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June 7, 1949

To Robert Sidney Gass, Director, Fryeburg Academy
Re: Religious Education

I received your letter of June 6th, enclosing a catalog of Fryeburg Academy. I note at the top of page 15 they have made special reference to religious education, stating that it is undenominational, although the academy was founded and sponsored by the Congregational Church. It also states that the Congregational Church is the school church and that scholars must attend there unless parents request some other church. It then mentions the other churches in town and adds that Catholic students attend church in Conway or North Conway.

Since Mrs. Gass handed me your material at the Portland meeting on May 10th, . . I have not had time to go over this material. As you know, my Deputy passed away suddenly on the evening of May 10th, after I returned from speaking in Portland, and during my absence from the office work has piled up. . .

Of course I cannot give a ruling to private parties, as I am permitted by statute to give official opinions only to the Governor and Council (etc.) Fryeburg Academy is a private school. Looking over the list of academies in the Resolves of 1947 and 1949, I find that these do not contain any aid to Fryeburg Academy. Therefore it is a private institution not receiving State aid, and as far as the Attorney General is concerned, I have no jurisdiction over it. The United States Supreme Court decision relating to religious instruction in public schools does not apply to private schools.

In the case of McCollum vs. Board of Education of Champaign County, Ill., decided March 8, 1948, it was held that religious instruction cannot be given during school hours in any public school which is supported by public funds. In this case there was an association composed of Jewish, Roman Catholic, and a few of the Protestant faiths, which was called the Champaign Council of Religious Education. They held weekly classes of 35 minutes for the lower grades and 45 for the higher grades for public school pupils in grades 4 to 9, inclusive, and the classes were taught in three separate religious groups by Protestant teachers, Catholic Priests, and a Jewish rabbi. These classes were conducted in the regular classrooms of a public school building.

Mrs. McCollum had a son who was an atheist under her teaching and she did not want him to attend any religious instruction by any faith. In her petition she asked that they be restrained from teaching any religion or anything about God, in the schools of Illinois. Admission to these classes was to be allowed only upon the express written request of parents and then only to classes designated by them. Mrs. McCollum asserted in her petition that she was a resident and taxpayer of Champaign and parent of this child who was enrolled in the Champaign public schools.

Illinois has a compulsory education law which requires parents to send every child aged 7 to 16 years to its tax-supported public schools, where the children are to remain in attendance during school hours. This religious education, so-called, was a "released-time program" for teaching religion in public schools. This had been inaugurated as early as 1914 in Gary, Illinois, and this system has spread to schools throughout the country. I understand that by last year this system had been adopted by 2200 communities involving two million pupils.

Vashti McCollum, mother of this pupil, is an avowed atheist, and she asked the court to bar every form of teaching that recognized that there was a God. She alleged that it was an invasion of her rights, having pupils recite such statements as, "The Lord is my shepherd, I shall not want." She also objected in her petition to having the Bible called the Word of God.

You can see by now that this case has no bearing on a private academy which has rules and regulations. If the rule of the academy is as outlined in the prospectus, that the students are required to attend church or Sunday school on Sunday mornings and that the Congregational Church is the one they must attend unless their parents request some other church, and the rule recites the other churches, including the Church of the New Jerusalem, that is a rule and regulation of a private institution, and if pupils do not want to comply with that rule, they are free to leave the academy; but the courts cannot force the academy to change its rules in regard to religious education, where the academy is not receiving public moneys and is not being supported by the taxpayers of the State of Maine. Therefore I have no jurisdiction in this case.

I might add for your information that the United States Supreme Court in writing this opinion in the McCollum case relied upon the First and Fourteenth Amendments of the Constitution of the United States. The Fourteenth Amendment made the "establishment of religion" clause in the First Amendment applicable as a prohibition against the States. The First Amendment rests upon the premise that both religion and government can best work to achieve their lawful aims if each is left free from the other within its respective sphere. In other words, the First Amendment erected a wall between church and State/ I quote some of the language from the McCollum opinion:

> "Here not only are the state's tax-supported buildings used for the dissemination of religious doctrines. The State also afford sectarian groups an invaluable aid in that it helps to provide pupils for their religious classes through use of the state's compulsory public school machinery. This is not separation of Church and State."

Fryeburg Academy is not a compulsory school. No pupil is obliged to go there. In order to do so, he must make application, pay tuition, etc. So far as I can ascertain, the academy is not assisted by the taxpayers of the State. . .

Ralph W. Farris
Attorney General

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