the child on a form provided by the superintendent which shall be countersigned by the administrator of the church school and returned to the public school superintendent by the parent. Should said child cease attendance at a church school, the parent, guardian, or other person in charge or control of the child shall by prior consent at the time of enrollment direct the church school to notify the local public school superintendent that said child no longer is in attendance at a church school.

(c) Each school operated by a church or other nonprofit religious organization exempt from federal taxation and which does not receive state or federal funding shall make and maintain monthly attendance records for each student enrolled and regularly attending classes. Such school shall operate on a regular schedule, excluding reasonable holidays and vacations, during at least nine calendar months of the year.

\* Section 7. AS 14.45.035 is added to read:

AS 14.45.035. REQUIREMENTS EXCLUSIVE. No school operated by any church or other nonprofit religious organization exempt from federal taxation which does not receive state or federal funding and which has complied with this chapter shall be subject to any other provision of law relating to education except requirements of law respecting fire, safety, sanitation, *physical* and immunization. *examination*

\* Section 8. AS 44.27.020(1) is amended to read:

(1) administer the state's program of education at the elementary, secondary, and adult levels, including, but not limited to, programs of vocational education and training, vocational rehabilitation, library services, correspondance courses, adult basic education, and fire-service training, but not including degree programs of postsecondary education or an educational program operated by a church or other nonprofit religious organization that is exempt from federal taxation if the program does not receive state or federal funding and if that school has elected to comply with the requirements of AS 14.45;

## Article

1. Department of Education (Sec. 14.07.010—14.07.070)
2. State Board of Education and Commissioner of Education (Sec. 14.07.075—14.07.170)

## Article 1. Department of Education

## Section

10. Department of Education
20. Duties of the department
30. Powers of the department
40. Repealed
50. Selection of textbooks
52. Repealed

## Section

53. Alaska School Activities Association
54. Alaska School Activities Fund
55. Repealed
57. Transmittal selections
60. Promulgation of regulations
70. Withholding state funds

**Sec. 14.07.010.** Department of Education. The Department of Education includes the commissioner of education, the State Board of Education, and the staff necessary to carry out the functions of the department. (Sec. 1 ch 98 SLA 1966)

**Sec. 14.07.020.** Duties of the department. The department shall

(1) exercise general supervision over the public schools of the state except the University of Alaska;

(2) study the conditions and needs of the public schools of the state and adopt or recommend plans for the improvement of the public schools;

(3) provide advisory and consultative services to all public school governing bodies and personnel;

(4) prescribe by regulation a minimum course of study for the public schools;

(5) establish, in coordination with the Department of Health and Social Services, a program for the continuing education of children who are held in detention facilities in the state during the period of detention;

(6) accredit those public schools which meet accreditation standards prescribed by regulation by the department; these shall be adopted by the department and presented to the legislature during the first 10 days of any regular session, and become effective 45 days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house; (am Sec. 1 ch 126 SLA 1978)

(7) prescribe by regulation, after consultation with the Department of Health and Social Services, standards that will assure healthful and safe conditions in the public and private schools of the state; the standards for private schools may not be more stringent than those for public schools; (am Sec. 2 ch 126 SLA 1978)

(8) in cooperation with the Department of Health and Social Services, exercise general supervision over public and private preelementary schools and over the educational component of nurseries as defined in AS 47.35.080(4); preelementary schools in this paragraph means schools for children ages three through five years when the schools' primary function is educational.

(9) provide accredited elementary and secondary correspondence study programs available to any Alaskan through a centralized office of correspondence study.

(Sec. 1 ch 98 SLA 1966; am Sec. 2 ch 69 SLA 1971; am Sec. 6 ch 104 SLA 1971; am Sec. 1 ch 190 SLA 1975; am Sec. 6 ch 50 SLA 1977)

(10) review plans for construction of new public elementary and secondary schools and for additions to and major rehabilitation of existing public elementary and secondary schools and, in accordance with regulations adopted by the department, determine the extent of eligibility for state aid of a school construction project begun after the effective date of this act; for purposes of this paragraph, a "plan" includes educational specifications, schematic designs, and final contract documents.

(11) accredit private elementary and secondary schools which request accreditation and which meet accreditation standards prescribed by regulation by the department.

(am Sec. 3 ch 126 SLA 1978)

(12) provide educational opportunities in the areas of vocational education and training, basic education, and fire-service training to individuals over 16 years of age who are no longer attending school. (am Sec. 1 ch 86 SLA 1979)

Sect 1 →

**Sec. 14.07.030. Powers of the department.** The department may

- (1) establish, maintain, govern, operate, discontinue, and combine area, regional, and special schools;
- (2), (3) and (4) Repealed Sec. 1 ch 205 SLA 1970.
- (5) enter into contractual agreements with the Bureau of Indian Affairs or with a school district to share boarding costs of secondary school students;
- (6) provide for citizenship night schools when and where expedient;
- (7) provide for the sale or other disposition of abandoned or obsolete buildings and other state-owned school property;
- (8) prescribe a classification for items of expense of school districts;
- (9) acquire and transfer personal property, acquire real property, and transfer real property to federal agencies, state agencies, or to political subdivisions;
- (10) enter into contractual agreements with school districts to provide more efficient or economical educational services;
- (11) provide for the issuance of elementary and secondary diplomas to persons not in school who have completed the equivalent of an eighth or twelfth grade education, respectively, in accordance with standards established by the department;
- (12) exercise disapproval power under AS 14.08.100. (Sec 1 ch 98 SLA 1966; am Sec 1 ch 66 SLA 1968; am Sec 2, 3, 4 ch 46 SLA 1970; am Sec 1 ch 161 SLA 1975)

**Sec. 14.07.040. Repealed.** (Sec 34 ch 46 SLA 1970)**Sec. 14.07.050. Selection of textbooks.**

(a) Textbooks for use in the public schools of the state shall be selected by district boards for district schools. . . by a State Schools Textbook Committee appointed by the director for state schools. Selections of the State Schools Textbook Committee shall be submitted to the Board of Directors for State-Operated Schools for approval or rejection.

(b) However, a district may elect to adopt the selection of the State Schools Textbook Committee. (Sec 1 ch 98 SLA 1966; am Sec 1 ch 96 SLA 1970; am Sec 2 ch 205 SLA 1970)

**Sec. 14.07.052. Repealed.** (Sec 2 ch 96 SLA 1970)**Sec. 14.07.053. Alaska School Activities Association.**

(a) There is created within the Department of Education the Alaska School Activities Association.

(b) The purposes of the association are to provide for the efficient governing of interscholastic activities through the promotion of those activities and other inter-school contests or programs sanctioned by the association and to assist in the promotion of those other activities and interests as it may from time to time elect.

(c) A public or private school or school district in the state may become a member of the association if it applies for membership. The Department of Education shall make applications available to all public or private schools or school districts in the state.

(d) The governing body of the association shall be the board of control with at least one member from each judicial district on the board of control. A member of the board shall be elected from each regional activities association by the members of that region. The term of office for each member is two years, except that one-half of the members elected to the first elected board shall be elected for one-year terms under regulations prescribed by the commissioner of education.

(e) The board in consultation with the Department of Education shall appoint an executive secretary, prescribe his duties and fix his compensation. He shall serve at the pleasure of the board.

(f) The board of control of the existing Alaska High School Activities Association in office on the effective date of this Act shall serve as the initial board of control for no longer than six months.

(g) The Department of Education shall approve the association's constitution and bylaws to ensure that all regions of the state are treated on an equitable basis and in the best interests of the state. ( Sec 1 ch 128 SLA 1976)

**Sec. 14.07.054. Alaska School Activities Fund.**

(a) The Alaska school activities fund is established within the Department of Education.

(b) The commissioner of education shall review the budget request of the Alaska School Activities Association and request a sum he approves that is equitable to all regions of the state.

(c) School districts and member schools of the Alaska School Activities Association may appropriate money to the fund. ( Sec 1 of 123 SLA 1976)

## Chapter 30. Pupils

Article	Article
1. Compulsory Education (Sec. 14.30.010 — 14.30.050)	3. Education for Exceptional Children (Sec. 14.30.180—14.30.350)
2. Physical Examinations (Sec. 14.30.060 — 14.30.170)	4. Bilingual-Bicultural Education (Sec. 14.30.400 — 14.30.410)

## Article 1. Compulsory Education

Section	Section
10. When attendance compulsory	45. Grounds for suspension or denial of admission
20. Violation	47. Admission or readmission, when cause no longer exists
30. Report of violations and procedures	50. Truant officers
40. Repeated	

*Sec 2* → **Sec. 14.30.010. When attendance compulsory.** (a) Every child between seven and 16 years of age shall attend school at the public school in the district in which the child resides during each school term. Every parent, guardian or other person having the responsibility for or control of a child between seven and 16 years of age shall insure that the child is not absent from attendance.

(b) This section does not apply if a child

(1) is provided an academic education comparable to that offered by the public schools in the area, either by

(A) attendance at a private school in which the teachers are certificated according to AS 14.20.020;

(B) tutoring by personnel certificated according to AS 14.20.020; or

(C) attendance at a private school in which the average student proficiency is not less than the average proficiency found in the public schools in the area as measured by national achievement tests; the Department of Education with assistance from representatives of the private schools shall promulgate regulations defining the subject areas to be tested and the minimum average scores to be achieved;

(am Sec. 4 ch 126 SLA 1978)

(2) attends a school operated by the federal government;

(3) has a physical or mental condition which a competent medical authority determines will make attendance impractical;

(4) is in the custody of a court or law enforcement authorities;

(5) is temporarily ill or injured;

(6) has been suspended or denied admittance according to sec. 45 of this chapter;

(7) resides more than two miles from either a public school or a route on which transportation is provided by the school authorities, except that this subsection does not apply if the pupil resides within two miles of a federal or private school which he is eligible and able to attend;

(8) is excused by action of the school board of the district at a regular meeting or by the district superintendent subject to approval by the school board of the district at the next regular meeting; (am Sec. 1 ch 10 SLA 1977)

(9) has completed the 12th grade;

(10) is enrolled in a full-time program of correspondence study approved by the department; in those school districts providing an approved correspondence study program, a student may be enrolled either in the district correspondence program or in the centralized correspondence study program;

(11) is equally well-served by an educational experience approved by the school board as serving his educational interests despite an absence from school, the request for excuse is made in writing by his parents or guardian, and approved by the principal or administrator of the school he attends. (am Sec. 1 ch 30 SLA 1976)

(Sec. 37-7-1 ACLA 1949; am Sec. 36 ch 98 SLA 1966; am Sec. 5 ch 71 SLA 1972; am Sec. 5 ch 190 SLA 1975)

(B) a person eligible to be admitted to an accredited postsecondary educational institution; and

(3) establishes financial need in accordance with standards for determining financial need adopted by the committee under 20 USC sec.1070c-2.

(b) The committee shall, by regulation, establish a system of priority in the selection of recipients of grants under sections 930-960 of this chapter under which students from "low income" families or whose incomes are considered "low income" shall be given preference in the award of the educational incentive grants.

**Sec. 14.40.950. Limitation on grants.** (a) No grant made under sections 930-960 of this chapter may be in an amount less than \$100 nor more than \$1,500 for each academic year.

(b) A grant awarded under sections 930-960 of this chapter may be used by a student only at an accredited postsecondary educational institution.

**Sec. 14.40.955. Confidentiality of certain information.** All information submitted in support of a determination of financial need as provided in this chapter is confidential. However, an applicant may inspect or copy information from his own application, or records relating to his own application, or authorize release of the application or records to designated individuals or organizations.

**Sec. 14.40.960. Definitions.** In sections 930-960 of this chapter

(1) "resident" means a person who, except for brief intervals, military service, attendance at an educational or training institution, or for absence for good cause shown, has resided in Alaska and who has maintained his domicile in Alaska; domicile is the true and permanent home of a person from which he has no present intention of moving and to which he intends to return whenever he is away;

(2) "undergraduate" means a student who has not completed a baccalaureate, graduate or professional degree.

(am Sec. 1 ch 51 SLA 1978)

#### Chapter 45. Private and Denominational Schools

Section

10. Repealed

20. Commissioner may furnish examination questions for and grant diplomas to eighth grade pupils

Section

30. Attendance and annual reports required

**Sec. 14.45.010.** Repealed. (Sec. 59 ch 98 SLA 1966)

**Sec. 14.45.020.** Commissioner may furnish examination questions for and grant diplomas to eighth grade pupils. The commissioner may furnish final examination questions for the eighth grade pupils in private and denominational schools and grant eighth grade diplomas in the same manner as in public schools. (Sec. 37-11-2 AC LA 1949)

**Sec. 14.45.030.** Attendance and annual reports required. Teachers and others in charge of private or denominational schools shall make regular monthly attendance reports and annual reports to the commissioner of education in the same manner as teachers and superintendents in the public schools. (Sec. 37-11-3 AC LA 1949)

Chapter 47. Regulation of Educational Institutions. Repealed. (Sec. 5 ch 25 SLA 1976)

Legislative history report. — For report on ch. 190, SLA 1972 (CSHB 499 am), see 1972 House Journal, p. 744.

Sec. 44.25.036. Repayment of loans. Repayment of loans under AS 44.25.030 — 44.25.038 shall be on an annual basis with repayment commencing no later than 90 days after receipt of funds authorized to be appropriated from the Alaska Native Fund to the regional corporation under § 6(a) (1) (A), P.L. 92-203. (§ 1 ch 190 SLA 1972)

Sec. 44.25.038. Expiration of loan program. Because the purposes for which the loan program is created are limited, no loan may be made after five years from October 4, 1972. The program shall be inoperative 10 years from October 4, 1972. (§ 1 ch 190 SLA 1972)

### Chapter 27. Department of Education.

#### Article

1. Board and Department of Education (§§ 44.27.010 — 44.27.020)
2. Alaska State Council on the Arts (§§ 44.27.040 — 44.27.060)
3. Alaska Historical Commission (§§ 44.27.061 — 44.27.076)

#### Article 1. Board and Department of Education.

##### Section

10. Board and commissioner of education
20. Duties of department

Sec. 44.27.010. Board and commissioner of education. There is at the head of the Department of Education a Board of Education. The commissioner of education is the principal executive officer of the department. (§ 11 ch 64 SLA 1959; am § 12 ch 96 SLA 1967)

Am. Jur. 2d references. — 63 Am. Jur. 2d, Public Officers and Employees, § 371; 68 Am. Jur. 2d, Schools, §§ 37 — 55; 72 Am. Jur. 2d, States, Territories and Dependencies, § 62.

*Sec. 5*

**Sec. 44.27.020. Duties of department.** The Department of Education shall

(1) administer the state's program of education at the elementary, secondary, and adult levels, including, but not limited to, programs of vocational education and training, vocational rehabilitation, library services, correspondence courses, adult basic education, and fire-service training, but not including degree programs of postsecondary education;

(2) administer the historical library;

(3) plan, finance and operate related school and educational activities and facilities. (§ 11 ch 64 SLA 1959; am § 77 ch 69 SLA 1970 am § 5 ch 86 SLA 1979)

Effect amendme "elementu including vocationa "elementu ing progr

- Section
40. Creat
  41. Comp
  42. Appoi
  43. Term
  44. Comp
  45. Chair

Editor' 44.27.040 44.19.900 repealed l (1980).

Sec. Educati 44, § 4

Sec. Arts cor perform compete perform

Sec. the go appoint made associat or prese making state-wi the cor appoint. Order N

Sec. is three appoint

CHAPTER 60.  
PRE-ELEMENTARY (EARLY  
CHILDHOOD) SCHOOL

## Section

- 10. Requirements
- 20. Exemption
- 30. Application for a certificate of approval
- 40. Denial of approval; hearing
- 50. Duration of approval
- 60. Display of certificate
- 70. Certificate of approval
- 80. Insurance
- 90. Records
- 100. Physical examination for children
- 110. (Repealed)
- 115. Staff
- 120. Recognition of special needs
- 130. Disaster plan
- 140. Facility inspections
- 150. Changes in major written policies, plans, programs
- 160. Nondiscrimination
- 170. Programmatic requirements of the pre-elementary schools
- 175. Transportation
- 180. Definitions

4 AAC 60.010. REQUIREMENTS. (a) Every person, institution or agency operating a school for children ages three through five years, when the school's primary function is educational, shall apply to the department for a certificate of approval.

(b) The educational component of all pre-elementary programs is under the general supervision of the department in cooperation with the Department of Health and Social Services. Those programs not approved by the Department of Education are supervised by the Department of Health and Social Services.

(c) Before admitting a child whose school expenses could be the responsibility of departments of state government, authorization of eligibility should be requested from the appropriate department by the school. (Eff. 4/20/73, Reg. 45; am 5/20/77, Reg. 62)

Authority: AS 14.07.020(8)  
AS 14.07.060  
AS 14.35.080(4)

4 AAC 60.020. EXEMPTIONS. The following are exempt from 4 AAC 60.010:

(1) schools maintained by the United States or funded entirely with federal funds;

(2) courses of instruction on religious subjects given under the auspices of a religious organization, such as church schools, vacation Bible schools, or similar denominational programs;

(3) schools that enroll six children or less. (Eff. 4/20/73, Reg. 45; am 5/20/77, Reg. 62)

Authority: AS 14.07.020(8)  
AS 14.07.060

4 AAC 60.030. APPLICATION FOR A CERTIFICATE OF APPROVAL. (a)

Application for a certificate of approval must be submitted on a form prescribed by the department.

(b) No pre-elementary school may represent that its program has a sponsorship, approval, characteristics, affiliation, or accreditation which it does not have, nor may any school cause a likelihood of confusion or misunderstanding as to any of these matters.

(c) Before issuing a certificate of approval, the department shall conduct an investigation of the applicant, including the proposed plan for the education and supervision of children and the mode of operation of the pre-elementary school. If the results of the investigation reveal that the primary purpose of the school is educational and that applicable regulations adopted by the department are satisfied, a regular certificate of approval shall be issued.

(d) The department may grant a conditional certificate of approval for programs with minor deficiencies correctable within a time specified on the permit, but not exceeding six months. (Eff. 4/20/73, Reg. 45; am 5/20/77, Reg. 62)

Authority: AS 14.07.020(8)  
AS 14.07.060

4 AAC 60.040. DENIAL OF APPROVAL; HEARING. (a)

A school or program denied a certificate of approval by the department is entitled to a hearing before the state Board of Education at a regular meeting of the board if a

written appeal is received by the commissioner within 15 days of the date of denial of certification.

(b) The decision of the board on the appeal is final. (Eff. 4/20/73, Reg. 45; am 5/20/77, Reg. 62)

Authority: AS 14.07.020(8)  
AS 14.07.060

4 AAC 60.050. DURATION OF APPROVAL.

(a) A certificate of approval remains in effect for a period of no more than five years from date of issuance.

(b) A certificate may be revoked or suspended for failure to comply with the requirements of this chapter or other statutes and regulations governing the health, safety and welfare of students and employees.

(c) If the department has reasonable cause to believe that the holder of a certificate has failed to comply with this chapter or other applicable statutes and regulations, it may notify the holder of the basis for its belief and schedule a hearing on the matter to determine whether the certificate should be revoked or suspended. The commissioner shall appoint a hearing officer to preside over the hearing and to control its proceedings. The hearing shall be public, and all interested persons who have information relevant to the inquiry shall be permitted to be heard or to submit written statements and arguments, or both. A record shall be kept of the hearing.

(d) Following the hearing, the hearing officer shall prepare his findings and conclusions and recommend appropriate action to the commissioner. The commissioner shall review the hearing officer's recommendations and decide what, if any, action should be taken.

(e) A certificate holder whose certificate has been revoked or suspended by the commissioner may request, in writing and within 15 days of receiving notification of the commissioner's decision, that the board review that decision. A review will be made by the board or a committee of the board in the same manner as that provided in 4 AAC 60.040. The decision of the board is final. (Eff. 4/20/73,

Reg. 45; am 5/20/77, Reg. 62)

Authority: AS 14.07.020(8)  
AS 14.07.060

**4 AAC 60.060. DISPLAY OF CERTIFICATE.**

The certificate of approval must be displayed in a prominent place in the pre-elementary school. (Eff. 4/20/73, Reg. 45; am 5/20/77, Reg. 62)

Authority: AS 14.07.020(8)  
AS 14.07.060

**4 AAC 60.070. CERTIFICATE OF APPROVAL.** The certificate of approval must include

- (1) name of pre-elementary school;
- (2) address of pre-elementary school;
- (3) maximum allowable number of children;
- (4) effective dates of certificate;
- (5) ages of children to be enrolled;
- (6) minimum number of staff members required to be in attendance while children are present. (Eff. 4/20/73, Reg. 45; am 5/20/77, Reg. 62)

Authority: AS 14.07.020(8)  
AS 14.07.060

**4 AAC 60.080. INSURANCE.** (a) Each nonpublic, pre-elementary school must have bodily injury liability insurance in an amount not less than \$100,000 per child, \$300,000 per accident, with a company authorized to do business in the State of Alaska. Policies must contain the following endorsement:

"In the event of cancellation of this policy, the company agrees to give 30 days' advance notice to the Department of Education, Pouch F, Juneau, Alaska 99811."

(b) If the insurance required under (a) of this section is allowed to lapse more than once in a 12-month period, the second policy lapse is grounds for termination of approval. (Eff. 4/20/73, Reg. 45; am 5/20/77, Reg. 62)

Authority: AS 14.07.020(8)  
AS 14.07.060

**4 AAC 60.090. RECORDS.** The

pre-elementary school shall maintain an individual record for each pupil enrolled which must contain not less than the following:

(1) child's full name, birth date, and current address;

(2) name and address of parents or legal guardians;

(3) telephone numbers and instructions how the parents may be reached during school hours;

(4) names and addresses of persons authorized to take the child from school;

(5) a record indicating the immunization status of the child;

(6) a Cumulative Health Record Form. (Eff. 4/20/73, Reg. 45; am 5/20/77, Reg. 62)

Authority: AS 14.07.020(8)  
AS 14.07.060

**4 AAC 60.100. PHYSICAL EXAMINATION FOR CHILDREN.** (a) Not more than three months before first entering school, each child must have a tuberculosis skin test which meets the requirements of 7 AAC 27.213.

(b) Before first entering school, each child must have received the immunizations required by 4 AAC 06.055. (Eff. 4/20/73, Reg. 45; am 5/20/77, Reg. 62; am 8/17/78, Reg. 67; am 9/24/82, Reg. 83)

Authority: AS 14.07.020(7) and (8)  
AS 14.07.060  
AS 14.30.070

**4 AAC 60.110. PHYSICAL EXAMINATIONS FOR EMPLOYEES AND VOLUNTEERS.** Repealed 5/20/77.

**4 AAC 60.115. STAFF.** (a) All staff members must have a physical examination annually and not more than three months before initial employment in the pre-elementary school. This

physical examination must include proof of negative Tine test. It is the responsibility of the operator to maintain a personnel file for each employee in which the results of the current physical examination are kept. This file is subject to inspection by the department.

(b) All volunteers who work in the classroom or who provide direct services to children must present to the operator proof of a negative Tine test taken not more than three months before initial service. This test must be repeated annually.

(c) Schools subject to the provisions of this chapter shall comply with all applicable statutes and regulations concerning labor and employment practices. (Eff. 5/20/77, Reg. 62)

Authority: AS 14.07.020(7) and (8)  
AS 14.07.060

**4 AAC 60.120. RECOGNITION OF SPECIAL NEEDS.** At the age of three years, an exceptional child may receive special assistance as a part of the local school district's annual plan of services for special education. Any pre-elementary school which provides services for an exceptional child and receives state funds for providing those services must adhere to state guidelines for special education programs. (Eff. 4/20/73, Reg. 45; am 5/20/77, Reg. 62)

Authority: AS 14.07.020(8)  
AS 14.07.060  
AS 14.30.180

**4 AAC 60.130. DISASTER PLAN.** Each pre-elementary school shall develop a disaster plan which must include provisions for accountability for each child in the school until he is released to an appropriate authority. (Eff. 4/20/73, Reg. 45; am 5/20/77, Reg. 62)

Authority: AS 14.07.020(7) and (8)  
AS 14.07.060

**4 AAC 60.140. FACILITY INSPECTIONS.** (a) Each pre-elementary school shall request an inspection by public safety and health agencies and shall conform to standards established by those agencies.

(b) Copies of documents indicating satisfactory compliance with health and safety standards must be filed with the department before the issuance of a certificate of approval.

(Eff. 4/20/73, Reg. 45; am 5/20/77, Reg. 62)

Authority: AS 14.07.020(7) and (8)  
AS 14.07.060

**4 AAC 60.150. CHANGES IN MAJOR WRITTEN POLICIES, PLANS, PROGRAMS.**

Major changes in written policies, plans, programs and other information included in the initial application must be transmitted to the department within 30 days following implementation of the change. (Eff. 4/20/73, Reg. 45; am 5/20/77, Reg. 62)

Authority: AS 14.07.020(8)  
AS 14.07.060

**4 AAC 60.160. NONDISCRIMINATION.** No pre-elementary school will be approved unless it adopts a policy of nondiscrimination in respect to race, sex, creed, color or religion with the following exceptions:

(1) a pre-elementary school established for an identified group (e.g., physical-mental handicaps) may serve that group only but otherwise may not discriminate;

(2) a religious group may elect to serve children that adhere to its religious beliefs but otherwise may not discriminate. (Eff. 4/20/73, Reg. 45; am 5/20/77, Reg. 62)

Authority: AS 14.07.020(8)  
AS 14.07.060

**4 AAC 60.170. PROGRAMMATIC REQUIREMENTS OF THE PRE-ELEMENTARY SCHOOLS.**

(a) The pre-elementary school shall provide the following information, in writing, to the department: the philosophy of education; the goals and objectives of the school; the program model and teaching techniques used in achieving the stated goals and objectives; daily educational activities schedule including provisions for individual activities, small group activities and large group activities; the number and ages of the children to be served along with the number of staff members working with the children; provisions for parental involvement; a copy of all public advertisements regarding the school; a copy of the personnel and administrative rules of the school; and a copy of all administrative forms used by the school.

(b) A pre-elementary school must have

sufficient staff to provide for each child's physical care and to offer individual attention to children as it may be needed as well as time to interact with children for the benefit of their conceptual and language growth. The number of staff and their utilization should reflect programmatic requirements, differences in the needs of the children served and should permit flexible groupings.

(c) There must be at least two staff members, one of whom may be a teacher-aide, present in each building. They must be stationed in sufficient proximity to be of aid in emergency situations.

(d) The operator shall provide a written training plan for each staff member who serves in the capacity of teacher, teacher-aide or assistant teacher. This plan must include provisions for preservice and inservice training and must indicate frequency as well as content. All such training is subject to the approval of the department.

(e) The department shall investigate to determine whether the programmatic objectives of the school are being met. (Eff. 4/20/73, Reg. 45; am 5/20/77, Reg. 62)

Authority: AS 14.07.020(8)  
AS 14.07.060

4 AAC 60.175. TRANSPORTATION. An adult must be designated to accompany the driver and provide for pupil safety when more than six pupils are transported in a vehicle. (Eff. 5/20/77, Reg. 62)

Authority: AS 14.07.020(8)  
AS 14.07.060

4 AAC 60.180. DEFINITIONS. Unless the context indicates otherwise, in this chapter

(1) "department" means the Department of Education;

(2) "board" means the state Board of Education;

(3) "commissioner" means the Commissioner of Education;

(4) "pre-elementary school" means a school for children ages three through five years whose primary function is educational;

(5) "certificate of approval" means a regular certificate issued to an operator of a pre-elementary school who has met the minimum requirements of this chapter;

(6) "operator" means the person legally responsible for the pre-elementary school;

(7) repealed (Eff. 5/20/77, Reg. 62);

(8) "staff member" means anyone who provides direct services to children in the classroom and may be any of the following:

(A) a person 19 years or over who is salaried;

(B) classroom volunteers who are at least 19 years of age;

(C) student aides who are enrolled in a training program who are at least 16 years of age;

(9) repealed (Eff. 5/20/77, Reg. 62). (Eff. 4/20/73, Reg. 45; am 5/20/77, Reg. 62)

Authority: AS 14.07.020(8)  
AS 14.07.060

STATE OF ALASKA  
FISCAL NOTE

Revision Date \_\_\_\_\_, 1983

I. REQUEST

Bill/Resolution No.: HB - 357  
 Title: ...regulation of religious schools  
 Sponsor: Fritz  
 Requestor: House HESS

II. FISCAL DETAIL

Agency Affected: Education  
 Program Category Affected: Elem. & Sec.  
 BRU, Program of Subprogram(s) Affected: \_\_\_\_\_

EXPENDITURES/REVENUES: (Thousands of Dollars)

	FY 83	FY 84	FY 85	FY 86	FY 87	FY 88
<b>OPERATING</b>						
100 PERSONAL SERVICES						
200 TRAVEL						
300 CONTRACTUAL						
400 COMMODITIES						
500 EQUIPMENT						
600 LAND & STRUCTURES						
700 GRANTS, CLAIMS, ETC						
<b>TOTAL OPERATING</b>		0	0	0	0	0
<b>CAPITAL</b>						
<b>REVENUE</b>						

FUNDING: (Thousands of Dollars)

GENERAL FUND		0	0	0	0	0
FEDERAL FUNDS						
OTHER (Specify Source)						

POSITIONS:

FULL-TIME		0	0	0	0	0
PART-TIME						
TEMPORARY						

III. SOURCE OF FUNDS TO OFFSET FISCAL IMPACT OF BILL:

IV. ANALYSIS: Attach a separate page for any Analysis

Prepared By: Steve Hole Phone: 465-865  
 Division: Management, Law, & Finance Date: 4/13/83  
 Approved by Commissioner Marshall Lind Date: 4/18/83  
 Department: Education

Distribution:

Original to Legislative Finance  
 Copy to Office of Management and Budget (for Legislature introduced bills)  
 Copy to Department (for Governor introduced bills)  
 Copy to Sponsor  
 Copy to Requestor (if different from Sponsor)

3/8/83

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU ALASKA 99811  
907-465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 14, 1983

SUBJECT: Regulation of religious schools  
(CSHB 357 (HESS))

TO: Representative Milo Fritz  
Chairman, Health, Education, and  
Social Services Committee

FROM: Keith B. Levy *KBL*  
Legislative Counsel

Enclosed is a copy of CSHB 357 (HESS), relating to the regulation of religious schools. The bill raises a number of constitutional questions. Because these constitutional requirements must be balanced against one another, there is virtually no way to guarantee that the bill is valid. In my opinion, however, the bill does a good job of balancing the constitutional requirements and is probably not unconstitutional.

In regulating religious schools, the state must consider the "free exercise" and "establishment" clauses of the state and federal constitutions. These provisions essentially prohibit the state from unduly burdening the free exercise of religion and from becoming so involved in the regulation of religious schools as to encourage or inhibit religious activity. On the other hand, the "equal protection" clauses of the state and federal constitutions require the state to justify treating religious schools differently from other private schools. Moreover, while the state may not excessively regulate religious schools, it also has an obligation to provide a reasonable education to school age children. Reconciling these different interests with one another is no easy task and it is difficult to predict which of these will take precedence in the courts.

CSHB 357 (HESS) exempts certain religious schools from all state laws and regulations relating to education except laws concerned with health, fire safety, sanitation, immunization, and physical examinations if the schools agree to comply

Representative Milo Fritz

Page 2

May 14, 1983

with certain minimal statutory requirements. The schools affected by the bill are those that are operated by a church or other religious organization that is exempt from federal taxation and do not receive state or federal funding (AS 14.45.040). Children attending these schools are exempt from the state's compulsory attendance law (AS 14.30.010). The schools that opt to comply with the minimal statutory requirements must maintain attendance and enrollment records (AS 14.45.030(b)), notify the public school superintendent if a child is no longer enrolled or attending (AS 14.45.-030(b)), administer a nationally standardized test to be selected by the individual schools that measures English grammar, reading, spelling, and mathematics (AS 14.45.035), and operate on a regular nine month schedule (AS 14.45.-030(c)). Parents of children attending these schools must file enrollment and attendance records with the local public school superintendent (AS 14.45.030(b)). Religious schools that choose not to comply with these standards remain subject to the same regulations as all other private schools.

The First Amendment to the United States Constitution and Article I, section 4 of the Constitution of the State of Alaska provide

No law shall be made respecting an establishment of religion, or prohibiting the free exercise thereof.

The free exercise clause has been interpreted to mean that the state may not unduly burden the right of a parent, child, or church to freely exercise a particular religion, unless the state can show a compelling state interest. Sherbert v. Verner, 374 U.S. 398 (1968). Even when the state can show a compelling interest in regulating religious schools, it must also show that the regulation is by the least burdensome means.

CSHB 357 (HESS) allows the state to regulate health and safety standards, to require certain standardized tests, and to assure regular attendance by the children. None of these requirements appears to be unduly burdensome on the free exercise of religion. The state clearly has a compelling interest in maintaining health and safety standards and these standards, if reasonable, generally have no connection to the exercise of religion. The interest justifying the standardized test requirement is the state's obligation to provide an education for children. The requirement is not unduly burdensome because the individual schools are

permitted to select the test of their choice provided that the test measures achievement in certain basic areas. Beyond that, the bill does not regulate curriculum in the religious schools. Finally, the bill requires certain attendance reports from the schools and the parents of children attending them. Again, the reporting requirements are minimal and are justified by the state's interest in assuring that the children are receiving an education. Accordingly, the bill probably does not infringe on the right to the free exercise of religion.

The analysis of the bill under the establishment clause is similar to that under the free exercise clause. Legislation must be substantially neutral toward religion. Epperson v. Arkansas, 393 U.S. 97 (1968). Excessive entanglement in the regulation of religious organizations is not permitted. Lemon v. Kurtzman, 403 U.S. 602 (1971).

The bill minimizes the state's involvement in regulating religious schools by exempting them from the state's general education regulations if the schools agree to comply with certain minimal standards. Of these standards, the only one that might present a problem by excessively involving the state in the regulation of religion is the attendance reporting requirement. In Surinach v. Pesquera de Busquets, 604 F.2d 73 (1st Cir. 1979), the court found state requirements that religious schools release extensive financial and other data unconstitutional. The statute challenged in that case can be distinguished from CSHB 357 (HESS), however, because the bill only requires attendance reports, the reports must be released by the parents, and they can be justified by the state's obligation to ensure that children receive an education. The attendance reports are probably not an excessive entanglement by the state in the regulation of religious schools.

The equal protection clauses of the Fourteenth Amendment of the United States Constitution and Article I, section 1 of the Constitution of the State of Alaska require the state to justify the statutory creation of a class based on religion. The classification

. . . must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.

Isakson v. Rickey, 550 P.2d 359, 363 (Alaska 1976).  
CSHB 357 (HESS) creates a class of religious schools which are exempt from most state regulations that apply to other private schools. Since the exemptions are substantially tied to the free exercise of religion, however, they can be justified on the basis that there is a substantial relationship between the exemptions and the goal of the legislation. Only if the exemptions were not tied to the exercise of religion or some other valid governmental purpose would the bill violate the equal protection clause.

The bill's deregulation of religious schools may raise a problem with respect to the state's obligation to provide an education to all children in the state. It is not clear, however, that this obligation is mandated by the constitution. Article VII, section 1 of the Constitution of the State of Alaska provides, in part,

The legislature shall by general law establish and maintain a system of public schools open to all children of the State, and may provide for other public educational institutions.

It is not clear whether this provision merely obliges the state to provide the opportunity for an education to all children of the state, or if it includes the obligation to ensure that they actually receive an education. If the latter is true, then the state would be restricted in the degree to which it may deregulate religious schools. Even if that is the case, however, CSHB 357 (HESS) probably does impose sufficient requirements on the religious schools to ensure a minimal level of quality of education. Thus, the bill probably does not violate any obligation the state has to provide an education to children in the state.

In conclusion, CSHB 357 (HESS) is probably constitutional although the necessary balancing of constitutional requirements makes it difficult to be certain of this. Ideally, legislation regulating religious schools will place minimal burdens on the schools and require minimal state involvement while requiring the schools to meet minimal educational requirements to ensure that the children are receiving an education. In my opinion, the bill successfully strikes this balance.



ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES  
RESEARCH AGENCY

Pouch Y, State Capitol  
Juneau, Alaska 99811  
(907) 465-3991

May 13, 1983

MEMORANDUM

TO: Representative Sam Pestinger

FROM: Leslie Longenbaugh *LL*  
Research Staff

RE: Other States' Regulation of Religious Schools  
Research Request 83-159

Ed Essa of your staff asked that we provide information about states that regulate religious and other nonpublic schools differently. My preliminary work, provided to you on May 4, revealed five states that exempt religious schools from some state regulation to which other nonpublic schools are subject. Upon further investigation, I found significant differences in regulation in only three states: Maryland, North Carolina and Tennessee. Below is a brief description of the statutory distinctions made by each state; I have attached copies of the pertinent state statutes.

Maryland

Maryland requires that private "noncollegiate" schools obtain a state certificate of approval before they may operate in the state. The issuance of such a certificate of approval is contingent upon the state board of education's finding that the "facilities, conditions of entrance and scholarship, and educational qualifications and standards are adequate and appropriate" for the type of school.<sup>1</sup>

Specifically exempted from the requirement of a certificate of approval are all institutions "operated by a bona fide church organization..."<sup>2</sup> Schools that come under this exemption may not receive any state funds other than funds for the state food service program.

All private noncollegiate schools in Maryland, including the religious schools that are exempt from the certificate of approval, must make annual reports of their enrollment and courses of study.<sup>3</sup> In addition,

---

<sup>1</sup> Annotated Code of Maryland, Education § 2-206 (e)(2).

<sup>2</sup> ACN § 2-206 (3)(4).

<sup>3</sup> ACN § 2-205.

# NEA - ALASKA

AFFILIATED WITH THE NATIONAL EDUCATION ASSOCIATION

Jean Krause, President

**JUNEAU OFFICE**  
147 S. FRANKLIN, #207  
JUNEAU, ALASKA 99801  
PHONE (907) 451-1111

**ANCHORAGE REGIONAL OFFICE**  
1411 WEST 35th  
ANCHORAGE, ALASKA 99503  
PHONE (907) 273-1111

**FAIRBANKS REGIONAL OFFICE**  
405 COLLEGE ROAD  
FAIRBANKS, ALASKA 99701  
PHONE (907) 451-1111

Gen. Office  
Pres. President  
Rm. 1024  
Kenai, Alaska 99511

May 12, 1983

Gayle Pierce  
President Elect  
SB Box 51377  
Fairbanks, Alaska 99701

TO: House HESS Committee

FROM: NEA-Alaska

Bill Potter  
NEA State Director  
177 Behrens Avenue  
Juneau, Alaska 99801

RE: HB 357

Bob McGiggor  
Region I Director  
Box 1042  
Sitka, Alaska 99825

NEA-Alaska members wanted to participate in this teleconference for HB 357; but, because of the timing of the teleconference to fall during the peak hours of the school day, in every region of Alaska, they find themselves unable to testify. Therefore, on behalf of over 6,000 teachers NEA-Alaska submits this written testimony in opposition to HB 357 "An Act relating to the regulation of religious schools".

William Conde  
Region II Director  
1441 E. 1st St.  
Anchorage, Alaska 99501

Our opposition is premised both on constitutional and educational grounds.

Richard Wood  
Region III Director  
P.O. Box 100  
Garden Valley, Alaska 99547

The State of Alaska is not and cannot be concerned with instruction in sectarian, religious matters; but in non-sectarian disciplines such as mathematics, science, English, history, civics, physical and vocational education, etc. the state is and must be concerned. The Alaska State Constitution in Article I, Section I, "Inherent Rights", states:

Frank Parker  
Region III Director  
P.O. Box 100  
Garden Valley, Alaska 99547

"SECTION 1. This constitution is dedicated to the principles that all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry; that all persons are equal and entitled to equal rights, opportunities, and protection under the law; and that all persons have corresponding obligations to the people and to the State."

Jean Robin  
Region IV Director  
P.O. Box 100  
Garden Valley, Alaska 99547

HB 357 removes all oversight and regulation by the State for those educational programs offered by religious institutions who do not receive federal or state funds. In doing so, HB 357 forces the State to abdicate its responsibility in the education, health and social services of youngsters enrolled in religious schools. The State of Alaska will not be able to ensure that religious school students are enjoying equal rights, opportunities and protections under the law:

Ray Webb  
Region IV Director  
10000 Main Street  
Anchorage, Alaska 99507

Paul Thomas  
Region V Director  
P.O. Box 100  
Garden Valley, Alaska 99547

Bill Abney  
Region VI Director  
P.O. Box 100  
Anchorage, Alaska 99507

Leo Wilson  
Region VI Director  
8410 Pioneer Drive  
Anchorage, Alaska 99507

Lon Sears  
Region VI Director  
SBA Box 501B  
Anchorage, Alaska 99511

Paul Stout  
Region VI Director  
6200 E. 14th Avenue  
Anchorage, Alaska 99504

Frank Holmes  
Director at Large  
Box 100  
Garden Valley, Alaska 99547

Section 14.45.030 as amended denies the State the power to receive and examine reports about the educational programs offered in religious schools;

Section 6. AS 14.45.030 Sentence addition to paragraph (c).

Such schools shall report annually the number of students enrolled in each grade and provide a copy of the school calendar to the department.

Such schools shall maintain adequate student records, including all information required of public schools on <sup>attendance</sup> immunization, physical examinations, testing and courses taken while in attendance at the religious school. (same as public school)

-direct difference - calendar & enrollment only -

This - adequate information if the youngster withdraws from the religious school want it available for public schools.

Milo & Mac -

5/18/10am

Just had a call from Ed Essa of  
Pestinger's office. He wanted you  
to know that But Carney is not  
very happy with the amendment made  
to Sec 1 of the religious school bill.

The H&M Committee insisted the exclusion  
of "educational component of pre-elementary  
schools and ~~and~~ nurseries operated by a church..."

He (Carney) is going to attempt to amend  
this out on the House floor & wants  
your support.

He feels that this defeats the purpose of  
the bill. ~~They~~

Jinda

# Alaska State Legislature

REP. MAE TISCHER  
CO-CHAIRMAN

REP. MILO FRITZ  
CO-CHAIRMAN

POUCH V  
STATE CAPITAL  
JUNEAU, ALASKA 99811  
(907) 465-3777

MEMBERS:  
REP. MIKE MILLER  
VICE CHAIRMAN  
REP. BITTE CATO  
REP. MIKE DAVIS  
REP. PETER GOLL  
REP. NILO KOPONEN

## House of Representatives

### HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

#### M E M O R A N D U M

TO: House HESS Committee DATE: May 12, 1983

FROM: Linda Otey, Committee Staff

RE: Summary/ HB 357 "An Act relating to the regulation of religious schools"

Enclosed is material that has been gathered in an attempt to more clearly understand the issue of 'de-regulation' of church schools while maintaining some monitoring of the constitutional mandate to provide for public education. A sectional analysis of the bill has been provided by Legislative Counsel. He suggests that HB 357, as written, is probably unconstitutional with respect to the equal protection clauses of the State & Federal Constitutions.

"The bill exempts certain private schools from requirements that apply to all other private schools..."

With the understanding of the desire and need to resolve this issue legislatively, staff has contacted Ms. Patricia Lines, Director of Law & Educations Center of the Education Commission of the States (ECS), Denver, Colorado. Ms. Lines has been working on this issue nation-wide and is extremely well versed in the objectives it encompasses. Her article, State Regulation of Private Education is enclosed for your review. Ms. Lines has been very helpful and has emphasized the need for legislative resolve through investigation of current regulation as well as the interest and need for religious school de-regulation and how best the two goals can work together. Ms. Lines also suggested that it would be in the best interest of expeditious and sound legislation for the issue to be dealt with away from the political arena; allowing each interest room for rational communication and resolution.

This issue is not easily addressed as it actually raises three constitutional issues:

- 1). Separation of Church & State - First Amendment, U.S. Constitution
- 2). Equal Protection Clause - Fourteenth Amendment, U.S. Const. & Art. 1, Sec. 1, Ak. Const.
- 3). Providing Public Education - Art 7, Sec 1, Ak. Const. & U.S. Const.

With the advice of our Legislative Counsel, in approaching the Alaska Statutes for revision, these three issues must be carefully meshed in order to be effectively implemented. A proposed Committee Substitute will be forthcoming.

#### folder content:

left

bill & statutes  
Pre-Elem Regulations  
Fiscal Note 0

right

Summary  
Sectional/Levy  
Pat Lines Article

National Comparison  
ECS Report  
Comments/Glover  
Jacobus Summary

Alaska State Legislature

AD 551

REP. MAE TISCHER  
CO-CHAIRMAN

REP. MILO FRITZ  
CO-CHAIRMAN



MEMBERS:  
REP. MIKE MILLER  
VICE CHAIRMAN  
REP. BETTE CATO  
REP. MIKE DAVIS  
REP. PETER GOLL  
REP. NILO KOPONEN

POUCH V  
STATE CAPITAL  
JUNEAU, ALASKA 99811  
(907) 465-3777

House of Representatives  
HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

April 20, 1983

Ms. Pat Lines  
Education Commission of the States  
Suite 300  
Lincoln Tower Bldg.  
1860 Lincoln St.  
Denver Colorado 80203

mt

Dear Ms. Lines:

In appreciation for the information you were able to extend to me in our telephone conversation earlier today, I would like to thank you for your time and efforts in forwarding any further background in regard to the issue concerning the exempting of religious schools from State government.

The enclosed bill has been proposed to the Alaska State Legislature and is currently being reviewed by the Health, Education and Social Services Committee. This language, however, has been declared unconstitutional through a legal opinion from our Legal Services Division attorney, Keith Levy (attached).

Any further assistance you are able to offer will be appreciated. We will be scheduling the legislation for hearings in the very near future.

Respectfully,

Linda Otey, Committee Aide  
House HESS Committee

cc: Rep. Milo Fritz, Co-Chair HESS ✓  
Rep. Mae Tischer, Co-Chair HESS

enclosures

STATE OF ALASKA  
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

M E M O R A N D U M

April 18, 1983

SUBJECT: Regulation of religious schools  
(HB 357)

TO: Representative Milo Fritz

FROM: Keith B. Levy *KBL*  
Legislative Counsel

RECEIVED  
MILO H. FRITZ, M.D.  
MAR 10 5 11 PM '83

You have requested a sectional analysis of HB 357, an Act relating to the regulation of religious schools. In general, the bill amends certain sections of Title 14 of the Alaska Statutes to remove state control of schools operated by a church or other nonprofit religious organization that is exempt from federal taxation and does not receive state or federal funding for its educational program.

Section 1 of the bill amends AS 14.07.020(8) to remove pre-elementary schools and the educational component of nurseries operated by these religious groups from the supervision of the Department of Education. The law currently requires the Department of Education to supervise these programs.

Section 2 of the bill amends AS 14.30.010(b)(1) to exempt children attending a school operated by one of the religious organizations described above from the requirement that children between seven and 16 years of age attend public school. It also makes clear that these schools need not have an average student proficiency that is at least equal to the average proficiency found in public schools in the same area. AS 14.30.010(b)(1) currently requires such proficiency of all private schools.

Section 3 excludes the schools described above from the provisions of AS 14.45.020. As presently written, AS 14.45.020 allows the commissioner of education to furnish final examination questions and grant diplomas for eighth graders in private schools.

Section 4 amends AS 14.45.030 to exempt the schools described above from monthly attendance and other reporting requirements currently applied to public and private schools.

Section 5 amends AS 44.27.020(1) to exclude the schools described above from the general duty of the Department of Education to administer the state's program of education.

You should be aware that HB 357, as currently written, presents a constitutional problem with respect to the equal protection clauses of the state and federal constitutions. The bill exempts certain private schools from requirements that apply to all other private schools. The factors that distinguish the exempt schools from the nonexempt schools are their federal taxation exemption status, that the educational programs involved do not receive state or federal funding, and that they are operated by a church or other nonprofit religious organization.

The equal protection clause of the Constitution of the State of Alaska (Article I, section 1) has been interpreted to mean that legislative classifications

...must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.

Isakson v. Rickey, 550 P.2d 359, 363 (Alaska 1976). Accordingly, the distinguishing factors mentioned above must meet this test if HB 357 is to survive a constitutional attack. Although some of the distinguishing factors do meet the test, at least one probably does not.

Singling out schools which do not receive state or federal funds for exemption from certain state requirements probably has a fair and substantial relationship to the goals of the legislation in the sense that the state has less of an interest in controlling such schools. The same may be true of schools with nonprofit status under federal taxation laws. However, a provision which singles out a school merely because it is operated by a church or other religious organization is subject to greater scrutiny. The legislature may be called upon to justify treating a private, nonprofit school which does not receive state or

Representative Milo Fritz

Page 3

April 18, 1983

federal funding in a different manner than a private, nonprofit school which does not receive federal funding and is operated by a church or other religious organization. The only difference between the two classes of schools is that one is run by a religious group and the other is not. To justify such a distinction, the legislature would have to show a very substantial relationship between the distinction and the goals of the legislation. Moreover, the goals of the legislation must be constitutionally legitimate. In my opinion, the classifications created by HB 357 lack this level of justification to the extent that they are based solely on religion. For this reason, the bill is probably unconstitutional.

KBL:ljb

15/009

# Alaska State Legislature



IN SESSION:  
POUCH V  
JUNEAU, ALASKA 99811  
(907) 465-4949

BOX 142  
EAGLE RIVER, ALASKA  
99577

## Representative Randy Phillips

HOUSE DISTRICT 15

### MEMORANDUM

TO: Senator Joe Josephson  
Chairman, Senate HESS Committee

FROM: Representative Randy Phillips *R.E.P.*

DATE: May 25, 1983

RE: CS HB 357 (RLS)

During the House floor debate on the captioned bill, Representative Koponen and I offered the attached amendments for consideration. These amendments failed the House.

The amendments were offered so that this bill would apply equally to all nonprofit private schools (to include religious schools). I have some real concern that the bill as is presently drafted could open the door to some lawsuits concerning the constitutionality of singling out religious schools for special treatment. It was my feeling that by extending the provisions to all nonprofit private schools, this problem could be avoided.

I would appreciate it if you and your committee would take the attached amendments into consideration when you review this legislation.

If you have any questions, please do not hesitate to contact me.

RECEIVED

MAY 26 1983

Josephson,

OFFERED IN THE HOUSE:

BY: Koponen and Phillips

To: CS HOUSE BILL No. 357 (RULES)

SENATE BILL No. \_\_\_\_\_

PAGE: \_\_\_\_\_ LINE: \_\_\_\_\_

PAGE 1, LINE 6

Delete: "religious"

Insert: "private"

PAGE 1, LINE 14, following "by a"

Delete: "church or other nonprofit religious"

Insert: "private nonprofit"

PAGE 2, LINE 6, following "by a "

Delete: "church or other nonprofit religious"

Insert: "private nonprofit"

PAGE 2, LINE 10, following "A"

Delete: "religious"

Insert: "private nonprofit"

PAGE 2, LINE 23, following "in a"

Delete: "religious"

Insert: "private nonprofit"

PAGE 2, LINE 25, following "in the"

Delete: "religious"

Insert: "private nonprofit"

PAGE 2, LINE 29, before "school"

delete: "religious"

insert: "private nonprofit"

## A M E N D M E N T #1 (continued)

OFFERED IN THE HOUSE:

By: \_\_\_\_\_

To: \_\_\_\_\_ HOUSE BILL No. \_\_\_\_\_

SENATE BILL No. \_\_\_\_\_

PAGE: \_\_\_\_\_

LINE: \_\_\_\_\_

PAGE 3, LINE 1, following "The"

Delete: "religious"

Insert: "private nonprofit"

PAGE 3, LINE 3, following "the"

Delete: "religiuous"

Insert: "private nonprofit"

PAGE 3, LINE 4, following "a"

Delete: "religious"

Insert: "private nonprofit"

PAGE 3, LINE 12, before "school"

Delete: "religious"

Insert: "private nonprofit"

PAGE 3, LINE 14, following "the"

Delete: "religious"

Insert: "private nonprofit"

PAGE 3, LINE 18, following "A"

Delete: "religious"

Insert: "private nonprofit"

PAGE 3, LINE 22, following "A"

Delete: "religious"

Insert: "private nonprofit"

OFFERED IN THE HOUSE:

BY: \_\_\_\_\_

To: \_\_\_\_\_ HOUSE BILL No. \_\_\_\_\_

SENATE BILL No. \_\_\_\_\_

PAGE: \_\_\_\_\_

LINE: \_\_\_\_\_

PAGE 3, LINE 25, following "the"

Delete: "religious"

Insert: "private nonprofit"

PAGE 3, LINE 26, following "chapter"

Delete: "religious"

Insert: "private nonprofit"

PAGE 3, LINE 27, following "by a "

Delete: "church or other nonprofit religious"

Insert: "private nonprofit"

PAGE 4, LINE 8, following "by a"

Delete: "church or other nonprofit religious"

Insert: "private nonprofit"

A M E N D M E N T #2

OFFERED IN THE HOUSE:

BY: KOPONEN AND PHILLIPS

To: CS HOUSE BILL No. 357 (RULES)

SENATE BILL No. \_\_\_\_\_

PAGE: \_\_\_\_\_

LINE: \_\_\_\_\_

PAGE 1, LINE 15

Delete: "direct"

PAGE 2, LINE 8

Delete: "direct"

PAGE 3, LINE 29

Delete: "direct"

PAGE 4, LINE 10

Delete: "direct"

HB 357 TITLE & SPONSOR SUMMARY  
AMENDED TITLE:  
AN ACT RELATING TO THE REGULATION OF RELIGIOUS SCHOOLS

12:30 5/21/83 PAGE 1 OF 2

PRIME SPONSOR: FRITZ.  
CO-SPONSORS: TISCHER, PESTINGER, FURNACE, WARD, FLOOD.  
CURRENT STATUS: 5/19/83 IN (H) RULES

HB 357 HOUSE ACTION 12:31 5/21/83 PAGE 2 OF 2

DATE	SEQ	PAGE	LEGISLATIVE ACTION
04/14/83	01	0861	FIRST READING --- COMMITTEE REPORTS
05/19/83	02	1426	HESS -- CS05
05/19/83	03	1427	HESS F/NOTE EQUALS ZERO RULES

\*\*\* \*\* \*\* \*\*\* \*\* \*

PUBLIC SERVICE ANNOUNCEMENT

5/4/83

STATEWIDE TELECONFERENCE

May 13, 1p.m. until 2:30 p.m. PST

Subject: HB 357 "An Act relating to the regulation of religious schools".

Contact: Linda Otey, HESS Committee Aide

FOR IMMEDIATE RELEASE

The House HESS Committee will be inviting the Senate HESS Committee to join them in a statewide teleconference regarding HB 357 "An Act relating to the regulation of religious schools. The teleconference will be held at 1p.m. on May 13, (PST) and will end at 2:30p.m. PST. The meeting will be held in Juneau in Court Room A of the Court Building. It would be appreciated, in the essence of time, if those wishing to testify would coordinate their testimonies to specific subject areas addressed by this legislation so as not to create a repetitious testimony that might not allow all witnesses to testify due to time constraints. Written comments may also be submitted to the House HESS Committee, Pouch V, Juneau, Alaska 99801.

Alaska State Legislature

REP. MAE TISCHER  
CO-CHAIRMAN

REP. MILO FRITZ  
CO-CHAIRMAN



MEMBERS:  
REP. MIKE MILLER  
VICE CHAIRMAN  
REP. BETTE CATO  
REP. MIKE DAVIS  
REP. PETER GOLL  
REP. NIILLO KOPONEN

House of Representatives

HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

POUCH V  
STATE CAPITAL  
JUNEAU, ALASKA 99811  
(907) 465-3777

April 22, 1983

Pastor Paul Glover  
Harvestor Christian Church  
and Academy  
9101 Brayton Drive  
Anchorage, Alaska 99507

Dear Pastor Glover:

Enclosed is a copy of a legal opinion regarding HB 357, the religious school legislation. The opinion has been concluded based on the legislation as written in its original form.

We are in the process of researching the relationship of religious, non-profit and private schools to other states and how best to draft legislation keeping with the intent and, at the same time, standing the test of constitutionality.

I will be happy to keep you informed as to the status of the legislation.

Sincerely,

A handwritten signature in cursive script that reads "Linda Otey".

Linda Otey  
Committee Aide  
House HESS Committee

cc: Representative Milo Fritz, Co-chairman  
Representative Mae Tischer, Co-chairman

Testimony of Burton Carney  
Associate Pastor and Principal of  
Harvester Christian Church and Academy  
Anchorage, Alaska  
November 29, 1982

Regarding  
New Regulations Being Proposed By  
Alaska Department of Education  
For  
Pre-Elementary School Programs

1). Remarks regarding the Task Force that prepared this proposal.

Dr. Marshall Lind's Response to the Draft Report dated February 2, 1982, specifically states, "The Task Force will be made up of persons from the state who are knowledgeable in the area of preschool education and who represent the various groups who will be impacted by the plan for managing preschool programs."

Although churches have a sizeable number of the pre-elementary programs in this state, no individuals were chosen from this impacted group to serve on the Task Force that wrote this proposal. Some of the major flaws of this proposal can be traced to the absence of these people from the Task Force.

2). 4 AAC 60.019 (Draft page 3) CERTIFICATE REQUIRED

The first amendment to the U. S. Constitution plainly says, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;" It is a clear violation of the principle of the separation of church and state for DOE regulations to require that a ministry of our church be LICENSED by the government. This interferes with the "free exercise" of our religion.

This proposal must be rewritten. No licensure or regulations that interfere with the "free exercise of religion" can be accepted or obeyed.

Some say that this proposal is for the "protection" of young children. I would point out that it is the conviction of our church that our buildings and equipment meet reasonable regulations for fire, life safety, health, and sanitation when they are equally and fairly applied to all. Regulations already exist that protect the health and safety of children without requiring that a church's ministry be licensed.

Portions of the proposal to which I strongly object as violations of the First Amendment include the need for a certificate (LICENSE), inspection of church personnel, finances, records, and church program/curriculum.

3). 4 AAC 60.019 (Draft p. 3) EXEMPTIONS

This section needs additional exemptions added.

Add a #3 that reads, "SCHOOLS WITH ELEMENTARY PROGRAMS."

Telephone conversations with the DOE have indicated that this new proposal would not be applied to schools such as Harvester or Tom Thumb Montessori, etc. because they already have a school program for children age six and up. When asked where this exemption was in the code in writing, we were told that it was an "understanding within the department." This is NOT good enough. Exempting "schools with elementary programs" would mean that those schools would not have to try to comply with two sets of different regulations within the same facility. Why should children of age five be regulated in a markedly different manner than children of age six? (Teacher/pupil ratios, square footage per child, hot lunch, etc.)

Add a #4 that reads, "SCHOOLS OPERATED BY LOCAL CHURCHES UNDER THEIR OWN BOARD."

This wording would give proper recognition to the exemption from licensure already granted by the constitution. The DOE must not interfere with the ministries of churches. Jesus Christ never said, "Suffer (allow) the little children to come unto me after you have a government license on the wall." God, not state government, calls and ordains these ministries to serve the community!

I wish to publicly state that as the Associate Pastor of Harvester Christian Church and Academy and as the Principal of our Christian school ministry, that I will NOT apply for a license from the DOE. It would be a violation of my religious convictions to do so!

Examples of discrimination against our church if this proposal is adopted in its present form include:

- A. Requiring Christian pre-elementary programs to get a license to minister to the needs of children.  
4 AAC 60.019 (Draft page 3)
- B. Threatening to close down a sacred ministry if we as a church do not bow to governmental control and interference.  
4 AAC 60.041 (Draft page 4)
- C. Government agencies should not be allowed to have total access to church and Christian school records. This violates the privacy of the church and of the parents.  
4 AAC 60.049 (b) which refers to "records" should be modified to say "medical records," etc. to properly limit government intrusion. (Draft page 5).
- D. The government has no right nor authority to dictate to churches the staff qualifications for their Christian pre-elementary programs. 4 AAC 60.088 & 4 AAC 60.099 (Draft pages 9 and 10)

E. The state must not be permitted to review, change, or dictate curriculum and program to churches. As presently worded, this proposal intrudes into the internal affairs of a church. 4 AAC 60.189 (Draft pages 16 and 17)

4). A number of the provisions of this proposal would INCREASE the cost of tuition for schooling. This would effectively DENY nursery school and kindergarten to the children less able to afford these beneficial programs.

Examples of MINIMUM standards that are not realistic for non-subsidized programs include:

- A. Unrealistic space requirements of 35 sq. ft./child. Minimum requirements for children in grades 1-12 are 20 sq. ft./child. Why almost double the space for a five year old child when compared to the space required for a six year old child? 4 AAC 60.119 (Draft page 12)
- B. Staff/student ratio of 1/8 for three and four year olds and a 1/10 ratio for five year olds. This certainly does not represent the MINIMUM standards for reasonable supervision and instruction. 4 AAC 60.109 (Draft p. 11)
- C. Schools should not be required to supply hot lunches to pre-elementary students. Parents should have the right to decide what they want done about lunches. Many church school programs have no hot lunch program now. To begin one would cost a great deal of money for some groups. 4 AAC 60.169 (Draft page 15)

Some may be tempted to say at this point, "You should be able to meet these requirements because day care centers already do." Yes, but the parents don't have to pay for a lot of the overhead costs because of government money that subsidizes the center.

Examples:

- A. Any day-care center can apply for a \$50,000 government loan at 7% interest to improve their center or help their center meet regulations or revised regulations.
- B. A lady at the local Day-care Assistance Office estimated that between 50 to 65% of the children in Anchorage day-care centers had subsidized tuitions. If a family has take-home pay of \$1,075 or less, the entire tuition (\$12/day) is paid for by the government. An individual or family can earn up to \$1,975 p/m. before the subsidies quit. This would amount up to \$240.00 for the month of November for 100% subsidy.
- C. Day-care centers receive surplus food products or cash to help with their snacks and noon meal. The amount per child can be as high as 52¢ for snacks and \$1.86 for their noon meal. This adds up to another \$50.00 per month to the center.

With all this government money, it's easy to see how day-care centers can make ends "meet" and still abide by so-called MINIMUM standards. Already they are planning to ask this next legislature for increased subsidies.

What's the point? Many of the groups that are opposed to this DOE proposal are non-profit organizations and by conviction do NOT receive government funds. We simply cannot operate like most day-care centers operate. The government will not help us meet these MINIMUM standards, our parents will have to help us by paying HIGHER tuitions. The sad part is that a number of children will end up being denied service because their families can't afford a tuition increase. I think that it is time for the Task Force to think about how families are going to pay for Utopian standards!

5). Some provisions of this proposal invade privacy and parental rights.

Examples:

A. The requirement that the school report a parent to the Department of Health and Social Services if the parent is over one hour late to pick up his child is unwarranted. No parent wants to be listed in some social worker's case file! 4 AAC 60.079 (h) (Draft page 9)

B. Why did the ANCHORAGE TIMES on Friday, Nov. 26th. headline an article in favor of the proposal, "CORPORAL PUNISHMENT OUTLAWED"? Because some of those writing this proposal really believe that it is wrong to paddle a child. They call that child abuse. Oh, it was later qualified in the article and is in this proposal that written authorization for spanking is permitted. But what about this wording?

Re: discipline - "...and that they not use any other technique which is humiliating, cruel, shaming, frightening, or otherwise damaging to the child." I ask, BY WHOSE STANDARDS? 4 AAC 60.189 (7) (Draft page 17)

6). This proposal neglects to include an important sentence in the DISCRIMINATION section -- 4 AAC 60.069 (3) (Draft page 7).

Present regulations contain the sentence,

"A religious group may elect to serve children that adhere to its religious beliefs but otherwise may not discriminate."

This recognizes the right of a church to serve those that are supportive of its programs. This deleted sentence MUST BE ADDED to the rewrite of this proposal.

IN SUMMARY. The most dangerous part of this proposal is the licensure of Christian church programs to young children. This must be changed to be acceptable. Cost factors have not been considered in light of what people are going to have to pay to meet these requirements. Some gross violations of privacy and parental rights need to be remedied.

Thank you.

*Burton Carney*  
Burton Carney

# YOUR CHURCH'S DEFENSE: Free Exercise and/or Entanglement

by Earl Little

## TO WHAT DEGREE SHOULD THE GOVERNMENT CONTROL A CHURCH MINISTRY? DOES THE STATE HAVE THE RIGHT TO ENTANGLE ITSELF WITH THE EDUCATIONAL MINISTRY OF A CHURCH?

Churches across America are coming under attack . . . yet as they go to the courtroom, many understand little about the deep meanings behind their choice of a defense. Pastors must not allow attorneys to put words in their mouths . . . present more easily defended arguments that compromise only a small part of their faith . . . place the priority of winning above the command to stand . . . twist the faith ever so slightly so as to appear more reasonable before the court . . . abandon five percent of their convictions to increase the chances of a courtroom victory by seventy-five percent . . . dip the colors with the justification that "half a loaf is better than no loaf at all" . . . cut the lines and allow the loser to sink, even though he is right, rather than risking his pulling them under . . . replace absolute Biblical truth as the basis for their position with the expediency of conformity to U.S. Supreme Court decisions.

Miller Road Baptist Church stood sued . . . as pastor, I was sued — two counts against the church and me, operating a school and day care without a license since November of 1979. The minimum fine was \$100 per day, with a maximum fine of \$2,000 per day. I could have gone to jail charged with violating the same Texas law that has put Brother Lester Roloff in jail three times. Such charges brought me no small amount of soul searching. I knew we had a much better chance to win by arguing not only "free exercise," but also "entanglement," yet my faith would not permit me to allow the lawyers to argue "entanglement." This decision involved principles from God's Word. I would rather lose than violate those principles. Many other pastors share my convictions on these matters and refuse to allow the Christian Law

Association attorneys or any attorneys to violate their faith by arguing contrary to what they believe, even though it is more likely to win.

CLA carefully explains to churches which it represents in lawsuits the possible avenues of defense. When fundamentalist pastors fully understand the basis of arguing "entanglement," many respond that to so argue would violate their faith in such areas as licensure, taxation, compulsory attendance, minimum standards for church school education, and zoning.

The basis of arguing "entanglement" is one of **degree**. In order to argue that the government is "entangled" with



Earl Little, Pastor, Miller Road Baptist Church, Garland, Texas

your religion (too great of a degree), one has to admit that the government has a right to come in a little but has come in too far. In other words, the camel has a right to put his head in the tent, but has no right to come any further into the tent.

A good illustration would be how far is too far to go with my wife. Someone reasons, "I promise you that I'll go no farther than holding her hand." My immediate reply would be a clinched fist, "Hands off!" This matter is not open to negotiation or discussion. Even to talk about such a thing makes adrenaline shoot through my body with muscles

tightening. Our church is the Bride of Jesus Christ. Matters of faith are not negotiable. Compromise is not considered. "Absolutely, keep your hands off her!" is my watchword to the government. I will not consider for a moment how far is too far. In such matters I am a purist — a Biblicist.

A classic example of a compulsory attendance case argued from the standpoint of entanglement is **State of Ohio v. Whisner**. Brother Levi Whisner is one of my heroes. As a pastor, he saw this thing sooner and stood straighter than perhaps any other pastor. He exercised amazing God-given wisdom when practically no one saw the issue clearly. Levi's faith was the turning point of Attorney David Gibbs' life. While Levi Whisner faced the lions, most of us cowered in the corner displaying our licenses. For years I spoke of the **Whisner** decision as a great victory. Recently I read the Ohio Supreme Court decision and realized the victory we received was in Brother Whisner's life, not in the Court's decision. God has used his life to change so many of us, but the case has set terrible precedent and will lead to a new series of lawsuits in Ohio.

The Biblical position regarding compulsory attendance laws is that the responsibility to train children rests entirely with the parents (Deuteronomy 6:4-6; Proverbs 22:6; Galatians 6:4; Malachi 4:6; Psalms 78:4-7). The Apostle Paul alludes to this uncontested principle in Galatians 4:1, 2 referring to children being under tutors and governors until the time appointed by the father. A father should determine at what age the pedagogy of his child has reached fruition. Nowhere in Scripture is education a responsibility of the State.

In **Whisner**, this Biblical principle is avoided under the compromising banner of "entanglement," which is far more reasonable to the State as well as to many judges. In **Ohio v. Whisner** (1 Ohio Opinions 3d - No. 75-746, decided July 28, 1976), an expert witness for the church, Professor Donald Erickson of the University of Chicago, testified that he is "of the firm position that the

state has some far-reaching fundamental educational responsibilities . . . " He further testified, "I don't think the state has any compelling interest at all in requiring schools to live up to the minimum standards in this book as a whole " (Page 111)

On August 15, 1974, the trial court in its opinion said: " . . . counsel for the defendants do not attack the well established law of this state and nation . . . that the natural rights of a parent to the custody and control of an infant child are subordinate to the power of the state; that a parent has an obligation to educate not only to the child but to the state; that the state has the power and duty to promulgate minimum standards for the education of its children and that compulsory education laws have been universally upheld as constitutional . . . the defense rests solely upon the contention that the minimum standards are vague, that they admit to several interpretations; that they are not rational . . . The court was not impressed by the testimony of the defendants' two expert witnesses . . .

Mr. Erickson agrees that the state has far reaching fundamental educational responsibilities and that it must regulate education . . . the basic thrust of the defense appears to be that there should be two sets of standards, one for tax supported schools and another of lesser requirements for Church or private schools " The conviction by the trial court was affirmed by the Court of Appeals which noted "But as stated in **Wisconsin v. Yoder**, there is no doubt as to the power of a state . . . to impose reasonable regulations for the control and duration of a basic education. "

The Ohio Supreme Court reversed the lower courts in favor of the church, noting that the church did not maintain that the state is devoid of all power to promulgate and enforce reasonable regulations affecting non-public schools. They mention minimum hours, employment of teachers with specified training and covering prescribed subjects. The decision said, as applied to this church, the minimum standards taken as a whole unduly burden the free exercise of religion and overstep the boundary of reasonable regulation. A separate opinion by Justice Stern stated: "Under a more reasonable construction of those provisions, the constitutional issues raised by the majority need not, and, therefore, should not even be considered

The Ohio Department of Education realized the way to overcome this decision (that their standards merely went too far, thus being entangling) was to write new, less entangling standards. These new standards were finalized and published on December 12, 1980. The **Whisner** decision rematerialized in the language of the Olin decision, rendered by the Ohio Supreme Court on December 30, 1980, wherein the court once again said if new, less-entangling standards were considered, its decision would go the other way.

"Entanglement" is clearly defined and demonstrated in the area of taxation of churches in **Walz v. Tax Commission**. The U.S. Supreme Court's majority opinion said churches were tax exempt, but not on the grounds of total separation of church and state. The court found "room for play," as long as

court, because taxation would involve more entanglement than exemption. The court states that church tax exemption is an indirect economic benefit, but not sponsorship. State legislatures, according to the court, can tax certain property at a lower rate wholly at the legislature's discretion. Tax exemption is thus viewed not as a right the church has, but a privilege granted by the state based on being less entangling than taxation. Justice Brennan's second reason for tax exemption for churches is that churches fit into the "pluralism" of American society thus helping to make society diversified. The church is viewed as only another organization that "is organized exclusively for the moral and mental improvement of men and women." He notes that the granting of the exemption may be wholly secular in nature. However, he agrees the secular is so intertwined with the sacred that to



*Delegates at the CLA Biblical Legal Seminar*

there is not excessive entanglement, noting prior rulings allowing government to provide textbooks and busing for religious schools. The dangerous implication is that the state can aid church functions outside the worship of God. This comes close to saying that some educational functions are not sacred and God mandated. The court further states that church tax exemption is the same as that afforded hospitals, libraries, patriotic groups, etc. Exemption is granted because the groups are "useful and desirable" to the state. Tax exemption would be lost if those groups (including a church) are considered no longer within this classification. Churches are exempt according to the

separate them for tax exemption could be too entangling.

Justice Harlan carried the trend even further by saying that the same exemption could be given to atheist groups because the exemption is based on charitable activities which would otherwise be borne by the state. He states that if the church is not involved in "secular" charitable community projects, tax exemption would be improper. He continues by saying that subsidy of the church through state tax exemption is a matter of degree to be determined by the U.S. Supreme Court.

The Word of God says to render unto

The latest trend is most disturbing, some of the people who argue against entanglement are proposing laws that entangle church with the state.

Caesar the things that are Caesar's, but to render unto God the things that are God's. The tithe is the Lord's (Malachi 3:8-10). God will not allow his tithe to go to Caesar, especially to support wicked programs such as abortions. As a matter of free exercise of religion our church can pay no tax. This would not apply to assessments. It is faulty reasoning to contend that our church tax exemption is not a matter of right, but abstention by the state in not exercising its right to tax because taxation would be too entangling. To me some churches who pay taxes (such as unemployment compensation) under protest are sacrificing their conviction against paying taxes in order to argue that taxation is going too far and entangling. Some cases concerning licensure are being argued from the standpoint of "entanglement." In one case I attended not argued by CLA, this was so clear to me. It was plainly brought out that the pastor was not opposed to all licensure of the church. A copy of a cafeteria permit was shown as an example of the church accepting a license. An expert witness testified to a certain point, then abruptly stopped. What he did not testify in this particular case, that he usually testified in other trials when I have heard him, is that historically the church has rejected all licensure because a license speaks of Lordship, only a higher can license a lower, a license is the permission to exist, and no one can replace the Lord Jesus as Head of the Church. It seems to me that higher courts will reason that if this church can take one license on their cafeteria, why can't they take another license on their children's ministry as long as the minimum standards are not too "entangling?" Why not take the license on the children's ministry and accept a variance on every standard the church finds objectionable? A recent case on zoning illustrates the pitfall of arguing establishment/entanglement. In **Damascus Community Church v. Clackamas County**, a church was issued a Conditional Use Permit allowing them to use their property for a "church" in 1967. In 1975 the county became aware of a church school that had operated for some time. The school was ordered closed by the zoning

board. Upon advise from counsel (not a CLA case) the church applied for a second Conditional Use Permit to operate a "school." This admitted the school was not the same as the church. The Oregon Supreme Court ruled: "By applying for a Conditional Use Permit for its school, the petitioner in effect concedes, that, for the purpose of this proceeding, its proposed use was not permitted by the original permit." On February 23, 1981, the U.S. Supreme Court refused the appeal, thus allowing the lower court's decision to stand.



*Charles Craze teaching the separation of church and state*

The Bible plainly teaches a geographical will of God. This church contends God led them to this property and through faith provided for the church to begin. God also led them to begin a church school (102 students on six acres located in a sparsely populated agricultural and residential area). One can understand a compelling government interest if a pastor said God told him to build a church on another man's property without permission. However, in this case there is no compelling interest, no question of safety or criminal law. A careful reading of the case suggests the church would have won had a pure stand based on free exercise been taken without the compromise, especially of seeking a second Conditional Use Permit.

The latest trend is the most disturbing. Some of the same people who argue against entanglement are proposing laws that unbelievably entangle church and state. A proposed law in Washington state forces church schools to "make and maintain daily attendance records, . . . provide minimum total program (hour) offerings required of

public schools . . . provide instruction in mathematics, reading, science, social studies, spelling and writing . . . administer at least once a year, a nationally standardized test . . . make records of the test available to a duly authorized representative of the state superintendent of public instruction . . . maintain on file health certificates for each teacher . . . make attendance and health certificates available for a representative of the superintendent of public instruction . . . maintain permanent student records and forward such . . . in event the church school should close, forward all student records to the nearest local school district office . . . have a policy which prohibits racial segregation . . . require students to provide proof of immunization . . . send a notification letter to the superintendent of public instruction by November 15th of each year, giving name and address of school, name of principal, statement that as a matter of conscience and/or religious beliefs it qualifies as an exempt school, grades which it operates, enrollment both in total and by grade . . . other states are passing similar laws. These unscriptural, compromise laws will effectively divide the fundamentalist churches. A few "hardliners" will refuse to submit. They will be sued. Fundamentalist pastors who submit will be subpoenaed as adverse witnesses and forced under oath to testify against their brother pastors. Their testimony will be effectively used to show the unreasonableness of the few purists.

A similar law is proposed in North Dakota. A watered down version was passed in North Carolina. A Washington State Senator summed up the situation rather well as he commented about a state department of education representative coming to him, urging his support of the bill (described above). The bureaucrat commented, "We need this piece of legislation. They are contesting laws in other states and proving the laws are unconstitutional. With this law, we can still keep the church schools under our control." The bureaucrat plainly sees they must push to the very limit of "entanglement" and maintain control, while they wait for the right moment to move in for the kill. ■

REASONS WHY WE CANNOT ACCEPT  
L I C E N S U R E  
OF OUR CHURCH MINISTRIES

The subject at hand has to do with the licensure or certification of pre-elementary programs in the State of Alaska by the Department of Education.

Our special concern has to do with the impact of these proposed regulations on our Church ministries.

THE U.S. CONSTITUTION EXEMPTS CHURCHES FROM STATE CONTROL.

The First Amendment to the U.S. Constitution plainly says, "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;" It should be crystal clear from this simple statement that the Church is constitutionally exempt from licensure.

At the same time, it should be noted that it is the responsibility of the Church to provide buildings and equipment that meet reasonable regulations for fire, life safety, health, and sanitation when they are equally and fairly applied to all alike.

On the other hand, inspection of personnel, programs, finances, records, curricula, etc., is clearly a violation of the First Amendment, and cannot be permitted by the local Church.

The First Amendment to the Constitution guarantees a separate Church and State. Historically, this has meant that the Church was not subject to the State, nor was the State subject to the Church.

The First Amendment also guarantees "free exercise of religion." Our nation has repeatedly recognized the value of this most important clause, and has resisted infringement of First Amendment rights of the citizenry.

In 1925 the State of Oregon passed a law requiring all students to attend public schools. Catholics argued that this violated their First Amendment rights because their children could no longer attend parochial schools. The U.S. Supreme Court ruled in favor of the Catholics in a case known as Pierce v. Society of Sisters.

## WHO IS RESPONSIBLE FOR THE EDUCATION OF THE CHILDREN?

Here we must consult the words of Jesus Christ as recorded in Matthew 22:21. ". . . Then saith He unto them, 'Render therefore unto Caesar the things which are Caesar's, and unto God the things that are God's.'"

On this Biblical basis we declare that neither the family nor the children belong to Caesar. In this view we contend that the Church is not to be controlled by the State. Furthermore, the Scriptures do not declare that the State has a compelling interest in the education of a child, or that it is responsible to guarantee his education.

*Constitutional  
issue - State's  
obligation for education*

Deuteronomy 6:3-7, Psalm 78:4-8, Proverbs 22:6, Galatians 4:1&2, and Ephesians 6:4 set forth the Biblical mandate that parents, especially fathers, have the primary responsibility for the education of their children, and that the local Church has the secondary responsibility.

One of the ministries of the Church is education. The Great Commission commands the Church to teach. Matthew 28:19 is a commandment to the Church. In I Timothy 3:15, the Church is called "the pillar and ground of the Truth."

At this point, it should be stated that fathers may delegate areas of their responsibility, but they can never be rid of the responsibility itself. It should be remembered that a person who delegates his responsibility to another is still responsible to see to it that the task is accomplished.

All education is inherently religious. Because this is true, it is impossible to teach without setting forth a philosophy of life. It is impossible to teach facts, whether they be historical, mathematical, psychological, or any other kind, without arriving at a conclusion to which those facts ultimately point. Facts cannot be isolated; they are a part of the whole.

In teaching, we convey our own values, or the lack of them, whichever the case may be. Our habits of life inevitably come through.

Christian parents have the distinct responsibility to train their children in God's way, since education is a religious function. A person simply cannot teach without instilling values and philosophies into the students in the classroom.

Christian schools customarily achieve academic excellence through a disciplined subject-centered teaching methodology which employs a completely different approach from that of the child-centered programs used by State and government schools.

## LICENSURE IS ABSOLUTELY UNACCEPTABLE.

If our Churches accepted a State license for their educational programs, there is a very real possibility that the same objectional programs which have already failed in the public sector would be forced upon the Christian schools. Even a cursory inspection of State licensing rules, as proposed in the considered document, quickly reveals a philosophy of education diverse from that of the Christian Church sector.

Sex education classes in the public sector are often required to display graphic illustrations of sexual activity before elementary school students. Perversion is treated as normal. The sin of sodomy is called "sexual preference" or a "lifestyle." The use of such euphemisms to classify sin is diametrically opposed to the Biblical philosophy and teaching of the Christian schools.

State licensure of Christian schools would establish de facto State schools, since the Christian schools would be at the mercy of State agencies for their existence. For these and other reasons which we shall cite, the Church cannot accept State licensure for its ministries.

When the State seeks to compel a Church to be licensed by the State, and thereby be controlled by the State, the State is in violation of the First Amendment to the Constitution. We simply cannot render to the State what belongs to God, because we are loyal to the Sovereign Head of the Church--The Lord Jesus Christ. All educational programs offered by the local Church are off limits to the State.

## ADMINISTRATIVE RESPONSIBILITIES.

Administratively, it is imperative that we reserve the right to make the decisions with regard to personnel, textbooks, disciplinary practices, curriculum, and all other areas which affect the quality of our teaching ministry. Our Christian Churches and schools must be able to preach and teach without interference from the State into their ministries.

Advocates of State licensure use the specious argument that it is necessary for the "protection" and "welfare" of the children enrolled in Christian pre-elementary programs. The case simply has not been made that licensure "protects" the children.

Astute observation of these efforts at licensure of Church ministries in other states has revealed that the so-called

need for licensure is but a guise for concealing the motives for the enhancement of power by a self-serving bureaucracy.

Advocates for licensure of the local Church seem to think that unless a Church provides pre-elementary and pre-school services free of charge, it is operating a business rather than a ministry. Biblical history and common sense dictate a completely different view. The Bible plainly teaches that "the laborer is worthy of his hire," and each employee of full-time Church ministries deserves an appropriate remuneration for his labors just as much as do the pastor, associate pastor, and full-time teachers in the Christian ministry.

There is another question to be addressed as we conclude our considerations. Should a ministry be limited only to its Church members in order to escape the allegation that the Church is operating a business? I think the answer is quite obvious: No other ministry is so limited in its outreach. No church limits its attendance to its membership. Once again, the First Amendment is violated if government and private businesses are allowed to determine that a Church's pre-elementary educational ministry has in fact become a business because its outreach goes beyond its immediate membership.

#### WHAT ABOUT CIVIL DISOBEDIENCE?

Since we have taken the position set forth in the previous paragraphs of this document, we are faced with the responsibility of stating when it is Biblically correct to disobey civil authority. WE MUST DISOBEY CIVIL AUTHORITY ONLY WHEN IT WOULD REQUIRE US TO ACT CONTRARY TO GOD'S COMMANDS. If the State Department of Education should endeavor to force a local Church to apply for a D.O.E. certificate in order to keep its pre-elementary educational ministry open, we would have no choice but to disobey the requirement. This is due to the fact that Jesus Christ is Lord of the Church, not the State Department of Education.

Licensure is an activity which proceeds from the superior to the subordinate. The U.S. Constitution calls for the Church and the State to exist alongside one another. We would never agree that the State Department of Education or the State of Alaska itself is superior to the local Church.

Furthermore, if the State should proceed to license a Church's pre-elementary education program, it would be violating the Constitution by "establishing" a school of religion by the State!

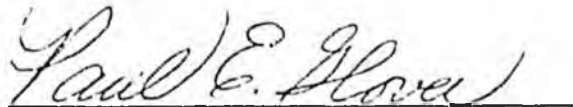
FINAL ANALYSIS.

The ultimate responsibility for the education of children lies within the home, not the State. Biblically and historically, the family is God's first and basic institution. The authority and love which God has ordained for the family must not be violated by any action of the State.

Much of the blame for the frighteningly large number of broken homes today lies with the failure of other institutions to honor the sanctity of the family.

Since there is a considerable body of evidence which supports the idea that more than three-fourths of a child's personality and character is formed by the time he is six years old, the Church must not abdicate its responsibility in providing a suitable Christian education for these children in their tender years. By the grace of God, we will fulfill our commitment by meeting the demands of the Great Commission and provide a Biblical education for the children of parents who have enrolled their most precious treasures in our Christian schools.

Respectfully submitted,



Paul E. Glover, Pastor  
Harvester Christian Church & Academy  
9101 Brayton Drive  
Anchorage, AK 99507

PEG:hm  
November 9, 1982

# Our Opinions

## Functional Illiterates

**T**wenty-three million adult Americans — a staggering 20 percent — are considered functional illiterates because they can neither read a restaurant menu nor fill out a job application form.

These people aren't to be confused with "conventional illiterates" — individuals over the age of 14 who lack a sixth-grade education. To the contrary many functional illiterates have high school diplomas, yet they cannot perform basic tasks that most people take for granted.

According to a University of Texas study, 11 percent of American high school graduates can't read well enough to interpret a bus schedule or address an envelope.

The latest group to declare war on educational failure is the Coalition for Literacy, an alliance of volunteer groups, businesses, and public service organizations that has announced a campaign to reduce the number of functional illiterates in American society.

Notwithstanding the coalition's good intentions, it must be noted that there have been many other volunteer groups devoted

to assisting undereducated adults. The federal government also began funding adult basic education 18 years ago, and in 1969 launched the "Right to Read" campaign. Yet, according to a 1979 Ford Foundation report, "only 2 to 4 percent of (the illiterates) ever enter the programs."

It appears these efforts are little more than ineffectual, albeit sincere, stopgap measures.

The cause of functional illiteracy is an institutional unwillingness to either accept past failures, or do something about present problems.

We refer, of course, to those public school systems that stubbornly refuse to require minimum-competency standards of their students. So long as schools fail to insist that their students meet fundamental educational objectives, the number of failures will continue to increase.

And all the well-intentioned programs for the victims will do nothing for the root cause of illiteracy — our defective public schools.



# Are schools really better than ever?

By Arthur E. Hippler

**VIEWING THE PAST** in reseat hues is usually an exercise in selective retrospection. Much in the "good old days" was really terrible, as anyone who was there can easily point out.

An exception to that view might be made for education. This was brought home to me with some force as I mentally attempted to compare the education being received by my eldest son and that which I received some 35 or more years ago.

By the time I'd left parochial elementary school, I had a good working knowledge of the major sequences of historical events from the Hellenic period of Greece to the first World War, a broad geographic perspective of the world and its countries, and a capacity to read at what would now be considered the 12th grade level (standards of reading achievement have been substantially "democratized" since then).

**IN PAROCHIAL** high school, history and geography were expanded upon and one could take both Latin and a contemporary foreign language, physics, chemistry and math (not including calculus). Social science, as such, was (fortunately) in short supply; no sociology or anthropology or psychology were offered.

Perhaps most importantly, we were provided a purpose for learning and a sense of right and wrong. About half my fellow students and myself were from very tough neighborhoods, and while fighting may have been common away from school, it was nearly unheard of within its boundaries.

Assaults on teachers would have been inconceivable as would incidents involving weapons, drugs or alcohol. Interracial conflicts were few in number.

Presently in the Anchorage school system, which I am told is one of the best in the U.S. and which seems to be staffed by people whose paper qualifications may be superior to those of the

teachers of my childhood, it seems possible to get through without really learning much history or geography, and to have "value free" (which really means value hidden) social science courses substitute a mushy kind of internationalist freebootery for serious substantive information about government.

Much more math is offered in the Anchorage school system than in those of my youth; it may be the outcome is greater mathematical sophistication.

**SCIENCE COURSES**, which offer the possibility for the learning of substantial content in the presence of intellectual discipline, are on the surface far better than those I was offered.

Unfortunately since children in this system do not learn to read or write either well or critically, the offerings must almost always be watered down. I understand they are presently in the process of further dilution locally.

**MOST APPARENT** of all is the breakdown of personal discipline. Minimal homework, minimal demands and "prepping" of students for the Iowa Basic Skills Test by teachers (so the school district will compare well) teach a lesson whose outcome is anti-social behavior within the very school.

Of equal importance is the uphill struggle to find teachers able and willing to communicate the powerful positive message of the cultural contribution of capitalist democracy. In any society the schools must communicate their basic values. Ours do so poorly because in large part schools are dominated by liberals who are very fuzzy about what our society's values are, but who are perfectly willing to substitute their own.

On the one hand, I can sympathize with them. How can schools supported by public funds formally

teach values alien to any segment of the supporting society? But such teachers are rarely consistent, and often define their own vague leftism as "progressive" and everything else as vaguely "reactionary." Thus they wind up teaching the contradictory idiosyncratic values of nihilism and collectivism. Liberals who learned their ideas about society from left-wing professors are not prone to teach the importance to human freedom of capitalist democracy.

The core of the difficulty is the decline of private education, a reality forced upon us by the massive tax support of public schools

and the imposition of curriculum control by state education departments and the ubiquitous self-serving teachers unions.

**VARIETY** in the educational experience, and hence useful competition of approaches, cannot be accomplished by smorgasbord offerings in the public system, since within that system the ethos and ideology remain fixed. If we wish to offer our children an education with vitality, we must remove barriers to private education, so that our high school grads will be able to read Horace, will know what happened at Thermopylae and why, and will understand just what the contributions of democratic capitalism have been.

Absent that kind of change, you'd better continue to expect your children to get less than you did, in the guise of getting more.

*Arthur Hippler, co-founder of the Alaska Civil Liberties Union, is a research associate professor of anthropology at the Institute for Social and Economic Research, University of Alaska.*

Law review  
Vol 16 - Wake Forest  
pp. 445-1980

Academy  
Dot Lines - 303-  
830-3650

1 Religious  
NC 2 identical  
Statutes 1) religion  
2) education  
Welcome  
law! voluntary  
accreditation  
analyze in law  
review as potential  
"model"

live-complaw  
unconst. - for failure  
to define "school"  
void for vagueness  
case definition

Alabama did the same as 357 (Weak) Constitutional question not yet challenged!

Yoder case - Yonick. Sup Ct decision. Ct ordered exemption specifically for that case!

use term "by reason of religious or conscientious conviction" - by the administrators of the school

Colorado has de-reg bill exempting non-public schools.

"For non-profit <sup>org.</sup> schools that are exempt will be exempt if the



Alabama - other states do it for all private education.

NC - allows school to be approved by the state  
OK

### Education Week

- Oct 82 - Phi Delta C PHI - Delta Kappans

State does have interest! Testing - <sup>standardize</sup> tests  
if de-regulated - how well on tests

- ① Consider protection needs of parents
- ② - People together in non-political environment to talk.

AD of Texas - appeal is in appellate system

now -

Gov Clements - 1<sup>st</sup> Rep. Gov in Texas

Calif - 100 churches have lost tax exemption -  
county sells prop to the state - Church has 5  
years to redeem the property.

- would not allow state to combine church w/ school.  
School had to come under Dept of Welfare.

- could not preach or influence legis unless  
reported teaching to franchise tax board.

St of Calif won't allow them to defend  
themselves because they're not a recog. entity -  
however they are still taxed.

~~Flourished~~ Kentucky Dept - brought into state court for a  
custody hearing for the crime of education

There is a Christian school

(finally won the case in court)

★ - Religious freedom issue not an education issue -

Neb - very powerful teachers union

Rev. ~~Sullivan~~ Sullivan  
Faith Baptist Church

Judge ordered school closed -

Rev. refused - Judge found him in contempt

School was closed except for church services

17 Students

- they moved into Church ~~and~~ <sup>and</sup> on line there.

3 months 17 day - contempt ~~charge~~ charge

Judge said laws needs to be solved by legis.

DR. Gregg Dickson

Unconformal leg. in Neb. - w/ state law exempting

churches. Religious liberty from

Corpus Christi Texas

Gov. illegally w/o state approval - arrested Rev. Sullivan.

- Judge case - trampled constitution

Faith Christy School will remain open

→ won't be reg by state - as certify teachers

~~→~~

If they loose - Religious freedom in Amer is gone  
per Rev.

Issue Bottom line not education as says press  
"Press" will not allow state to reg. this edur "

Rev  
Renard

Is the Church a sly of the state. - Can the  
state control any or all of the Church. If they  
have the rite to license teachers - they will  
have the rite to license preachers - worship serv  
sunday school etc - we say none - How far  
can the state go?

5/17 7pm Mtg

Tischen - Steve Hales Amer / DOE -

① pg 2 - technical changes -

② pg 2 l 1 - change Dept to State Bd of Educ  
As a sect 26 Bd - has sole authority,

to adopt reg's

③ sec 5 l 24 - unnecessary

④ Sec 4 - offered by DOE but not <sup>necessarily</sup> same as what  
they - pt to sec (c) pg. 3. - not necessary

⑤ l 1 pg 3 delete parent visit religious school

Hole - if we get from parent okay - but - if does not enroll in a  
public school no way to know if he is re-enrolled.

Hole - confused about Sect 4: Intent of section:

Hole - Reg. of 16-21 - private school not otherwise affected  
by the effects of this bill (religious) to report - any  
non-religious or for-profit schools.

they - Sect. also applies to religious schools that choose not to  
comply w/ bill.

Hole - creating 2 separate reporting methods. - Maybe 2, one  
oversite. Increased burden to state.

⑤ pg 3 l 6 - delete 9 mo - visit 180 days.

Hole - N.C. statute - 11<sup>th</sup> grade proficiency test language -  
doesn't define quality of test.

⑥ H.S. be req to provide school calendar i.e. of students  
enrolled in each grade - purely statistical.

Would be the same for all private schools. Does 4  
partly requirement.

tape # 1720

Hole - Compulsory attendance not req. by St Brd. Collect aggregate info by district generally.

Report for Foundation - based upon all the schools - when we deal w/ private schools they are separate entities.

Tischer - Is this info classified -

Hole - Any parent & school officials has access to confidential information.

critical - immunization records - less critical - achievement records.

M. Miller - Testig is important on behalf of receiving school.

Tischer - Req. by religion school teacher - do not require any more than what is required of public schools.

Koppen 14.09.020 - Provides Transportation

14.30.010 - Compulsory Attendance

14.45. - Deal of private & denominational schools - cert repealed in 1966 -

14.45.020 - permission - allows comm to grant diplomas

Ques - What is acute immediate danger or problem that has brought forth bill? Problem in some other state - not Alaska.

Tischer - Preventive measures are the best - national interest -

- Endorse as long as DOE is context of monitoring.

M. Miller - No problem for private schools re DOE amendments. -

- Motion to adopt. DOE amendment.

Hole - "Competency requirement"

John Krause - Pro NEA - opposes bill - based on fear of professional organization - must strengthen standards this bill weakens bill. Under CS amended - no requirements for certified teachers. No min graduation requirements. Free exam & religion differs from secular matters. Perhaps state should establish a standardized test. No challenge to statutes - no evidence of burden. Generated by the new Commission from Maine. Should be no transportation of these pupils or activities on spec educ @ public expense. No reason to change now.

Fitz - Partake of public transportation? Special Educ.

Krause - In Andover students, on occasion, students transfer to special educ classes provided by public schools.

Dall - Henry's opinion illegal to schools if do not receive state or fed funding - relationship w/ other Federal or state assistance.

Levy - Desiring to hear that private school - At Supreme Ct. -

Mr. Miller - This catholic school - reimburse school dist for buses used.

Koerner - 14.09.020. Transp for - By Dick Bavel -

Fitz - Teachers on their own recognition - why is end user seem to be superior educ in private schools.

Rep Schutt - opposed to bill - more press - leading to mediocrity. Should turn this into a resol. to Gov to DOE to set higher educ. standards.

Dall - Issue of church state relationship raised -

Schutt - States respon to set standards? do see

For Nurse - Dept H&A - approve rel parent? how it affects

learn programs - day care? alert -

major concern - to exclude pre-employment operators by

religion

1) no background on operator of facility

emergency child restraint

emergency protection - inform of policies

just order

to

group on sq. footage req.

admission of medication

Purpose of Licensing - Pre-schools - 3-4 1/2 yrs old.

- OK - No wonder they're reluctant to remain day care assistance - cos

Move out as immediate - Problem - 12 10-14 pg 1 / DHSS would contact pg. 12 13 - in our long -

More - AS for 357 (H&A) - And Roe

regulation





ALASKA STATE LEGISLATURE  
HOUSE OF REPRESENTATIVES  
RESEARCH AGENCY

Pouch Y, State Capitol  
Juneau, Alaska 99811  
(907) 465-3991

May 13, 1983

MEMORANDUM

TO: Representative Sam Pestinger

FROM: Leslie Longenbaugh *LL*  
Research Staff

RE: Other States' Regulation of Religious Schools  
Research Request 83-159

Ed Essa of your staff asked that we provide information about states that regulate religious and other nonpublic schools differently. My preliminary work, provided to you on May 4, revealed five states that exempt religious schools from some state regulation to which other nonpublic schools are subject. Upon further investigation, I found significant differences in regulation in only three states: Maryland, North Carolina and Tennessee. Below is a brief description of the statutory distinctions made by each state; I have attached copies of the pertinent state statutes.

Maryland

Maryland requires that private "noncollegiate" schools obtain a state certificate of approval before they may operate in the state. The issuance of such a certificate of approval is contingent upon the state board of education's finding that the "facilities, conditions of entrance and scholarship, and educational qualifications and standards are adequate and appropriate" for the type of school.<sup>1</sup>

Specifically exempted from the requirement of a certificate of approval are all institutions "operated by a bona fide church organization..."<sup>2</sup> Schools that come under this exemption may not receive any state funds other than funds for the state food service program.

All private noncollegiate schools in Maryland, including the religious schools that are exempt from the certificate of approval, must make annual reports of their enrollment and courses of study.<sup>3</sup> In addition,

---

<sup>1</sup> Annotated Code of Maryland, Education § 2-206 (e)(2).

<sup>2</sup> ACN § 2-206 (3)(4).

<sup>3</sup> ACN § 2-205.

they must conform to a state law that requires private schools that are ending operation to furnish to the state the academic records of all past and present students.

### North Carolina

North Carolina in 1979 enacted a statute which has served as a compromise between the competing interests of religious schools and states.<sup>4</sup> For the purposes of state regulation, the law creates three types of legal nonpublic schools: 1) religious schools, defined as "private church schools or schools of religious charter"; 2) "qualified nonpublic schools" -- these institutions are either accredited by the state or an association or receive no state funds; and 3) "proprietary schools," or nonpublic schools that are operated for profit.

Schools in the first and second classifications above (religious institutions and other nonpublic schools) share the following requirements:

- a) notice to the state of the intent to begin or cease operation;
- b) maintenance of annual attendance and disease immunization records for all students (there is no requirement that these records be submitted to the state);
- c) operation on a regular schedule during at least nine months of the year;
- d) subjection to reasonable fire, health and safety inspections as required by law;
- e) administration of nationally standardized tests for all students in the first, second, third, sixth and ninth grades;
- f) administration of nationally standardized tests for all students in the eleventh grade and establishment of minimum standards for achievement on the test before graduation.

In addition, schools of these two types may choose to participate in any state-operated or -sponsored program which is available to other nonpublic schools. The statute adds that no other state laws, except health, fire and safety laws, are applicable to these schools.

Apparently, North Carolina is one of only three states that require standardized testing for students of religious schools (New York and

---

<sup>4</sup> General Statutes of North Carolina, § 115C-547 through § 115C-554.

Representative Pestinger

May 13, 1983

Page 3

South Dakota are the other states). In North Carolina, the chief administrator of the religious school may choose the test, rather than having the state select the tests to be given. The tests need cover only the basic secular skills -- grammar, reading, spelling and mathematics. Records of the test scores must be available for state inspection for one year following the test.

Nonpublic schools that are operated for profit must obtain a license from the state annually. The state board of education is charged with promulgating and enforcing regulations and standards governing approval and licensure. By law, the reports solicited must include detailed information regarding curricula, costs, and instructional space. In addition, the schools must post a bond of \$1,000.<sup>5</sup>

Another difference in the requirements for licensed and exempt nonpublic schools in North Carolina is the certification of their staff. While North Carolina is one of the few states that require nonpublic-school teachers to be certified, teachers in religious schools are exempt from this provision.

#### Tennessee

The Tennessee Department of Education, by regulation, requires that all nonpublic schools report the name, age and address of all students to the local public school superintendent for the purposes of ensuring compliance with attendance laws.<sup>6</sup> Otherwise, state law requires only that the department of education inspect, approve and classify those primary, secondary and pre-elementary nonpublic schools that request such services. The approval is to be according to the standards that are used for the state's public schools.<sup>7</sup>

In 1976, the Tennessee legislature enacted legislation which prohibits the state and local boards of education from regulating the selection of faculty, textbooks or curricula of "church-related schools." The law requires that these schools meet the standards of accreditation of at least one of four nonpublic school associations. The law does require that the terms of church-related schools be as long as the public schools'.<sup>8</sup>

---

<sup>5</sup> GSNC §115C-570.

<sup>6</sup> Donald Wood, Chief of Management Services, Tennessee Department of Education, Nashville; telephone: 615/741-2731.

<sup>7</sup> Tennessee Code Annotated, 49-105 § 19.

<sup>8</sup> TCA 49-5201.

Representative Pestinger  
May 13, 1983  
Page 4

The statute adds that children who attend church-related schools may transfer into the state's public school system; however, the public schools may test such students and place them at a grade level that is indicated by the results of the test.

Like other nonpublic schools in Tennessee, church-related schools may apply for state approval, and many do. Of approximately 440 nonpublic schools in the state, roughly 160, both religious and secular, have received state approval.<sup>9</sup>

#### Case Law

Mr. Essa mentioned an interest in the case law about the regulation of religious nonpublic schools. I have enclosed a copy of a law review article written about North Carolina's regulation of religious schools; this article contains a concise overview of the findings of the United States Supreme Court and state courts of last resort.

\* \* \*

If you have any questions or further needs for research, please call on us.

LL

Attachments: Annotated Code of Maryland, Education, § 2-205, § 2-206,  
§ 2-304  
General Statutes of North Carolina, Articles 39 and 40  
Tennessee Code Annotated, Chapter 52 and § 49-105  
J. Eric Evenson II, "State Regulation of Private Religious Schools in North Carolina -- A Model Approach,"  
Wake Forest Law Review, Vol. 16 1980, pages 405 to 437

---

<sup>9</sup> Donald Wood, Tennessee Department of Education.

MAY 11 1983

STATE OF ALASKA  
THE LEGISLATURE

POUCH Y - STATE CAPITOL  
JUNEAU, ALASKA 99811  
907-465-3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

May 11, 1983

SUBJECT: Chief school administrators  
(CSHB 384 (HESS))

TO: Representative Mae Tischer  
Chairman, Health, Education, and Social  
Services Committee

FROM: Keith B. Levy *KBL*  
Legislative Counsel

Enclosed is a draft of a Committee Substitute for HB 384 (HESS). The bill may present a constitutional problem which you should be aware of. In addition, this draft differs in certain respects from the request I received from your office.

The committee substitute sets out certain limits on what a chief school administrator for a regional educational attendance area may do and the compensation he or she may receive. To go outside of these limits, the chief school administrator must obtain the approval of the school board and the legislative budget and audit committee. It may be a violation of the separation of powers doctrine for the legislature to require an employee of the executive branch to obtain legislative approval since that approval may be an executive function.

However, the state constitution does allow the legislature to exercise certain executive powers with respect to the unorganized borough. Article X, section 6 of the state constitution provides:

The legislature shall provide for the performance of services it deems necessary or advisable in unorganized boroughs, allowing for maximum local participation and responsibility. It may exercise any power or function in an unorganized borough which the assembly may exercise in an organized borough.

Accordingly, CSHB 384 (HESS) may be a valid exercise of executive power by the legislature since the bill only applies to chief school administrators in the regional educational attendance areas. Since the extent of the legislature's power to perform executive functions in the unorganized borough has not been fully defined by the courts, however, the bill merits a discussion of the separation of powers issue.

The Constitution of the State of Alaska implicitly recognizes the separation of powers doctrine. Public Defender Agency v. Superior Court, 534 P.2d 947 (Alaska 1975). Article III, section 1 of the state constitution provides

The executive power of the state is invested in the governor.

Accordingly, the legislature may not reserve to itself an executive power unless the constitution specifically provides for such a retention of power. Citing the United States Supreme Court, the Alaska Supreme Court noted that

Legislative power, as distinguished from executive power, is the authority to make laws, but not to enforce them or appoint the agents charged with the duty of such enforcement. The latter are executive functions.

Bradner v. Hammond, 553 P.2d 1, 6, n. 17 (Alaska 1976), citing Springer v. Philippine Islands, 277 U.S. 189, 202, 72 L.Ed. 845, 849 (1927).

If the approval required in the bill is construed as a legislative rather than an executive function, there is no constitutional problem. This interpretation is feasible with respect to AS 14.14.130(d) in the sense that fiscal control is at least in part a legislative function and that subsection allows the legislature to ensure fiscal integrity by retaining the power to disapprove budget excesses by chief school administrators. On the other hand, a court could also construe this power as executive in the sense that it is the power to enforce the law, i.e., the power to ensure that a chief school administrator does not violate AS 14.-14.130. At the very least, that subsection is open to constitutional attack. Some of the remaining subsections, however, do not even have the fiscal justification found in subsection (d). Subsection (f) requires legislative approval

of military and sick leave exceeding six days by chief school administrators and subsection (g) requires legislative approval for sabbatical leave. These duties are clearly administrative and would require the legislature to make executive decisions. In my opinion, such a usurping of executive power would be unconstitutional without express constitutional justification. As noted above, however, Article X, section 6 of the state constitution may provide that justification.

Moreover, there is some precedent in the Alaska Statutes for requiring legislative approval of executive acts. AS 38.-06.055(a) provides

(a) In addition to the recommendation by the board required under AS 38.06.050, the commissioner of natural resources may not enter into a sale, exchange, or other disposition of oil or gas or of the rights or waiver of the rights to receive future production of royalty oil or gas under AS 38.05.183 without the prior approval of the legislature. The legislature may approve a sale, exchange, or other disposition of oil or gas or of the rights or of a waiver of the rights to receive future production of royalty oil or gas only by enacting legislation.

This section has not been challenged in the courts. However, in an opinion addressed to Senator Ziegler regarding other aspects of AS 38.06.055, former Attorney General Avrum Gross said

It is no secret that the statute authorizing legislative approval of these contracts creates some rather serious questions concerning separation of powers. There is no need to reach the constitutional question in this case, since whatever the legal merits of the issue, the Governor has submitted these contracts to the legislature for its approval and will be bound by its decision.

Op. Att'y Gen. February 23, 1977. In other words, although the attorney general felt that the requirement of legislative approval might be unconstitutional, he chose not to address the issue since the governor had agreed not to challenge the statute. If the present administration were to challenge the provisions of CSHB 384 (HESS), the same constitutional issues would arise. In my opinion, such a challenge could fail because of the legislature's unique

Representative Mae Tischer  
Page 4  
May 11, 1983

power to govern in the unorganized borough. I would caution, however, that the exact meaning of Article X, section 6 is not clear and the question is still an open one.

You should also be aware that the provisions in this draft of the committee substitute relating to tenure of chief school administrators differ from your draft request slightly. My understanding is that you wish to provide that a chief school administrator may not acquire tenure and a teacher must forfeit tenure if appointed to the position of chief school administrator. Your draft request did not cover the possibility of a teacher who has already acquired tenure before being appointed chief school administrator. Accordingly, the enclosed draft amends two sections of Title 14 to provide that a chief school administrator forfeits tenure upon appointment and may not acquire tenure after appointment.

KBL:ljb  
19/001

made into new  
law in CD. - 14.45.040. Records

Section 6. AS 14.45.030 Sentence addition to paragraph (c).

Such schools shall report annually the number of students enrolled in each grade and provide a copy of the school calendar to the department.

Such schools shall maintain adequate student records, including all information required of public schools or <sup>attendance:</sup> immunization, physical examinations, testing and courses taken while in attendance at the religious school.

Hess CD  
Final  
4

WORK DRAFT  
WORK DRAFT  
WORK DRAFT  
Levy  
5/13/83 ✓

Original sponsors: Fritz, Tischer,  
Pestinger, et al

1 IN THE HOUSE

  
BY THE HEALTH, EDUCATION AND  
SOCIAL SERVICES COMMITTEE

2 CS FOR HOUSE BILL NO. 357 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 THIRTEENTH LEGISLATURE - FIRST SESSION

5 A BILL

6 For an Act entitled: "An Act relating to the regulation of religious  
7 schools."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 \* Section 1. AS 14.07.020(8) is amended to read:

10 (8) in cooperation with the Department of Health and Social  
11 Services, exercise general supervision over public and private pre-  
12 elementary schools and over the educational component of nurseries as  
13 defined in AS 47.35.080(4) excluding <sup>educational component of</sup> pre-elementary schools and nur-  
14 series operated by a church or other nonprofit religious organization  
15 that is exempt from federal taxation and does not receive state or  
16 federal funding; pre-elementary schools in this paragraph means  
17 schools for children ages three through five years when the schools'  
18 primary function is educational;

19 \* Sec. 2. AS 14.30.010(b)(1) is amended to read:

20 (1) is provided an academic education comparable to that  
21 offered by the public schools in the area, either by

22 (A) attendance at a private school in which the teach-  
23 ers are certificated according to AS 14.20.020;

24 (B) tutoring by personnel certificated according to  
25 AS 14.20.020; [OR]

26 (C) except as provided in (D) of this paragraph,  
27 attendance at a private school in which the average student  
28 proficiency is not less than the average proficiency found in the  
29 public schools in the area as measured by national achievement

1 tests; the <sup>State Bd. of Educ.</sup> [department] with assistance from representatives of the  
 2 private schools shall adopt [PROMULGATE] regulations defining the  
 3 subject areas to be tested and the minimum average scores to be  
 4 achieved; or

5 (D) attendance in an educational program operated in  
 6 compliance with AS 14.45 by a church or other nonprofit religious  
 7 organization that is exempt from federal taxation and does not  
 8 receive state or federal funding;

9 \* Sec. 3. AS 14.45 is amended by adding a new section to read:

10 Sec. 14.45.025. EXEMPTION FROM EDUCATION LAWS. A religious  
 11 school that complies with this chapter is exempt from other provisions  
 12 of state law and regulations relating to education except laws and  
 13 regulations relating to health, fire safety, sanitation, immunization,  
 14 and physical examinations.

15 \* Sec. 4. AS 14.45.030 is amended to read:

16 Sec. 14.45.030. ATTENDANCE AND ANNUAL REPORTS REQUIRED. (a)  
 17 Except as provided in (b) and (c) of this section, teachers [TEACHERS]  
 18 and others in charge of private or denominational schools, <sup>best notification</sup> shall make  
 19 regular monthly attendance reports and annual reports to the commis-  
 20 sioner in the same manner as teachers and superintendents in the  
 21 public schools.

22 \* Sec. 5. As 14.45.030 is amended by adding new subsections to read:

23 (b) The parent or guardian of a child enrolled in a religious  
 24 school that complies with this chapter shall file <sup>an</sup> annual <sup>notice of</sup> enrollment  
 25 <sup>in the religious school</sup> [and attendance records] for the child with the public school superin-  
 26 tendent for the area in which the child resides on a form provided by  
 27 the public school superintendent. The form shall be signed by the  
 28 parent and the chief administrative officer of the religious school  
 29 and returned to the public school superintendent by the parent. The

1 <sup>religious school</sup>  
 2 [parent] shall notify the public school superintendent immediately if  
 3 the child is no longer enrolled in or attending the religious school.

4 (c) A religious school that elects to comply with this chapter  
 5 shall maintain monthly attendance records for each student enrolled in  
 6 the school and shall operate on a regular schedule, excluding reason-  
 7 able holidays and vacations, during at least <sup>180 days</sup> [nine calendar months] of  
 8 the year.

9 \* Sec. 6. AS 14.45 is amended by adding new sections to read:

10 Sec. 14.45.035. STANDARDIZED TESTING REQUIREMENTS. (a) A  
 11 religious school that elects to comply with this chapter shall admin-  
 12 ister a nationally standardized test selected by the chief administra-  
 13 tive officer of the religious school to all students enrolled in  
 14 grades one, three, six, and nine at least once each school year.

15 (b) The nationally standardized test must measure achievement in  
 16 English grammar, reading, spelling, and mathematics.

17 (c) A religious school shall maintain records of the results of  
 18 the nationally standardized tests and the records shall be made avail-  
 19 able to the parent or guardian of the student and to authorized rep-  
 20 resentatives of the state. <sup>visiting written amendment by Hols</sup>

21 Sec. 14.45.040. DEFINITION. In this chapter, "religious school"  
 22 means a school operated by a church or other nonprofit religious  
 23 organization that is exempt from federal taxation and does not receive  
 24 state or federal funding.

25 \* Sec. 7. AS 44.27.020(1) is amended to read:

26 (1) administer the state's program of education at the  
 27 elementary, secondary, and adult levels, including, but not limited  
 28 to, programs of vocational education and training, vocational reha-  
 29 bilitation, library services, correspondence courses, adult basic  
 education, and fire-service training, but not including degree