

MAINE STATE LEGISLATURE

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March 9, 1976

Honorable James B. Longley
Governor of Maine
State House
Augusta, Maine

Dear Governor Longley:

By "an undesignated period of silence," my letter of February 6, 1976, referred to a scheduled time interval of silence during the school day, "observed" by the school, but not designated or labeled for any particular purpose. I think it is clear that the school administration may make available and schedule a particular silent interval.

In my opinion such a period of silence, not intended and not identified in any way as a religious exercise, would not offend the Establishment Clause of the Federal Constitution. I believe some schools observe a brief silent period at the beginning of each day simply to allow students to calm down and attain a mental attitude conducive to learning. If individual students choose to accomplish this through silent prayer or meditation, there can be no legal objection to that choice. I believe the public school authorities of Maine presently have the statutory authority as well as the constitutional license to include such a time period in the daily schedule.

You correctly assume that my letter of February 6 did not suggest any objection or question concerning the propriety or legality of prayer before legislative sessions, cabinet meetings, and other government functions. Prayer on such occasions has

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never been seriously questioned. For example, Justice Douglas evidently felt that the prayers with which Congress opens each day, the phrase "God save the United States and this Honorable Court," which announces the convening of every Federal Court, and like expressions, were as much in contradiction of the establishment clause as New York's public school prayer. Engel v. Vitale, 370 U.S. 421, 439-42 (1962), Douglas, J. concurring. The majority in that case, however, clearly took a different view. The opinion of the court explains, in a footnote at page 435:

"There is of course nothing in the decision reached here that is inconsistent...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 of New York has sponsored in this instance."

I trust this sufficiently answers the questions raised in your letter of February 13, 1976.

Very truly yours,

JOSEPH E. BRENNAN
Attorney General

JEB/sjn