Washington Law Review

Volume 28 | Number 2

5-1-1953

Constitutional Law—Fourteenth Amendment—Religious Education—Validity of Released Time Programs

Raymond H. Siderius

RECENT CASES

Constitutional Law—Fourteenth Amendment—Religious Education—Validity of Released Time Programs. In 1948 the Supreme Court (8-1) held invalid under the 14th Amendment a system adopted by the Illinois Board of Education which permitted students, on written request of their parents, to be released during regular school hours for religious instruction or devotion in the public school buildings. *McCollum v. Board of Education* 333 U.S. 203, 2 A.L.R. 2d 1338 (1948). Under these so-called "released time" plans, non-participating children remain in the classroom and continue some form of secular study. Since the majority opinion in the *McCollum* case relied in part upon the metaphorical "wall of separation between Church and State," an uncertain test was provided for the future disposition of systems distinguishable from that involved in the Illinois case. The constitutional vice in the *McCollum* plan could have been the use of public money and property for religious purposes, or more broadly, the coercive effect of the plan in that the children released from the classroom routine to the religious services were still satisfying the statutory obligation to attend school.

Last year the Supreme Court was again faced with the problem and clarified the holding of the *McCollum* case, holding (6-3) that a released time program in New York which provided for religious instruction *off* the public school grounds, and involved no public expense, was not violative of the Federal Constitution. Justice Douglas, for the majority, held that although the 14th Amendment prohibits the states from establishing religion or prohibiting its free exercise, the particular program involved was not such that it violated either of these guaranties. Coercion in fact in administration was retained as a possible ground for holding released time plans invalid, but the majority found no evidence of any coercion in the record. The *McCollum* case was expressly affirmed but was summarily distinguished since there the program involved public expenditure. *Zorach v. Clauson,* 343 U.S. 306 (1952).

Dissenting Justices Black and Jackson saw coercion in the plan and Justice Frankfurter labeled it "use of the public schools as the instrument for security of attendance at denominational classes." The vigor alone of the dissenting opinions indicates that the problem is far from settled.

Washington at the present time does not have statutory authorization for released time religious education, possibly because of the Washington Constitution, Art. 1 § 11: ". . . No public money or property shall be appropriated for, or applied to any religious worship, exercise or instruction, or the support of any religious establishment;" and more particularly Art. IX § 4: ". . . All schools maintained or supported wholly or in part by the public funds small be forever free from sectarian control or influence." The applicability of these sections to released time plans has of course not been resolved by the Washington court. In *State* ex rel. *Dearle v. Frazier,* 102 Wash. 369, 173 Pac. 35 (1918) a resolution of the Everett Board of Education which allowed high school credit for Bible study done at home was found violative of Art. I § 11 because of the admittedly small public expense for salaries of teachers who examined the students in the subject of study. A program similar to that in *Zorach* would meet this objection since no public funds are expended.

The more serious objection to released time in Washington is found in certain language in *Visser v. Nooksack Valley School Dist.,* 33 Wn. 2d 699, 207 P. 2d 198 (1949). Plaintiffs, whose children attended a private religious school brought mandamus against the school district to force it to furnish transportation to their children, citing

RCW 28.24.060 [REM. SUPP. 1945 § 4719-1] which permitted all students of public or private schools to use the ". . . transportation facilities provided by the school district in which they reside." Although the U.S. Supreme Court had already found such statutes not violative of the Federal Constitution, *Everson v. Board of Education,* 330 U.S. 1 (1947), Justice Steinert, speaking for the majority and denying the writ, noted that the Washington Constitution is stricter than the Federal Constitution, and that Art. I § 11 and Art. IX § 4 of the Washington Constitution presented a "clear denial of the rights asserted." A determination of the constitutionality of released time plans in Washington schools would require separate consideration of precisely what constitutes "sectarian influence" within the prohibition of Art. IX § 4. The *Visser* opinion dealt with the question of what constitutes support of an admittedly sectarian school, and therefore offers no help here.

However, Art. IX § 2 (". . . But the entire revenue derived from the common school fund and the state tax for common schools shall be exclusively applied to the support of the common schools") has provided additional support for the decisions denying transportation rights to students of religious schools, but would have no application to a provision like the one in the *Zorach* case involving only the question of released time.

In any event, the rule thus far is merely that the *Zorach* type program does not violate the Federal Constitution. The Washington Constitution could present another hurdle for the local advocates of this type of religious training.

RAYMOND H. SIDERIUS

Taxation—Prizes for Artistic or Scholastic Accomplishments—Gifts or Income? *P* won $25,000 for the best symphony entered in a contest sponsored by a philanthropist. *P* composed his symphony during a three year period, 1936 to 1939, entered the contest and won the prize in 1947. The sponsor of the award derived no profit from the contest nor from *P's* participation in it. The Commissioner of Internal Revenue ruled that the entire award was taxable as income and under I.R.C. § 107(b), to be computed as though the award had been ratably received over the three year period ending with 1947. *P* filed a claim for refund on the ground that the prize constituted a gift under I.R.C. § 22(b)(3) which excludes gift from gross income as defined under I.R.C. § 22(a). The district court held that it was a gift. *Robertson v .U.S.,* 93 F. Supp. 660 (D. Utah 1950). The Court of Appeals reversed, holding that the award was taxable as income. *U.S. v. Robertson,* 190 F. 2d 680 (C.A. 10th 1951). Certiorari granted because of a conflict between this case and *McDermott v. Commissioner,* 150 F. 2d 585 (App. D.C. 1945). *Held:* Affirmed. Acceptance by contestants of the offer tendered by the sponsor of a prize contest creates an enforceable contract. Payment of the prize offered to the winner of the contest is the discharge of a contractual obligation and therefore not excludable from gross income as property received as a gift. *Robertson v. U.S.,* 343 U.S. 711 (1952).

The taxability of a prize is determined by Sections 22(a) and 22(b)(3) of the Internal Revenue Code. Section 22(a) provides, "Gross income includes gains, profits and income derived from salaries, wages or compensation for personal service . . . of whatever kind and in whatever form paid. . . ." Section 22(b) provides, "The following items shall not be included in gross income and shall be exempt from taxation under this chapter: . . . (3) . . . The value of property acquired by gift. . . ." If the award is compensation for personal services, it is taxable; if it is a gift, it is exempt.

This is the first ruling of the Supreme Court in this area. The broad doctrine