

# MAINE STATE LEGISLATURE

The following document is provided by the  
**LAW AND LEGISLATIVE DIGITAL LIBRARY**  
at the Maine State Law and Legislative Reference Library  
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied  
(searchable text may contain some errors and/or omissions)

JOSEPH E. BRENNAN  
ATTORNEY GENERAL



RICHARD S. COHEN  
JOHN M. R. PATTERSON  
DONALD G. ALEXANDER  
DEPUTY ATTORNEYS GENERAL

STATE OF MAINE  
DEPARTMENT OF THE ATTORNEY GENERAL  
AUGUSTA, MAINE 04333

August 9, 1977

To: H. Sawin Millett, Jr., Commissioner, Department  
of Educational and Cultural Services

From: Joseph E. Brennan, Attorney General

Re: Use of Public Funds to Staff Positions at  
Parochial Schools

FACTS:

The Brunswick School Department has for many years shared staff with Saint John's Parochial School at public expense. During the 1976-77 school year, the Brunswick School Department has provided Saint John's with the services of an art teacher, a speech therapist and a school nurse.

QUESTION:

Is the Establishment Clause of the First Amendment of the United States Constitution violated if a school administrative unit provides certain staff services at a church operated school?

ANSWER:

The Establishment Clause of the First Amendment of the United States Constitution, <sup>1/</sup> as made applicable to the States by the Fourteenth Amendment, prohibits public funds to be used to staff certain educational positions at a church operated school because of the potential for excessive governmental entanglement with religion, while permitting provision of health related staff services.

---

<sup>1/</sup> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof;" United States Constitution, Amendment 1.

In 1975, the United States Supreme Court held in Meek v. Pittenger, 421 U.S. 349 (1975),<sup>3/</sup> that a Pennsylvania law<sup>2/</sup> authorizing publicly funded staff<sup>3/</sup> to provide auxiliary services at non-public elementary and secondary schools (religious schools) violated the Establishment Clause of the First Amendment of the United States Constitution. The Court based its holding on the fact that the services were provided only on non-public school premises and only when requested by non-public school representatives thereby creating a potential for excessive governmental entanglement with religion. Meek, Ibid. pages 367, 377.

"This potential for political entanglement, together with the administrative entanglement which would be necessary to ensure that auxiliary-services personnel remain strictly neutral and nonideological when functioning in church-related schools, compels the conclusion that Act 194 [the staff services law] violates the constitutional prohibition against laws 'respecting an establishment of religion.'" 421 U.S. at 372.<sup>4/</sup>

However, in Wolman v. Walter, 45 L.W. 4861, 4865-6, June 23, 1977, the Supreme Court held that if "therapeutic and remedial services" are provided at a neutral site off the non-public school premises, then the Establishment Clause would not be violated. The Supreme Court also held in Wolman that the local

---

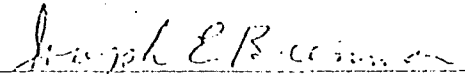
2/ Pa. Stat. Ann., Tit. 24, § 9-972; repealed 1975, August 1, P.L. 180, No. 89, § 1.

3/ The staff in question were special education teachers for remedial and exceptional students.

4/ The excessive governmental entanglement with religion test is clearly defined by the Supreme Court in Committee for Public Education and Religious Liberty v. Nyquist, 413 U.S. 756 (1973). In Meek, the Court did hold that it did not violate the Establishment Clause to provide free transportation to nonpublic school students nor to loan textbooks to be used by students in nonpublic schools. The Court's reasoning was that the financial benefit was to the children and their parents and was not to the school. Meek, Ibid. page 360.

board of education could provide speech, hearing and psychological diagnostic services to nonpublic school pupils at the school attended by those pupils without violating the Establishment Clause. The Court also made reference to the principle of law that a local board of education could also provide "publicly funded physicians, nursing, dental, and optometric services to nonpublic schools." The Court's reasoning is based on the premise that "the provision of health services to all school children - public and nonpublic - does not have the primary effect of aiding religion." Wolman, Ibid. p. 4864.

Therefore, in accordance with the Meek and Wolman decisions, the Brunswick School Board is constitutionally prohibited from providing, at public expense, the services of an art teacher to Saint John's Parochial School. It appears that the Board may make a school nurse available to Saint John's. The Board may also make a speech therapist available to Saint John's at the school's premises for the limited purposes of providing diagnostic services. However, if the speech therapist were to provide "therapeutic and remedial services," then they may only be provided at a neutral site off the nonpublic school premises.

  
\_\_\_\_\_  
JOSEPH E. BRENNAN  
Attorney General

JEB/ec