

MAINE STATE LEGISLATURE

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STATE OF MAINE

Inter-Departmental Memorandum Date October 10, 1975

To Fred Douglas

Dept. Educational and Cultural Serv.

From Joseph E. Brennan, Attorney General

Dept. Attorney General

Subject Schooling of Amish Children

SYLLABUS:

The Maine Compulsory School Attendance Statute is enforceable against Amish parents who refuse to send their elementary age children [children age 14 or below who have not completed the 8th grade] to public school.

FACTS:

During the spring of 1975, a number of families of the Amish faith came to Maine and are now residing within the boundaries of School Administrative District #48. The Superintendent of Schools for S.A.D. #48 contacted the Department of Educational and Cultural Services for assistance concerning the Compulsory School Attendance Statute. According to the Superintendent there are nine (9) children of legal school age [ages 16, 14, 13, 12, 10, 9, 8 and two aged 7]. The Superintendent has brought the Compulsory Attendance Statute to the attention of the families concerned and they have indicated that in accordance with their religious beliefs the children will not be permitted to attend public schools. The Department of Educational and Cultural Services requests an interpretation of its obligation to enforce the Compulsory Attendance Statute in this instance. Further, the Department asks whether a distinction can be made in its obligation between elementary age and secondary age children, Wisconsin v. Yoder, 406 U.S. 205 (1972).

QUESTION AND ANSWER:

Whether, in view of Wisconsin v. Yoder, 20 M.R.S.A. § 911 is enforceable as against Amish parents who, having control over children of elementary school age, induce such children to absent themselves from school. Yes.

REASONS:

The State of Maine has a strong interest in universal compulsory basic education of its citizens. Basic education customarily means education to the 8th grade which prepares the individual to be a self-reliant and self-sufficient participant in society.

The Amish, however, have an abiding fear of modern education and its alluring entrapments. They believe that education which goes beyond the basic discipline and delves into worldly subjects

"militates against humility, obedience to Christ and submission to the will of God." "The Amish and Compulsory School Attendance Recent Developments," 1971 Wisconsin Law Review 832. Coupled with the Amish fear that modern secondary education will deprive them of spiritual salvation is the added fear that "the continued exposure of [Amish children] to motorized buses and large schools, to electricity, to modern science, to modern clothes and speech and customs [will]. . . threaten the very existence of [their] faith." "The Right Not to be Modern Men: The Amish and Compulsory Education," 53 Virginia Law Review 925, 948-949 (1967).

Chief Justice Warren best summarized the interest of the state in compulsory education. He wrote,

"Today, education is perhaps the most important function of state and local governments. Compulsory school attendance laws and the great expenditures for education both demonstrate our recognition of the importance to our democratic society. It is required in the performance of our most basic public responsibilities, even service in the armed services. It is the very foundation of good citizenship. Today it is a principal instrument in awakening the child to cultural values, in preparing him for later professional training, and in helping him to adjust normally to his environment. In these days it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education." Brown v. Board of Education, 347 U.S. 483, 493 (1954).

The interest of the State of Maine in compulsory education of its youth and the interest of the Amish religion in shielding its children from modern worldly education must be balanced under the principles adopted in Sherbert v. Verner, 374 U.S. 398 (1963). In the sensitive area of First Amendment rights the state must show a compelling interest to support limitations of important rights. The limitation which the State of Maine seeks to impose on religious freedom regarding education is set out in 20 M.R.S.A. § 911.

"Every child between the 7th and 17th anniversaries of his birth shall attend some public day school during the time such school is in session, and an absence therefrom of $\frac{1}{2}$ day or more shall be deemed a violation of this requirement. . . . Such attendance shall not be required if the child obtains equivalent instruction, for a

like period of time, in a private school in which the course of study and methods of instruction have been approved by the commissioner. . . . All persons having children under their control shall cause them to attend school as provided in this section, and any person having control of a child who is an habitual truant as defined in section 914 and being in any way responsible for such truancy, and any person who induces a child to absent himself from school, or harbors or conceals such child when he is absent, shall be punished by a fine of not more than \$25 or by imprisonment for not more than 30 days for each offense. . . . "

Section 911 does not provide an exemption from its application to children of the Amish religion.

When the State applies section 911 to Amish children, it ignores the single most important precept of the Amish religion, i.e., the belief that separation from the worldliness of modern society is the "sine qua non of spiritual salvation." 1971 Wisconsin Law Review, supra, at 832.

"The interest of the state in basic education of its youth cannot be disputed. However, beyond basic education, i.e., education through the 8th grade, the interest of the Amish Religion must predominate. 'We know of no doctrine that the state, in its asserted omniscience, should undertake to deny [the Amish] the observance of their religion in order to free them from the suppositions "shackles" of their "enlightened" and "primitive condition."' " People v. Woody, Cal. 394 P.2d 813 (1963).

In accordance with the principles expressed by the United States Supreme Court in Wisconsin v. Yoder, 406 U.S. 205 (1972), Maine may not compel Amish families to send their children to public secondary schools. However, Maine may compel attendance of elementary age Amish children [children age 14 or below who have not completed the 8th grade]. The Supreme Court has chosen the "completion of the 8th grade - 14 years of age" standard because it is "the child's crucial adolescent period of religious development" and further "conventional formal education will [substantially interfere] with his integration into the way of life of the Amish faith community." Yoder, supra, at 215-235.

While it is permissible to compel the attendance of elementary age Amish children, I suggest that the Department of Educational and Cultural Services consider certifying Amish methods of instruction for those children of secondary school age pursuant to its authority in 20 M.R.S.A. § 911. This kind of certification [Amish vocational training] is similar to what other states have done to resolve the Yoder conflict.


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