STATE OF MAINE

REPORT

OF THE

ATTORNEY GENERAL

For The Calendar Years

1963 - 1964

bers. Therefore, if one of those members dies or otherwise vacates the office and a successor is duly elected to fill the vacancy, that successor would be entitled to the remaining amount of the $1,600 which would have been due the first elected member. He is not entitled to full pay. However, there is nothing to prevent the legislature from awarding him such proportionate part of that salary as he should be entitled, notwithstanding the original January order.

Subject to the constitutional provision, Article IV, Part Third, section 7, the legislature (meaning both branches) may at any time during the session make the determination as to what amounts and at what time their salaries shall be paid; the only proviso being that "the balance be paid at the end" of the session.

Very truly yours,

FRANK E. HANCOCK
Attorney General

June 21, 1963

To: Dr. Warren G. Hill
Commissioner of Education
State Office Building
Augusta, Maine

Dear Dr. Hill:

In light of the recent United States Supreme Court decision in the *Schempp and Murray* cases, —— U. S. ——, relating to prayers in the public schools, we offer the following synopsis of the decisions and an interpretation of its effect on the present practice under Maine law.

The statutes before the court were, *Pennsylvania*, 24 Pa. Stat. § 15 — 1516 (in part) —

> "At least ten verses from the Holy Bible shall be read, without comment, at the opening of each public school on each school day. Any child shall be excused from such Bible reading, or attending such Bible reading, upon the written request of his parent or guardian."

Maryland — a rule of the Baltimore City School Commissioners pursuant to a Maryland statute (Art. 77 § 202) which provided for the holding of opening exercises in the schools consisting primarily of the reading, without comment, of a chapter of the Holy Bible and/or the use of the Lord's Prayer. Children could be excused on request.

Maine's statute reads as follows: Chapter 41, § 145, Revised Statutes of Maine:

> "Readings from scriptures in public schools; no sectarian comment or teaching. To insure greater security in the faith of our fathers, to inculcate into the lives of the rising generation the spiritual values necessary to the well-being of our and future civilizations, to develop those high moral and religious principles essential to human happiness, to make available to the youth of our

land the book which has been the inspiration of the greatest masterpieces of literature, art and music, and which has been the strength of the great men and women of the Christian era, there shall be, in all the public schools of the state, daily or at suitable intervals, readings from the scriptures with special emphasis upon the Ten Commandments, the Psalms of David, the Proverbs of Solomon, the Sermon on the Mount and the Lord's Prayer. It is provided further, that there shall be no denominational or sectarian comment or teaching and each student shall give respectful attention but shall be free in in his own forms of worship."

You can readily see that the Maine law is specifically mandatory in its application. However, the provisions allowing students to be excused in the matter before the court was of no factor in the decision.

The specific finding of the court is expressed thusly:

"In light of the history of the First Amendment and of our cases interpreting and applying its requirements, we hold that the practices at issue and the laws requiring them are unconstitutional under the Establishment Clause, as applied to the states through the Fourteenth Amendment."

Mr. Justice Clark, who wrote the majority opinion, takes time to review the history of the First Amendment and those cases in which the court has heretofore ruled on religious questions. His summation of this review is stated as follows:

" . . . . As we have indicated, the Establishment Clause has been directly considered by this Court eight times in the past score of years and, with only one Justice dissenting on this point, it has consistently held that the clause withdrew all legislative power respecting religious belief or the expression thereof. The test may be stated as follows: What are the purpose and primary effect of the enactment? If either is the advancement or inhibition of religion then the enactment exceeds the scope of legislative power as circumscribed by the Constitution. *That is to say that to withstand the strictures of the Establishment Clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion.*" (Emphasis ours)

The state's "neutrality" is the theme of the decision.

Justice Clark: " . . . . They are religious exercises, required by the States in violation of the command of the First Amendment that the government maintain strict neutrality, neither aiding nor opposing religion."

Again Justice Clark: " . . . . In the relationship between man and religion, the State is firmly committed to a position of neutrality . . . . "

Mr. Justice Goldberg concurring with the majority sums it up rather neatly:

"The practices here involved do not fall within any sensible or acceptable concept of compelled or permitted accommodation and involve the state so significantly and directly in the realm of the sectarian as to give rise to those very divisive influences and

inhibitions of freedom which both religion clauses of the First Amendment preclude. The state has ordained and has utilized its facilities to engage in unmistakably religious exercises — the devotional reading and recitation of the Holy Bible — in a manner having substantial and significant import and impact. That it has selected, rather than written, a particular devotional liturgy seems to me without constitutional import. The pervasive religiosity and direct governmental involvement inhering in the prescription of prayer and Bible reading in the public schools, during and as part of the curricular day, involving young impressionable children whose school attendance is statutorily compelled, and utilizing the prestige, power, and influence of school administration, staff, and authority, cannot realistically be termed simply accommodation, and must fall within the interdiction of the First Amendment."

There is no question that the exercises set forth in section 145 of chapter 41, and the statute itself, are unconstitutional and must be considered henceforth null and void. All practices in our public schools of Bible reading and recitation of the Lord's Prayer or any other prayer as part of a religious exercise shall cease. The pamphlet printed and distributed by the Department of Education entitled "Suggested Bible Readings For Maine Public Schools" should be now discarded by school officials.

It is clear that the decision does not prohibit the secular study of the Bible or of those subjects in which the history of religion may be an integral part. As the court said,

> " . . . (I)t might well be said that one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization. It certainly may be said for its literary and historic qualities. Nothing we have said here indicates that such study of the Bible or of religion, when presented objectively as part of a secular program of education, may not be effected consistent with the First Amendment. . . . "

It also would not prohibit the study and recitation in our schools of documents and books containing references to God nor would it prohibit the singing of religious hymns by students as long as that singing was not a part of a regular religious exercise or program. At least Justice Goldberg gives us a hint as to the feeling of the court:

> " . . . And, of course, today's decision does not mean that all incidents of government which import of the religious are therefore and without more banned by the strictures of the Establishment Clause."

He then quotes the Court in *Engel v. Vitale*, 370 U. S. 421 (N. Y. Regents Prayer Case):

> "There is of course nothing in the decision reached here that is inconsistent with the fact that school children and others are officially encouraged to express love for our country by reciting historical documents such as the Declaration of Independence which contain references to the Deity or by singing officially espoused anthems which include the composer's professions of faith in a

Supreme Being, or with the fact that there are many manifestations in our public life of belief in God. Such patriotic or ceremonial occasions bear no true resemblance to the unquestioned religious exercise that the State . . . has sponsored in this instance."

We trust this interpretation will answer the basic question of the validity of the Maine law and serve as somewhat of a guide in advising school officials at the local level.

Very truly yours,

FRANK E. HANCOCK
Attorney General

June 26, 1963

Steven D. Shaw, Administrative Assistant
State House
Augusta, Maine

Dear Steve:

You have asked, "1. Whether or not after the adjournment of the Legislature it is the Governor's prerogative to review the pending legislation without time limitation until the next meeting of the Legislature, or do the Resolves and Acts become law notwithstanding his signature, after expiration of the time limitation of five days, as set forth in Section 2 referred to above."

We answer your first question in the negative. It is our opinion that the Governor must sign those Bills and Resolves, presented to him after adjournment of the legislature, within 5 days after that presentation. If he does not do so, then those Bills and Resolves left unsigned shall have the force and effect as if he had signed them, unless returned within 3 days after the next meeting of the legislature. (Maine Constitution Article IV, Part Third, Section 2.)

" . . . (W)hen there is no expressed constitutional provision, most jurisdictions had held that the Executive may approve a bill after adjournment if he does so within the time specified for failure to return." *Volume 1, Southerland Statutory Construction*, Section 1505.

In reference to similar wording as our own Constitution, Professor Alonzo H. Tuttle said in the Ohio State University Law Journal, Volume 3, No. 3, June, 1937:

"Many courts . . . have construed these clauses as still giving the Executive the power to sign bills after such adjournment, but only by analogy within the time provided for such signing while the legislature is in session.

We interpret section 2 as follows:

If a Bill or Resolve is passed by both houses of the legislature it becomes law,

(1) When approved and signed by the Governor within 5 days of presentation to him.