April 12, 1948

To H. V. Tweedie, M.D., Knox County Rural Religious Association
Re: Religion in the Schools

. . . You ask, in view of the recent decision of the U. S. Supreme Court in regard to religious teaching in public schools, what should be your present attitute as a religious association. . You further state that you understand that some who have been doing this work are still continuing along this line, and you ask, "Should it be discontinued or not, although looked on favorably by school boards and people of the school district generally?"

While it is not within the statutory province of the Attorney General to advise private religious associations and while I am not advising you to continue or not to continue the work which the Knox County Rural Religious Association is doing, I will say that the U.S. Supreme Court decision in the case of Vashti McCollum vs. Board of Education of Champaign County, Ill., in no way affects the statute and the adjudicated cases on this subject in the State of Maine. In this case, Mrs. McCollum began this action against the Board of Education on the ground that she was a resident and taxpayer and the parent of a child enrolled in the public school. The State of Illinois has a compulsory education law which, with exceptions, requires parents to send their children aged 7 to 16 to its tax-supported public schools, where the children are to remain in attendance during the hours when the schools are in regular session. Parents who violate this law commit a misdemeanor punishable by fine, unless their children attend private or parochial schools which meet educational standards fixed by the State. Mrs. McCollum, the petitioner against the Board of Education, alleged that religious teachers employed by private religious groups were permitted to go weekly into the school building during regular hours set apart for secular teaching, and then and there for a period of thirty minutes substitute their religious teaching for the secular education provided under the compulsory education law.

In this case the complainant's son could join religious classes if he chose to do so and if his parents requested, or he could have stayed out of them, which he did. The complaint of the parent was that when others joined in religious services "and he does not, it sets him apart as a dissenter, which is humiliating".

This being the case, in my opinion, if the members of the Supreme Court, who decided this case by an 8 to 1 decision, had gone into the matter of jurisdiction more thoroughly, they would have found, as Justice Jackson commented, that this complainant was not deprived of property by being taxed for unconstitutional purposes to support the religious establishment, and no legal compulsion was applied to complainant's son and no penalty was imposed or threatened from which he was relieved by the decision of the Supreme Court of the United States.

It appears to me that the Court took jurisdiction on strictly constitutional grounds, referring to the First Amendment to the Constitution of the United States, which provided, "Congress shall make

no law respecting an establishment of religion or prohibiting the free exercise thereof," and the Fourteenth Amendment, which provides that no State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States.

In our State, Section 127 of Chapter 37 of the Revised Statutes of 1944 provides,

> "There shall be no denominational or sectarian comment or teaching in our public schools," and "Each student shall be free in his own forms of worship."

The Attorney General's office on September 1, 1943, ruled as follows:

"Public school buildings are provided from funds derived from taxation of all the people. The question of sectarianism and the question of religious affiliation cannot be raised in connection with the taxation of any one of our citizens. . . He is taxed and his money is used for the erection of school buildings. Those buildings are dedicated to purposes of secular education as distinguished from religious education. Knowing as we do that controversies over religious dogmas have been one of the great sources of trouble in this world, and recognizing the fact as we do that we ourselves as a people have not yet advanced to that point where we can treat with complete toleration the religious views of our neighbors, . . . we are compelled. . . to maintain a strict construction of the law. . . .

"In my opinion, a school board in any municipality of this State cannot lawfully permit the use of a public school building by any group for any particular type of religious training."

You can readily see by considering this quotation from an opinion of this office in 1943 that the opinion of the Supreme Court of the United States has added nothing, and neither has it taken away anything from our Maine statute on this subject.

I trust this letter will give you some light on the subject about which your Association is concerned.

Ralph W. Farris
Attorney General

RWF:c