House Bill 2290) extended the present term of office of common pleas court judges serving on December 31, 1965, for an additional year and provides for the election of their successors at the general November election held in 1966 and in the even numbered years thereafter. Therefore, judges of the common pleas court will be elected at a special city election held contemporaneously with the general November election in said even numbered years. It follows that votes cast for those offices will be canvassed by the board of canvassers of the City of Detroit.[6]

3. "Can the candidates for Recorder's Judges and Common Pleas Judges continue to file with the clerk of the City of Detroit as provided in House Bills 2290 (P.A. No. 100) and 2291 (P.A. No. 85) as amended?"[7]

Section 426d of Act No. 116 of the P.A. of 1954 as added by Act No. 85 of the P.A. of 1965, provides for the filing of nominating petitions or the depositing of a filing fee by the candidates for the office of judge of the recorder's court with the city clerk. Section 646c of Act No. 116 of the P.A. of 1954 as added by Act No. 100 of the P.A. of 1965, provides for the filing of nominating petitions by candidates for judge of the common pleas court with the city clerk. Such provisions violate no constitutional limitation or requirement. Therefore, candidates for election as judges for the recorder's court or the common pleas court of the City of Detroit will file nominating petitions in the office of the city clerk as specified by said acts.

FRANK J. KELLEY,
Attorney General.

650910.1

CONSTITUTIONAL LAW:
SCHOOLS: Religious practices in the schools.

The Supreme Court of the United States has ruled that the State may not prescribe any particular form of prayer for use in the public schools even though the prayer is denominationally neutral and observance on the part of the students is purely voluntary.

The Supreme Court of the United States has ruled that the State may not require as a religious exercise either the reading of the Bible or the recitation of prayers in the public schools even if individual students may absent themselves upon parental request.

Neither a school board nor a teacher has the discretion to conduct or sanction a voluntary program of prayers, Bible reading, or other devotional exercises in the public schools.

A strictly voluntary program of student prayer or other religious exercise is permissible if it does not take place during regular school hours, and if

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[6] See C.L.S. 1961 § 168.323; M.S.A. 1956 Rev. Vol. § 6.1323.

[7] Since the submitting of the request for this opinion, House Bills 2290 and 2291 have been passed, given immediate effect, signed by the Governor, and assigned the Public Act numbers designated.

the authority of the school is in no way utilized to organize or maintain the exercise or to secure the attendance of the pupils.

Students are prohibited from conducting any religious exercise, including the saying of prayers and Bible reading, on public school property during regular school hours.

The board of education of a school district is authorized in its discretion by Section 580 of the School Code of 1955 to make public school buildings available during off-school hours for the purpose of holding religious instruction classes as long as the authority of the school is in no manner utilized to secure the attendance of the pupils to such classes and the use is simply a use of the school building.

A religious training program through Bible instruction, comments, and distribution of printed materials on public school property during regular school hours and benefiting from the authority of the school through action by its teachers does not conform with the law of the land. Local school boards should take steps to end any such programs within their jurisdiction.

The Federal and State Constitutions bar a religious training program conducted on public school property, either during the normal school day, or at any time when the authority of the school is applied to the pupils through its teachers or other officials.

Courses in religion given as a part of a secular program of education are not prohibited when presented objectively. The attempt to indoctrinate towards any particular belief or disbelief is prohibited.

In regard to the recognition of religious holidays in the public schools, the following guidelines should be observed:

(a) The emphasis on what unites rather than what divides will be an important factor in evaluating the propriety of any particular activity.

(b) School recognition of religious holidays and teaching about their origins, as distinguished from any attempt towards indoctrination, is not prohibited.

(c) The fact that a holiday is being celebrated does not alter the prohibition against religious instruction or ceremony.

(d) Symbols of religious holidays may be permitted, as part of the over-all educational process, when utilized to promote understanding of their significance, but are prohibited when used as the focal point of religious indoctrination.

No. 4405 September 10, 1965.

The Honorable Alexander J. Kloster
Acting Superintendent of Public Instruction
Department of Public Instruction
5th Floor Prudden Building
Lansing, Michigan

Your predecessor requested an interpretation by this office of the effect of recent United States Supreme Court decisions upon certain stated activi-

ties, both real and hypothetical, which raise questions concerning religious practices in the public schools.

U. S. CONSTITUTION AND FEDERAL DECISIONS

These decisions are rooted, of course, in the First Amendment to the United States Constitution which declares in part that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; * * *." It has been made abundantly clear that this mandate is also made applicable to the states through the Fourteenth Amendment to the Constitution of the United States. See *Cantwell v. State of Connecticut* (1940), 310 U.S. 296, 84 L. ed. 1213, 60 S. Ct. 900, and many other cases including those under scrutiny here.

That part of the First Amendment to the United States Constitution hereinbefore quoted is readily divisible into two concepts:

the first being concerned with the establishment of religion, sometimes called the establishment clause;

the second being concerned with the free exercise of religion, sometimes called the free exercise clause.

The fundamental purpose of the establishment clause is to require a position of neutrality which protects both religion and government. The fundamental purpose of the free exercise clause is to insure to all persons the free exercise of their religion, freed from the influential interference of government. Briefly stated, the two concepts may be summarized as — freedom to believe and freedom to act.

The United States Supreme Court decisions regarding the First Amendment's mandate handed down in 1962 and 1963 were the first significant interpretations in this area since three important decisions of the late 1940's and early 1950's. While these three earlier decisions related to varying aspects of the question of religion in schools, the first decision (*Everson*[1]) enunciated a principle which was repeated in the second (*McCollum*[2]), reiterated in the third (*Zorach*[3]) and remains today as a guiding beacon in cases of this nature.

> "Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another. Neither can force nor influence a person to go to or to remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the

[1] *Everson v. Board of Education of the Township of Ewing et al* (1947), 330 U.S. 1, 91 L. ed. 711, 67 S. Ct. 504.

[2] *People of the State of Illinois, ex rel. McCollum v. Board of Education of School District No. 71, Champaign County Illinois, et al* (1948), 333 U.S. 203, 92 L. ed. 649, 68 S. Ct. 461.

[3] *Zorach v. Clauson* (1952), 343 U.S. 306, 96 L. ed. 954, 72 S. Ct. 679.

> Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and *vice versa.* In the words of Jefferson, the clause against establishment of religion by law was intended to erect 'a wall of separation between Church and State.'" *Everson,* supra, pp. 15-16.

Also in *Everson* the Court, in defining the scope of the First Amendment, indicated that it was designed to suppress forever the prohibition of the free exercise of religion. This "requires the state to be a neutral in its relations with groups of religious believers and non-believers; it does not require the state to be their adversary. State power is no more to be used so as to handicap religions than it is to favor them." (p. 18)

With this as a background, the high Court on June 25, 1962, handed down its decision in *Engel et al v. Vitale, Jr. et al,* 370 U.S. 421, 8 L. ed. 2d 601, 82 S. Ct. 1261, declaring unconstitutional the recitation in the public schools of a prayer composed by the New York Board of Regents even though the prayer was denominationally neutral and its observance on the part of the students was voluntary. The Court said:

> "* * * The First Amendment was added to the Constitution to stand as a guarantee that neither the power nor the prestige of the Federal Government would be used to control, support or influence the kinds of prayer the American people can say — that the people's religions must not be subjected to the pressures of government for change each time a new political administration is elected to office. Under that Amendment's prohibition against governmental establishment of religion, as reinforced by the provisions of the Fourteenth Amendment, government in this country, be it state or federal, is without power to prescribe by law any particular form of prayer which is to be used as an official prayer in carrying on any program of governmentally sponsored religious activity." (pp. 429-430)
>
> "Neither the fact that the prayer may be denominationally neutral nor the fact that its observance on the part of the students is voluntary can serve to free it from the limitations of the Establishment Clause, as it might from the Free Exercise Clause, of the First Amendment, both of which are operative against the States by virtue of the Fourteenth Amendment. Although these two clauses may in certain instances overlap, they forbid two quite different kinds of governmental encroachment upon religious freedom. The Establishment Clause, unlike the Free Exercise Clause, does not depend upon any showing of direct governmental compulsion and is violated by the enactment of laws which establish an official religion whether those laws operate directly to coerce nonobserving individuals or not. This is not to say, of course, that laws officially prescribing a particular form of religious worship do not involve coercion of such individuals. When the power, prestige and financial support of government is placed behind a particular religious belief, the indirect coercive pressure upon religious minorities to conform to the prevailing officially approved religion is plain. But the purposes underlying the Establishment Clause go much further than that. Its first and most immediate purpose rested on

the belief that a union of government and religion tends to destroy government and to degrade religion. * * *." (pp. 430-431)

On June 17, 1963, the Supreme Court rendered its decision in the case of *School District of Abington Township, Pennsylvania, et al v. Schempp* and *William J. Murray, III, etc., et al v. Curlett,* 374 U.S. 203, 10 L. ed. 2d 844. This case reviewed the question of whether the First Amendment's "Establishment Clause" was violated by a Pennsylvania statute requiring the reading without comment of ten verses from the Holy Bible on the opening of public school each day, or by a rule of the Board of School Commissioners of Baltimore City adopted pursuant to statutory authority requiring the reading without comment at the opening of each school day of a chapter from the Bible and the recitation of the Lord's Prayer by the students in unison. These exercises were prescribed as part of the curricular activities of students who were required by law to attend school and they were held in school buildings under the supervision and participation of teachers employed in those schools. Provision was made for the excused absence of children from participating in such Bible reading and recitation of prayers.

The Court found that both practices were unconstitutional. The Court first discussed the long-held position that the government is a neutral in religious matters, neither helping nor hindering religious activities. After its review of the decisions discussing this point, it came to this conclusion:

"The wholesome 'neutrality' of which this Court's cases speak thus stems from a recognition of the teachings of history that powerful sects or groups might bring about a fusion of governmental and religious functions or a concert or dependency of one upon the other to the end that official support of the State or Federal Government would be placed behind the tenets of one or of all orthodoxies. This the Establishment Clause prohibits. And a further reason for neutrality is found in the Free Exercise Clause, which recognizes the value of religious training, teaching and observance and, more particularly, the right of every person to freely choose his own course with reference thereto, free of any compulsion from the state. This the Free Exercise Clause guarantees. Thus, as we have seen, the two clauses may overlap. As we have indicated, the Establishment Clause has been directly considered by this Court eight times in the past score of years and, with only one Justice dissenting on the point, it has consistently held that the clause withdrew all legislative power respecting religious belief or the expression thereof. The test may be stated as follows: what are the purpose and the primary effect of the enactment? If either is the advancement or inhibition of religion then the enactment exceeds the scope of legislative power as circumscribed by the Constitution. That is to say that to withstand the strictures of the Establishment Clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion. *Everson v. Board of Education,* [330 U.S. 1, 91 L. ed. 711, 67 S. Ct. 504, 168 A.L.R. 1392,] supra; *McGowan v. Maryland,* supra [366 U.S. at 442]. The Free Exercise Clause, likewise considered many times here, withdraws from legis-

lative power, state and federal, the exertion of any restraint on the free exercise of religion. Its purpose is to secure religious liberty in the individual by prohibiting any invasions thereof by civil authority. Hence it is necessary in a free exercise case for one to show the coercive effect of the enactment as it operates against him in the practice of his religion. The distinction between the two clauses is apparent — a violation of the Free Exercise Clause is predicated on coercion while the Establishment Clause violation need not be so attended." *Schempp*, supra, 10 L. ed. 2d, at 858, 374 U.S. 222.

Applying these principles to the cases under discussion, the Court found that the Pennsylvania statute requiring reading of Bible verses violated the establishment clause since there was a religious character to the exercises.

In regard to the Baltimore case where a rule provided for the holding of opening exercises in city schools consisting primarily of the reading of a chapter of the Bible and/or the use of The Lord's Prayer, the Court rejected the State's argument that the program was an effort to extend its benefits to all public school children without regard to their religious belief. The contention was based upon an argument that there were secular purposes for the rule, including the promotion of moral values, the contradiction to the material trends of our times, the perpetuation of our institutions, and the teaching of literature. The Court said:

"* * * even if its purpose is not strictly religious, it is sought to be accomplished through readings, without comment, from the Bible. Surely the place of the Bible as an instrument of religion cannot be gainsaid, and the State's recognition of the pervading religious character of the ceremony is evident from the rule's specific permission of the alternative use of the Catholic Douay version as well as the recent amendment permitting non-attendance at the exercises. None of these factors is consistent with the contention that the Bible is here used either as an instrument for nonreligious moral inspiration or as a reference for the teaching of secular subjects.

"The conclusion follows that in both cases the laws require religious exercises and such exercises are being conducted in direct violation of the rights of the appellees and petitioners. Nor are these required exercises mitigated by the fact that individual students may absent themselves upon parental request, for that fact furnishes no defense to a claim of unconstitutionality under the Establishment Clause. * * * Further, it is no defense to urge that the religious practices here may be relatively minor encroachments on the First Amendment. The breach of neutrality that is today a trickling stream may all too soon become a raging torrent and, in the words of Madison, 'it is proper to take alarm at the first experiment on our liberties.' * * *." *Schempp*, supra, 10 L. ed. 2d, at pp. 859-860, 374 U.S. 224, 225.

These then were the basic holdings in the most recent United States Supreme Court decisions in regard to the question of religion in the schools. Of some interest also was a decision not relating to schools, but pertaining to the whole question of governmental activity in the area of religion. That was the decision of *Sherbert V. Verner et al* (1963), 374 U.S. 398, 10

L. ed. 2d 965, 83 S. Ct. 1790, decided the same day as the *Schempp* and *Murray* decision. In the *Sherbert* case, the Supreme Court held that the Constitutional right of a Seventh Day Adventist to the free exercise of her religion was violated when she was refused unemployment compensation benefits after being discharged for refusing to work on Saturday. The Court held:

> "The door of the Free Exercise Clause stands tightly closed against any governmental regulation of religious *beliefs* as such * * *. Government may neither compel affirmation of a repugnant belief, * * * nor penalize or discriminate against individuals or groups because they hold religious views abhorrent to the authorities. * * *." 10 L. ed. 2d, at 969, 374 U.S. 402.

In awarding unemployment benefits to members of the Seventh Day Adventists in common with Sunday worshipers, the Court reflected that this meant "nothing more than the governmental obligation of neutrality in the face of religious differences, and does not represent that involvement of religious with secular institutions which it is the object of the Establishment Clause to forestall." (374 U.S. p. 409)

MICHIGAN CONSTITUTION AND STATUTES

Before we consider the application of these cases to the specific questions before us, it is pertinent to note that activities in Michigan must not only meet the test of the First Amendment to the Constitution of the United States as interpreted by these United States Supreme Court decisions, but they must also meet the test of the Constitution of the State of Michigan, which provides:

> "Every person shall be at liberty to worship God according to the dictates of his own conscience. No person shall be compelled to attend, or, against his consent, to contribute to the erection or support of any place of religious worship, or to pay tithes, taxes or other rates for the support of any minister of the gospel or teacher of religion. No money shall be appropriated or drawn from the treasury for the benefit of any religious sect or society, theological or religious seminary; nor shall property belonging to the state be appropriated for any such purpose. The civil and political rights, privileges and capacities of no person shall be diminished or enlarged on account of his religious belief." Article I, § 4, Const. 1963.

In substance this constitutional provision was also found in the Michigan Constitution of 1850 and came before the Michigan Supreme Court in *Pfeiffer v. Board of Education of Detroit* (1898), 118 Mich. 560. The teacher was required to excuse any children upon application of their parents or guardian. The Court was asked to rule that the practice of reading from a book entitled "Readings from the Bible" in the public school violated Article IV, Sections 39 and 40 of the Michigan Constitution of 1850. The Court concluded that reading from such a book without comment did not violate any provision of the Michigan Constitution of 1850.

Our interpretation must also include a study of the impact of Section 366 of the School Code of 1955 (C.L.S. 1956, § 340.366; M.S.A. 1959 Rev. Vol. § 15.3366) which provides:

> "No school district shall apply any of the moneys received by it from the primary school interest fund or from any and all other sources for the support and maintenance of any school of sectarian character, whether the same be under the control of any religious society or made sectarian by the board. The provisions of this section shall not be construed to prohibit the transportation to and from school of pupils attending private or parochial schools as provided in sections 591 and 592 of this act."

REVIEW OF SPECIFIC ACTIVITIES

In the light of these constitutional provisions, statutes, and Supreme Court decisions, the following points have now been settled:

I. *The Supreme Court of the United States has ruled the State may not prescribe any particular form of prayer for use in the public schools even though the prayer is denominationally neutral and observance on the part of the students is purely voluntary.*

II. *The Supreme Court of the United States has ruled the State may not require as a religious exercise either the reading of the Bible or the recitation of prayers in the public schools even if individual students may absent themselves upon parental request.*

Based upon these clearly and specifically settled principles you have raised several other questions. The first of these deals with whether or not a local school board or an individual teacher may, as a matter of discretion, adopt a program of voluntary prayers, Bible reading, or other devotional exercises in the public schools.

It is clear that when a school board and a teacher perform their duties in the public schools and classes within their jurisdiction they are acting respectively as an agency and an agent of the State. What the State cannot do may not be done by one of its agencies.

> "There can be no question but that the limitation of authority is applicable to school districts, which are State agencies. What the State itself is forbidden to do, a governmental agency or subdivision may not do." *Michigan Savings & Loan League v. Municipal Finance Commission,* 347 Mich. 311, 319.
>
> To the same effect see *Attorney General, ex rel. Eaves, v. State Bridge Commission,* 277 Mich. 373.

Both the school board and the teacher must maintain the completely neutral position defined by the Court in *Engel* and *Schempp.* As Mr. Justice Brennan stated in his concurring opinion in *Schempp*: "* * * government cannot sponsor religious exercises in the public schools without jeopardizing that neutrality." 374 U.S. 299. Mr. Justice Goldberg added:

> "* * * The pervasive religiosity and direct governmental involvement inhering in the prescription of prayer and Bible reading in the public schools, during and as part of the curricular day, involving

> young impressionable children whose school attendance is statutorily compelled, and utilizing the prestige, power, and influence of school administration, staff, and authority, cannot realistically be termed simply accommodation, and must fall within the interdiction of the First Amendment. * * *." 10 L. ed. 2d, at 906, 374 U.S. 307.

In an opinion to the Governor of this State on this question, the Attorney General of Maine, the Honorable Frank E. Hancock succinctly stated the limitation on a teacher as follows:

> "The teacher has no inherent authority to conduct religious exercises and she may not effectuate a policy which is beyond the power of her employer to authorize nor may she attempt to accomplish by indirection that which is directly forbidden by the law of the land." O.A.G. Maine, November 7, 1963, p. 6.

It is clear that a third conclusion is impelled by the United States Constitution and court decisions construing the same:

III. *Neither a school board nor a teacher has a discretion to conduct or sanction a voluntary program of prayers, Bible reading or other devotional exercises in the public schools.*

We come now to a consideration of voluntary actions by the pupils themselves to conduct, in the public schools, religious exercises such as the recitation of prayers or readings from the Bible. Since the authority of the State is brought to bear on the teachers and students throughout the school today, it is clear that any authorization of such a program would involve an active act of acquiescence or of approval on the part of the authorities.

The Attorney General of Maryland, the Honorable Thomas B. Finan, considered a student-promoted voluntary program in an opinion to the Maryland State Superintendent of Education. The program adopted by the student council included Bible reading and the recitation of the Lord's Prayer. No part of the program was planned or conducted by the faculty or by an administrative official of the school. If a student did not wish to listen or participate, he could either remain silent at his seat or he could leave the room and wait in the hall until the exercises were concluded.

The Maryland Attorney General found the program to violate the United States Constitution. He stated:

> "We are of the opinion that the described program constitutes activity which is proscribed by the Establishment Clause of the First Amendment of the United States Constitution, applicable here by virtue of the Fourteenth Amendment.
>
> "* * *
>
> "The activity which the Supreme Court regarded as offensive to the Establishment Clause in *Schempp* is present in the Fort Hill program. The conduct of a religious ceremony in a public school as part of the established curriculum, at a time when student attendance is normally required, is the practice proscribed and it is no less unlawful simply because the State, acting through the school officials, permits it rather

than requires it. Cf. *McCollum v. Board of Education,* 333 U.S. 203 (1948).

"* * * It is the State's participation in the program by permitting the ceremony to become a part of the regular school curriculum that renders it invalid, * * *." O.A.G. Maryland, December 16, 1963, pp. 2-4.

To the same effect, see the opinions of the Attorneys General of:

Connecticut, November 13, 1963;
Kentucky, September 3, 1963;
Pennsylvania, August 26, 1963;
Colorado, October 1, 1963;
West Virginia, September 12, 1963;
Massachusetts, August 20, 1963.

These are but a few examples of a generally held conclusion derived from recent Supreme Court decisions which we now formulate as the fourth point in this opinion.

IV. *Students are prohibited from conducting any religious exercise, including the saying of prayers and Bible reading, on public school property during regular school hours.*

It will be seen from the above conclusion that there may be an area of voluntary action by students that has no relationship to State action through teachers or other authorities. While we have no conclusive law on the subject, it would seem that a voluntary program could under certain circumstances avoid constitutional objections.

My predecessor, Attorney General Paul L. Adams, ruled in O.A.G. No. 3630, dated April 21, 1961, O.A.G. 1961-62, p. 148, that a Bible study club or Bible fellowship club meeting on public school property is not objectionable if (a) it is a voluntary gathering, (b) which meets off-school hours, and (c) if the authority of the school is in *no way* utilized to promote or maintain the club. The conclusions of this opinion by the Attorney General have not been modified by the recent Court decisions.

A similar conclusion was reached by the Maryland Attorney General in the opinion quoted from above. He said on page 5 thereof:

"Any truly voluntary program of student prayer carried on upon the school premises which is not a part of the established and required school program, and which is not in any way promoted or supervised by the teachers or the school officials, would be an activity that we would regard as permissible. * * *."

We may, therefore, arrive at this conclusion:

V. *A strictly voluntary program of student prayer or other religious exercise is permissible if it does not take place during regular school hours, and if the authority of the school is in no way utilized to organize or maintain the exercise or to secure the attendance of the pupils.*

It seems pertinent to reiterate and adopt as a part of this omnibus opinion three other rulings by Attorney General Paul L. Adams which remain

effective after the recent Supreme Court opinions. The following quotations are from the syllabi of the opinions:

VI. *"The board of education of a school district is authorized in its discretion by Section 580 of the School Code of 1955 to make public school buildings available during off-school hours for the purpose of holding religious instruction classes as long as the authority of the school is in no manner utilized to secure the attendance of the pupils to such classes and the use is simply a use of the school building."* O.A.G. 1961-62, No. 3630, p. 148.

VII. *"A religious training program through Bible instruction, comments, and distribution of printed materials on public school property during the regular school day and benefiting from the authority of the school through action by its teachers does not conform with the law of the land. Local school boards should take steps to end any such programs within their jurisdiction."* O.A.G. 1961-62, No. 3596, p. 60.

VIII. *"The Federal and State Constitutions bar a religious training program conducted on public school property, either during the normal school day, or at any time when the authority of the school is applied to the pupils through its teachers or other officials."* O.A.G. 1961-62, No. 3596, p. 60.

We may now give consideration to the question of whether, as a part of a school curriculum, the subject of religion has a proper place. There is a difference between the teaching *of* religion and teaching *about* religion. Mr. Justice Goldberg, in his concurring opinion in *Schempp*, put it this way:

> "Neither government nor this Court can or should ignore the significance of the fact that a vast portion of our people believe in and worship God and that many of our legal, political and personal values derive historically from religious teachings. Government must inevitably take cognizance of the existence of religion and, indeed, under certain circumstances the First Amendment may require that it do so. And it seems clear to me from the opinions in the present and past cases that the Court would recognize the propriety of providing military chaplains and of the teaching about religion, as distinguished from the teaching of religion, in the public schools. The examples could readily be multiplied for, both the required and the permissible accommodations between state and church frame the relation as one free of hostility or favor and productive of religious and political harmony, but without undue involvement of one in the concerns or practices of the other. To be sure, the judgment in each case is a delicate one, but it must be made if we are to do loyal service as judges to the ultimate First Amendment objective of religious liberty." 10 L. ed. 2d, at p. 906, 374 U.S. 306.

It is Justice Clark, in his majority opinion in *Schempp*, who gives what may be considered the direct answer to this question:

> "* * * In addition, it might well be said that one's education is not complete without a study of comparative religion or the history of religion and its relationship to the advancement of civilization. It certainly may be said that the Bible is worthy of study for its literary and historic qualities. Nothing we have said here indicates that such study of the Bible or of religion, when presented objectively as part of a secular program of education, may not be effected consistently

with the First Amendment." 10 L. ed. 2d, at p. 860, 374 U.S. 225.

Attorney General Edward W. Brooke of Massachusetts considered this question of whether it is permissible in the public schools to teach about the various religions and the Bible. In an opinion dated August 20, 1963, Attorney General Brooke said:

> "* * * Yet there remains a distinction between the teaching of religion, with all the necessary incidents thereof, and the practice of religion in school. The line of demarcation is vague; no single factor is likely to be decisive. The propriety of any such judgment would depend upon a series of factors setting the context in which it was exercised: whether or not it was the denouement of an exposition of an entire area; whether the exposition set forth all the competing factors; the extent to which it was expounded in connection with a course of study; the extent to which any views were labelled as the teacher's own opinion with due allowances made for others to hold contrary views; and whether or not the pupils were of an age to understand it as such.
>
> "At this point all that can be said is that the teacher and school committee must exercise the discretion vested in them in each case. Disputes in any given case must ultimately be resolved by the courts. Accordingly, with the caveat stated above, it is my opinion that courses in religion are a proper part of secular education and may be taught in the public schools."

What would be objectionable would be "* * * When instruction turns to proselyting and imparting knowledge becomes evangelism * * *." See the separate concurring opinion by Mr. Justice Jackson in *McCollum,* 92 L. ed., at p. 672, 333 U.S. 236.

We now formulate our conclusion:

IX. *Courses in religion given as a part of a secular program of education are not prohibited when presented objectively. The attempt to indoctrinate towards any particular belief or disbelief is prohibited.*

The next question relates to the observance in the public schools of religious holidays, such as Christmas, Hannukah, Easter, and Passover. Here we have no specific court decisions to guide us. The general principles enunciated by the courts in other cases must be applied with reason and good sense, and with an understanding of the difficulty of the problem. It is of value in this regard to note some of the observations and guidelines set forth by other Attorneys General.

The Attorney General of West Virginia, the Honorable C. Donald Robertson, made the following pertinent comments:

> "The observance of Christmas and Easter by plays depicting the importance of the occasion, and the display of Christmas trees and nativity scenes, fall within an undecided area. We recognize the importance of such days in the life of most children in this country. Christmas and Easter days are important in promoting understanding among Christians and non-Christians alike. In many areas in this country certain non-Christian religious groups join in some form of

observance of Christmas. The school has an important role to play in promoting good will among all groups. The state and its agencies cannot participate in such events to the extent of giving endorsement thereto if such events involve a religious service. Yet, on the other hand, we recognize the value of the observance held at Christmas and Easter in promoting peace on earth, and good will toward men. If care is exercised to avoid the appearance of a religious service, and such activities are directed toward promotion of good will, such programs may be held constitutional. It will be necessary for the courts to consider many factors in reaching a decision. The religious overtone will play an important part in any final decision as to the validity of such programs in public schools. It is necessary for us to keep in mind that the State cannot participate to the extent of giving its endorsement toward the promotion or advancement of any particular religious dogma." O.A.G., West Virginia, September 12, 1963.

Attorney General Brooke of Massachusetts saw the problem this way:

"Being religious in nature, the symbolism cannot entirely be avoided. On the other hand, there can be no doubt that the state cannot participate to such an extent as to amount to an endorsement of the religious dogma of the holidays. Such participation would be unconstitutional. Accordingly, I again can only say that the whole program must be evaluated, with reference to the following, among other factors: The extent to which symbols, such as a Christmas tree or Nativity scene, were utilized as a part of the overall educational process; the extent to which the universal concepts such as peace on earth and good will toward men were stressed; whether or not ceremonies peculiar to any form of orthodoxy were emphasized; the extent to which the teacher used the seasons to promote understanding and tolerance, as opposed to any particular form of orthodoxy; the extent to which other religions and religious holidays were discussed; the character of religious songs, such as Christmas Carols or more traditional religious hymns and the extent to which they were sung in connection with the seasonal holidays and as an integral part of the school program relative thereto." O.A.G., Massachusetts, August 20, 1963.

There are those, however, who feel any form of religious holiday observance is a sectarian event and advise the separation of church and state. They contend that a sectarian holiday observance is a form of religious instruction which challenges the neutrality of the school in the eyes of the student and the parent.

Accepting these differences of opinion, and cognizant of the fact the courts have yet to speak definitively on the subject, we are nevertheless obliged to respond to the need for some kind of legal guidance in this area. To meet this obligation the following conclusion has been formulated:

X. *In regard to the recognition of religious holidays in the public schools, the following guidelines should be observed:*

(a) The emphasis on what unites rather than what divides will be an important factor in evaluating the propriety of any particular activity.

(b) *School recognition of religious holidays and teaching about their origins, as distinguished from any attempt towards indoctrination, is not prohibited.*

(c) *The fact that a holiday is being celebrated does not alter the prohibition against religious instruction or ceremony.*

(d) *Symbols of religious holidays may be permitted, as part of the over-all educational process, when utilized to promote understanding of their significance, but are prohibited when used as the focal point of religious indoctrination.*

This opinion represents a careful analysis of the decisions of the United States Supreme Court, the provisions of the federal and state constitution, opinions of Attorneys General, and such other legal sources as might be of assistance. Dealing as it does with questions of religion, and accepting as we must the pluralistic nature of religion and religious views in this nation, it is apparent that any expression of position, such as that represented by this opinion, will be the subject of controversy.

In these circumstances, it is absolutely vital to recognize that this opinion is an expression of *legal* conclusions and not a statement of the personal views of the present Attorney General. The Rule of Law requires that those charged with the responsibility of rendering legal judgments divorce their determinations from their own personal preferences concerning the subject matter of the questions before them.

By the same token, once these determinations have been made, it is incumbent upon the citizens of the affected jurisdiction to follow the law as it has been expressed until it has been changed by a valid constitutional process, or until it has been interpreted in a different manner by a higher judicial authority.

The outstanding record of Michigan's citizens in following the law leads me to believe that they recognize these principles and will continue to follow them.

Those of our citizens who believe that religious practices should have a greater place in our public schools are afforded the opportunity of positive action by seeking the adoption of a constitutional amendment. Disagreement with the law is by this means expressed not through defiance or useless attacks on those who are obligated to state the law, but rather through the democratic process of changing the law.

Faith and religion have been powerful factors in the creation and maintenance of the American way of life. At the same time, the Rule of Law has been one of the chief factors in the preservation of our heritage of liberty. Indeed, it has created a haven of religious freedom in our nation.

This legacy gives us the right confidently to expect that our citizens will recognize the necessity of following the law, while always reserving to themselves the right to change it.

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Attorney General.