Religious Uses of Public Facilities
Public Facilities Religious Uses
Schools: Religious Uses

JOSEPH E. BRENNAN
ATTORNEY GENERAL

RICHARD S. COHEN
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DEPUTY ATTORNEYS GENERAL

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

October 10, 1978

Honorable John L. Martin
Speaker of the House
State House
Augusta, Maine 04333

Dear Mr. Speaker:

Attorney General Joseph E. Brennan has asked me to respond to your recent letter asking certain questions about renting of municipal facilities to religious organizations.

Basically, you asked two questions:

1. May a municipality rent a municipal facility to a religious organization and charge rent for such purpose?

2. May the municipal officers enter into the rental agreement or does such agreement have to be approved by the voters of the municipality?

It is difficult to answer the first question in a way that would address all factual situations. For example, the appropriateness of the rental might depend on such factors as:

- the use intended by the religious organization (e.g., religious instruction, a church fair, athletic or other recreational activities, etc.).

- the frequency of the intended use (e.g., a one-time use, or a daily, weekly or monthly use).

- the extent to which the request to use the facility is at the same or different times as the regular public uses of the facility intended by the municipality.

- the extent to which the intended uses do or do not interfere with the uses intended by the municipality.

- the extent to which the rental payment reimburses the municipality for the total costs of use of the facility.

As a general matter, municipalities are not absolutely barred from renting their facilities for use by religious organizations. However, difficulties may arise depending on the nature and scope of the use intended. For your interest, I am enclosing copies of five prior opinions of this office which have addressed the question of religious use of public facilities.

As to your second question, I would advise that there is no provisions of State law which bars municipal officials from renting municipal facilities without a town meeting vote as a precondition to such action. However, the provisions of local charters or ordinances should be reviewed to determine, in the case of any particular municipality, whether a town meeting vote is required as a precondition for rental of a town facility.

I hope this information is helpful.

Sincerely,

DONALD G. ALEXANDER
Deputy Attorney General

DGA:jg
Enclosures

cpr.

I find also in the last sentence of paragraph six of Section 12 of Chapter 77 as amended by Chapter 388 of the Public Laws of 1949 the following language:

"Said licensees shall also pay purses at least equal to minimum purses paid at any other New England harness racing track."

This is all that I find in the statutes and the rules and regulations which relates to purses.

It is my opinion that the Maine Racing Commission has wide discretion except that the commission should take an over-all view of the minimum purses paid at other New England harness racing tracks, in fixing the purses at our Maine harness racing tracks. It seems to me that the commission should set the purses to fit the financial picture of our own State, of which the U. S. Trotting Association would have no knowledge except from hearsay.

If there is anything further that you would like us to check in regard to the Maine State Racing Commission statute and the rules and regulations, please advise me.

RALPH W. FARRIS
Attorney General

July 5, 1950

To Harland A. Ladd, Commissioner of Education
Re: Renting of School Buildings

I have your memo of June 29th, stating that my opinion is sought on a phase of administering the principle of the division of church and State. You state that the school department of the City of Presque Isle has been requested to make the high school auditorium available for a series of meetings sponsored by the Seventh Day Advent Churches of Aroostook, and the superintendent of schools wishes advice on what to tell his committee. You ask if the next to the last sentence in the September 1, 1943, statement of the late Attorney General, Frank I. Cowan, is pertinent.

I quote the language to which you refer, which is found on page 71 of the Report of the Attorney General for 1943-44:

"In my opinion, a school board in any municipality of this State cannot lawfully permit the use of a public school building by any group for any particular type of religious training."

In answer to your question I will state that in my opinion this statement is pertinent, and I concur in same.

RALPH W. FARRIS
Attorney General

July 6, 1950

To Marion E. Martin, Commissioner of Labor and Industry
Re: Section 38, Chapter 25, R. S. 1944

As I read the weekly payment of wages law, it appears to me that the requirement of payment weekly of wages earned up to within eight days of such payment refers to calendar days.

September 1, 1943

Alfred Perkins, Commissioner — Insurance

I have your memo of August 30th in regard to Mutual Casualty insurance on State of Maine risks.

It is my understanding that in years past this office has avoided giving a formal opinion on this subject. If the mutual casualty company to which you refer is a State of Maine company, which will necessarily be under the direct attention of the Insurance Commissioner, I see no reason at all why the State of Maine cannot insure with it. The courts of Maine have never passed on the only question that has really bothered people in the past, which is that of possible membership in a mutual organization and liability for losses on the part of the company. However, the courts of New York have stated affirmatively that that State can buy mutual insurance, and it is my understanding that courts in some other States have come to the same conclusion. I see no reason why we cannot safely follow their example.

FRANK I. COWAN
Attorney-General

September 1, 1943

David H. Stevens, State Assessor — Taxation

This office has a memo from Mr. Lewis of your office dated July 1, 1943, and another dated September 1, 1943, in regard to T1R1NBKP Rockwood Strip, Somerset County, together with exhibits. I am returning the exhibits herewith.

I believe that the matter referred to is one that must be corrected by the legislature. There is no authority in the Tax Assessor nor in the Governor and Council, to straighten out titles.

FRANK I. COWAN
Attorney-General

September 1, 1943

Harry V. Gilson, Commissioner — Education

Your memorandum of December 15, 1942, in regard to use of public school buildings in Auburn for holding classes in religious education has, as you know, been discussed by us on several occasions. We have tried to work out a rule that shall follow the principle of division of Church and State and still will not conflict with the proper desire of people of a community to hold religious exercises in locations that may in some cases be the only ones available for public gatherings. We have found it necessary to consider the propriety of people in country districts holding religious services on Sunday in country school houses, where no church is located within several miles or where, if there is a church, it is not available for use by this particular group. We have also been compelled to consider cases such as that which has arisen in Brunswick, where a parochial school has burned and the religious sect which operated that particular school informs us it has not been able to obtain priorities to erect a school building during the summer.

Our survey of the whole situation throughout the State seems to lead us inevitably to the conclusion that if any religious group wishes to hold religious services, it is perfectly free to make use of any privately owned buildings or halls, the owners of which are willing to have them meet there, or to erect places of worship or schools for religious instruction. That right is definitely protected by both the Federal and the State Constitutions. However, public school buildings are provided from funds derived from taxation of all the people. The question of sectarianism and the question of religious affiliation cannot be raised in connection with the taxation of any one of our citizens. Whether a man is Christian, Mohammedan or Jew, and what particular dogma he follows in his worship are wholly immaterial. He is taxed and his money is used for the erection of school buildings. Those buildings are dedicated to purposes of secular education as distinguished from religious education. Knowing as we do that controversies over religious dogmas have been one of the great sources of trouble in this world, and recognizing the fact as we do that we ourselves as a people have not yet advanced to that point where we can treat with complete toleration the religious views of our neighbors, it seems to me that we are compelled by our knowledge of the facts to maintain a strict construction of the law. In my opinion, a school board in any municipality of this State cannot lawfully permit the use of a public school building by any group for any particular type of religious training. Such, I believe, was the intention of the framers of the State Constitution, and such, I believe, has been the intention of our legislature in all the enactments that it has made since the foundation of our government.

FRANK I. COWAN
Attorney-General

September 1, 1943

Carl W. Maxfield, D.M.D., Secretary
Board of Dental Examiners,
31 Central Street,
Bangor, Maine.

Dear Doctor,

I have just written to Dr. ..... to find out if he has anything further in connection with the newspaper ad for a dentist. I asked him specifically, if he has one of the letters enclosing an application and a dollar. I suggested to him that if he has he either send it to me or give it to you to send to me.

R. S. Chapter 21, Section 34, as amended by P. L. 1935, Chapter 97, Section 5, still continues to provide that "said board may revoke a certificate . . . if the person named therein . . . is guilty of immoral or unprofessional conduct. . . "

As far as I know, the courts of Maine have not passed on this particular point; but the court of California in the case of *Parker* v. *Board of Dental Examiners*, 216 Cal. 285, held that the acts of dentists in aiding an unlicensed person to practise dentistry and in unlawfully using a fictitious name in practising dentistry, constitutes unprofes-

January 13, 1965

William T. Logan, Commissioner — Education

John W. Benoit, Assistant — Attorney General

Use of Chapel at Northern Maine Vocational Technical Institute.

FACTS:

The United States of America, acting by and through its Secretary of Health, Education and Welfare, and other Federal officers, conveyed (by Quit-Claim deed) certain surplus property (buildings and land) to the State of Maine to be used for educational purposes. One of the lots conveyed by the grant (Lot F) consisted of a parcel of land and a building; the structure being known as the "chapel". The deed contained the following proviso concerning the chapel:

> "PROVIDED that the building on the above described lot F., known as the 'Chapel,' being Facility Number 00127 listed in Appendix A is conveyed on condition that, during the useful life thereof, it shall be maintained and used as a shrine or memorial, or for religious purposes and not for commercial, industrial, or other secular use, which restriction shall remain in full force and effect unless released by the Department of Health, Education and Welfare, or its successor in function, upon a determination that the building no longer serves the purpose for which it is hereby conveyed; or that such release will not prevent accomplishment of the purpose for which the building is conveyed. It is expressly understood and agreed that this condition and restriction applies to the building only, and does not run with the land."

To date, the Institute has used the chapel for: (1) its graduation exercises; (2) the presentation of a Christmas program; and (3) vesper services.

Some time ago (April, 1964) a Baptist Mission inquired of the State whether the latter would lease the chapel to the Mission. Between April, 1964, and January 12, 1965, several letters have passed between the Mission's pastor, the Department of Education,

and the Base Commander of Loring Air Force Base. The gist of the plural correspondence may be stated as follows:

1. A 'verbal understanding' exists between the State and the Base Commander whereby "the chapel might be made available for religious services for families of Air Force personnel which were conducted by chaplains of the Air Force." That the condition-precedent to the State's granting of such use would be "a formal request from the commanding officer of Loring Air Force Base." (Cecil's letter, May 1, 1964.)

2. Neither the Base Commander nor the Air Force "has any formal jurisdiction over this property"; meaning the property subject to the reference deed. (Col. Cyliax's letter - May 11, 1964.)

3. Although the State Board of Education has established a policy "on rental and/or use of facilities" at the vocational-technical institutes, the Board has not yet established any such policy regarding the chapel; and has sought legal advice of the Attorney General's office. (Maine Commissioner of Education's letter - December 21, 1964.)

4. The Mission Pastor is not a chaplain, and the attendance at the Mission services is not limited to families of Air Force personnel. (Reverend Hutchisons' letter - January 18, 1965.)

QUESTIONS:

1. To what extent may the personnel of the Mission use the chapel?

2. Does the State Board of Education have the right to grant the use of the chapel to other groups, on a rental or non-rental basis?

ANSWERS:

The answers appear below.

REASON:

According to the applicable provisions of the [illegible]

the chapel is to be maintained and used "as a shrine or memorial, or for religious purposes." The chapel is not to be maintained or used "for commercial, industrial, or other secular use." Utilization of the facility for the purpose of conducting graduation exercises at the Institute constitutes a qualifying use; and the use in two of special events conducted on campus, such as the Christmas program. We do not wish to pronounce upon the subject of use; any proposed use may be submitted to this office by the State Board of Education for a decision of its validity in light of the language in the deed. Because no other specific use is contemplated by the State Board of Education, the first question is moot.

The State Board of Education does not possess the requisite authority permitting it to allow the reference religious group to use the chapel for the purpose of conducting religious services. The reference deed contains a condition prohibiting a lease except upon the written authority of the Federal Department of Health, Education and Welfare:

> "2. That during the aforesaid period of twenty (20) years the State of Maine will never sell, lease, mortgage or encumber or otherwise dispose of the above described property or any part thereof or interest therein only as the Department of Health, Education and Welfare, or its successor in function, in accordance with existing regulations, may authorize in writing." (Deed, page 4.)

Please take particular note of the further condition in the deed which prescribes that the property conveyed to the State must be utilized for educational purposes:

> "1. That for a period of thirty (30) years from the date of this deed the above described property herein conveyed shall be utilized continuously in the manner and for the educational purposes set forth in the approved program and plan contained in the application of the State of Maine dated October 2, 1961, as amended by submissions to said application dated December 6, 1961 and January 10, 1962, and for no other purpose." (Deed, page 4)

It is difficult to perceive how an allowance of the religious use by the group to the religious orientation to a utilization of the property by the State for an educational purpose of the deed.

of the fact that the deed vests the State with the maintenance of the facility; and that, therefore, the State's consent to the requested use would result in its support of the particular religious group. Although, according to the provisions of the deed, the State may divest itself of this duty of maintenance, such divestiture cannot result except by reason of action between the State and the Federal Government; and any such cancellation of maintenance results in a loss of the [illegible] use.

In conclusion, the State Board of Education is without legal authority to permit the Mission to use the chapel for the purpose of conducting religious services.

John [illegible]
Assistant Attorney General

[illegible]/ch

A definition would be "any obligation of a candidate or committee for services rendered by request of a candidate or committee for which a bill has been received but not fully paid." The word "services" includes radio and television time, advertising and all other items which a candidate or committee purchases.

GEORGE C. WEST

Deputy Attorney General

June 14, 1962

To: Paul A. MacDonald, Secretary of State

Re: Mileage for the Executive Council

The question asked is stated in the following language:

"I have been requested by the Executive Council to make inquiry of you as to whether the provision of Section 31, Chapter 16 of the Revised Statutes, as amended by Chapter 415 of the Public Laws of 1957 relating to automobile travel by State Employees applies to members of the Executive Council."

Chapter 11, § 3, covers the pay and expenses of the executive council. This section provides that from January to adjournment of the legislature the council members shall receive the same compensation and travel as representatives to the legislature. The second sentence provides that at other sessions of the council the members shall receive $20 for each session *"and actual expenses."*

Section 44, Chapter 15-A (formerly § 31, chap. 16) as enacted by chapter 340, § 1, Public Laws 1957, provides that the state shall pay for the use of privately owned automobile for travel by employees of the state not more than 8c per mile for the first 5,000 miles and 6c per mile after 5,000 miles traveled in each fiscal year.

The latter section does not say that the figures paid for travel by employees are "actual expenses." The statute merely says that the state will pay not more than those amounts.

The Executive Council members are to receive "actual expenses" hence they are not bound by the provisions of section 44, chapter 15-A.

GEORGE C. WEST

Deputy Attorney General

June 20, 1962

To: Kermit S. Nickerson, Deputy Commissioner of Education

Re: Religious Instruction in Public Schools

This is in answer to your inquiry as to the legality of the rental or lease of a public building to a particular religious denomination for use outside of regular school hours.

It appears that the previous opinions of this office, which you referred to in your memorandum, do not rule directly on the question of leasing a public building to a religious denomination before or after regular school hours.

There is a split of authority in those states which have considered this prob-

lem. Annotation 79 A.L.R. 2d 1148. In those states which do permit such leasing during non-school hours, the courts indicate that the school board must insure that there is no abuse of discretion. The court stated in *Southside Est. Bapt. Church v. Trustees,* (Florida), 115 So. 2d 697:

> "We, therefore, hold that a Board of Trustees of a Florida School District has the power to exercise a reasonable discretion to permit the use of school buildings during non-school hours for any legal assembly which includes religious meetings, *subject, of course to judicial review* should such discretion be abused to the point that it could be construed as a contribution of public funds in aid of a particular religious group or the promotion or establishment of a particular religion." (Emphasis supplied)

In determining whether or not there has been an abuse of discretion in renting the public building for private use, the courts use various criteria; does the private use of the building interfere with the operation of the school system; is a fair rental paid for the private use; have a majority of the taxpayers in the school district authorized the rental or lease; is the public building available to all denominations; is the use temporary or under a long term lease.

Traditionally in this State the superintending school committee has general management and control of the public schools in its own towns. Section 54 of Chapter 41, Revised Statutes of 1954, prescribes the duties of the superintending school committee as follows:

> "1. The management of the schools and custody and care, including repairs and insurance on school buildings, of all school property in their administrative units."

It is well known that many towns permit use of public buildings for private functions either gratis or under a rental arrangement. I do not find in the case law of this State a prohibition against the lease of a public school prior to or after regular school hours. I do not find a statute in our State which forbids such a lease. Section 147 of Chapter 41 providing for release time during regular school hours for religious instruction does not prohibit such a lease agreement.

The lease agreement does not violate the state or federal constitution. There is no expenditure of public monies to support a particular religious denomination. There is no inculcation of a captive audience of students by a public school teacher during regular school hours of a particular religious doctrine.

The problem is primarily one for a court, i.e. whether or not there has been an abuse of discretion by the town in leasing a public building under authority of Section 54 of Chapter 41, supra.

RICHARD A. FOLEY

Assistant Attorney General

July 10, 1962

To: Paul A. MacDonald, Secretary of State

Re: Vacancy in office of County Commissioner

The facts as stated are that a vacancy has occurred in the office of a county

34 MRSA §1
34 MRSA § 3051

State Buildings Private Use of Gym in Informal Opinion Book

DEPARTMENT OF THE ATTORNEY GENERAL

DA

Memo From

COURTLAINE D. PERRY
ASSISTANT ATTORNEY GENERAL
COUNSEL, MENTAL HEALTH & CORRECTIONS

Date: 26 July 1976

To: John Wakefield, Associate Commissioner Dept. Mental Health and Corrections

Subject: Authority of Department of Mental Health and Corrections to Permit Private Use of Gymnasium at Former Stevens School

This is an informal memorandum in answer to your inquiries relative to the authority of the Department of Mental Health and Corrections to permit private use of the gymnasium on the grounds of the former Stevens School.

The Department of Mental Health and Corrections has received numerous requests from civic organizations and social groups in Hallowell, to be allowed to use the gymnasium. In this connection, the Department has asked the following questions:

1. "Does the Department, by statute, have the authorization to allow civic or other groups to use the gymnasium?"

2. "If the Department does have the authorization to grant requests to use the Stevens' gymnasium, does it have the authority to charge fees to cover the costs of operations?"

3. "Is the State liable for personal injuries or property damage on citizens using this facility?"

Your first question is answered - No, if the intended use of the gymnasium is solely for the purposes of the civic organization or social group and bears no relationship to the functions and programs of the Department of Mental Health and Corrections. Your first question is answered - Yes, if the use of the gymnasium intended by the civic organization or social group is in the furtherance of statutory functions and purposes of the Department, applying the reasoning set forth below.

The Department of Mental Health and Corrections has no express authority by statute to permit the use of buildings which are under its control. We must, therefore, look at the general statutory authority of the Department over such buildings and, at the purposes and functions of the Department and apply to these, recognized principles of statutory construction. 34 M.R.S.A. §1 provides in pertinent part as follows:

> "The Department of Mental Health and Corrections, as heretofore established, hereinafter in this Title called the 'department,' shall have general supervision, management and control of the research and planning, grounds, buildings and property, officers and employees, and patients and inmates of all of the following state institutions: The hospitals for the mentally ill, Pineland Center, the State Prison, the Maine Correctional Center, the Maine Youth Center, the Military and Naval Children's Home and

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such other charitable and correctional state institutions as may be created from time to time."

34 M.R.S.A. §3051 as enacted by P.L. 1975, Chapter 756 §23 provides in pertinent part as follows:

> "The Department of Mental Health and Corrections shall have control over the facility formerly known as the Stevens School located in Hallowell."

The latter section also provides that the Commissioner of Mental Health and Corrections, with the approval of the Governor, may establish a residential facility for children with severe emotional, mental and behavioral disturbances which may be located on the site of the institution formerly known as the Stevens School. This statute contemplates the provision of a broad range of services upon establishment of the children's residential facility.

34 M.R.S.A. §2 provides:

> "The department shall have authority to perform such acts, relating to the care, custody, treatment, relief and improvement of the inmates of the institutions under its control, as are not contrary to law."

The exercise of the general authority set forth in the above statutes is to be measured by application of the following tests:

> "Public bodies may exercise only that power which is conferred upon them by law. The source of that authority must be found in the empowering statute, which grants not only the expressly delegated powers, but also incidental powers necessary to the full exercise of those invested...An authorizing statute grants such powers as may be fairly implied from its language. These powers are:
>
> 1. those necessarily arising from powers expressly granted
>
> 2. those reasonably inferred from powers expressly granted
>
> 3. those essential to give effect to powers expressly granted.
>
> The public body may employ means appropriate for the purpose of carrying out the authority directly conferred upon it." State v. Fin & Feather Club, 316 A. 2d 351 at 355 (Me. 1974).

It is my opinion that, the Department in permitting the use of a building at one of the institutions under its control, such as the gymnasium at the former Stevens School, must employ a device which does not vest in the user any estate in the building, such as might be conveyed by a lease. The Legislature has not given this power to the Department. (See Opinion of the Attorney General, August 24, 1959). The device which may be used by the Department in effecting such a grant of use is a license revocable at will. By way of example, such license device has been employed by the Department in previous instances cited below.

1. A license to the Depositors Trust Company to use space at the Augusta Mental Health Institute for the purpose of operation of a branch bank for the benefit of the residents of the Augusta Mental Health Institute; this has been considered by institutional administration as a valuable therapeutic tool in assisting institute residents in achieving greater independence.

2. A license granted to individuals to permit grazing or cutting of hay on the grounds of the Bangor Mental Health Institute and the Pineland Center; these licenses were undertaken in the interest of the good husbandry of farm lands at these institutions which are not being used by the institutions, each undertaken in the "management of the grounds" of such institutions.

3. A license to the Kennebec Valley Mental Health Association to permit the use of a building at the Augusta Mental Health Institute as a halfway house; under this license, the Association provided halfway house services to residents of the Mental Health Institute and such services generally in conjunction with Kennebec Valley Mental Health Clinic, all within the broad responsibilities of the Department under 34 M.R.S.A. §2001.

If the civic organizations or social groups whose requests have given rise to the Department's inquiry of this office are asking to use the gymnasium for a purpose within the general authority of the Department as measured by the above test, such use would be appropriate.

In answer to your second question, I am of the opinion that the Department could charge a fee when it grants a license for the use of the gymnasium at the former Stevens School; however, such charge would not assist the Department in defraying costs of operations incurred in connection with such permitted use, since any such fees must be deposited with the Treasurer of State and would become part of the General Fund and not part of the operating budget of the Department. 5 M.R.S.A. §131.

Your question three as to liability of the State for personal injuries or property damage incurred through the permitted use of the gymnasium at the former Stevens School, is answered in the negative. The Doctrine of Sovereign Immunity from liability obtains Austin W. Jones Company v. State, 122 Me 214 (1923). In the event of personal injury or property damage resulting from a permitted use of the gymnasium, there being no other statutory provision applicable, the injured person could file a claim with the Governor and Council in an amount up to $2,000 pursuant to 5 M.R.S.A. §1510. The injured person might file a bill with the Legislature seeking either direct reimbursement for injury or the authority to bring suit against the state.

I suggest that any grant of a license permitting the use of the gymnasium contain a "hold harmless" clause through which the licensee will assume responsibility for personal injuries and property damage and will hold harmless the State and its officers and agents from any such liability.

Courtland D. Perry
Assistant Attorney General

CDP/vv
pc: W. J. Kelleher
L. G. Howard
Donald A. Alexander
Commissioner Rosser

JOSEPH E. BRENNAN
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DEPUTY ATTORNEYS GENERAL

STATE OF MAINE

DEPARTMENT OF THE ATTORNEY GENERAL

AUGUSTA, MAINE 04333

April 26, 1978

Martin A. Neptune, Chairman
Steering Committee
Indian Island School Evaluation Committee
112 Oak Hill Street
Old Town, Maine 04468

Re: Religious Instruction for the Indian Island School

Dear Mr. Neptune:

This responds to your letter of April 3, 1978, by which you request our opinion as to whether the United States Supreme Court bans on teaching of religion in public schools apply to the Indian Island school.

Your letter states the following facts:

> "The students in grades 1-6 are being taught the Catholic religion for 30 minutes of each school day. During this period, students not of the Catholic faith leave the classroom at their parent's request and spend this time in the gym reading, coloring, etc."

Based on the facts you have provided, I believe that the United States Supreme Court rulings which ban religious instruction in the public schools would apply to the Indian Island school. The Indian Island school is a public school financed by the State of Maine. Thus it is a public agency. Further, the school committee on Indian Island is governed by the general laws dealing with education in the same manner as any other school committee or board of directors in the State. 22 M.R.S.A. § 4719.

Our office generally discussed the question of public school religious exercises, prayer, Bible reading, and other such matters in an opinion dated February 4, 1976. That opinion is attached for your information. That opinion cites United States Supreme Court cases which:

- ban prayer in schools even if the prayer attempts to achieve denominational neutrality, Engal v. Vitale, 370 U.S. 421 (1962).

- prohibit releasing students from school time to participate in religious activities when the religious activities are to occur on school premises, Illinois ex rel. McCollum v. Board of Education, 333 U.S. 203 (1948.

- prohibit Bible reading, without comment, as a classroom activity with individuals being excused on request, School District of Abington Twp., Pa. v. Schemp, 374 U.S. 203 (1963)

The religious activities you indicate are undertaken in the Indian Island school, direct religious instruction in a specific faith in a school classroom, with students excused where their parents desire that they be excused, appears to be a greater involvement of the public school in religious instruction than any of the activities which the Supreme Court found to violate the Establishment Clause of the First Amendment of the United States Constitution.

Accordingly, it would be my view that the Supreme Court decisions apply to the activities which you describe occur in the Indian Island school.

I hope this information is helpful.

Sincerely,

Joseph E. Brennan

JOSEPH E. BRENNAN
Attorney General

DGA:jg

cc: Governor James B. Longley
H. Sawin Millett, Jr., Commissioner of Education
Edward Dicenso, Superintendent of Schools
Wally Buschmann, Assistant Attorney General