

The contracting parties who secure the license by fraud are subject to the penalties provided by the act, but, assuming capacity to consent and compliance with R. S. 37:1-10, as amended, the marriage is valid.

Very truly yours,

THEODORE D. PARSONS,
Attorney General,

By: EUGENE T. URBANIAK,
Deputy Attorney General.

MARCH 28, 1949.

MR. JOSEPH L. BUSTARD, *Assistant Commissioner,*
Department of Education,
Division Against Discrimination,
1060 Broad Street,
Newark 2, New Jersey.

FORMAL OPINION—1949. No. 17.

DEAR MR. BUSTARD:

Receipt is acknowledged of your letter of March 18th, in which you inform us that a question has arisen as to the meaning of the word "creed" in the 1945 Law Against Discrimination and in "the proposed civil rights law" (by which we assume that you refer to Assembly Bill No. 65, which would amend said 1945 law), and request our opinion as to whether "use of the word 'creed' in the law applies only to religious beliefs or religious principles, and not political beliefs or political principles."

It is our opinion, and we advise you, that, as used in the Law Against Discrimination (P. L. 1945, c. 169), the word "creed" comprehends religious principles only; and that if Assembly Bill No. 65 becomes law in its present form (second official copy reprint), no provision thereof will alter such meaning.

The broad object of the Law Against Discrimination is to prevent and eliminate practices of discrimination against persons "because of race, creed, color, national origin or ancestry".

In your letter you pass on to us the suggestion that in some dictionaries the word "creed" is defined to comprehend political, as well as religious, principles. Let this be conceded. Our task, however, is not to find and apply various authoritative definitions of the word, but to ascertain the meaning thereof as used in the Law Against Discrimination. It would be futile, therefore, to resort to dictionaries. Nor would reported judicial constructions of the word be helpful. Rather, we approach the issue, first, from the viewpoint of the meaning intended for the word "creed" by the Legislature which enacted the law, and, secondly, from the viewpoint of pertinent provisions of the 1947 Constitution.

It is a matter of common knowledge that our Law Against Discrimination was patterned generally after a similar law which had been then recently enacted in New

York State. The New York law had been recommended for enactment by the State Temporary Commission Against Discrimination in its report to the Governor and the Legislature (January 29, 1945). On page 39 of its report the Commission said:

"The various anti-discrimination statutes of this state vary in their phrasing of the grounds of discrimination. Some refer only to 'race or color.' Some mention 'creed,' while others mention 'religion'; and some mention both.

"*Obviously, the underlying intent is the same; and that intent should be expressed in uniform phraseology.*" (Italics ours.)

Section 2 of the New Jersey Law Against Discrimination declares:

"The enactment hereof shall be deemed an exercise of the police power of the State . . . and in fulfillment of the provisions of the Constitution of this State guaranteeing civil rights."

The law became effective April 16, 1945, when the New Jersey Constitution of 1844 (as amended) was in force. In Article I (Rights and Privileges) of that Constitution, the words (or term) "race", "color", "national origin", "ancestry" were not specifically mentioned, nor were they represented by specific synonyms. As to the word "creed", however, while there was no specific mention thereof as such, the article did contain several clauses relating to religion; and paragraph 4 thereof specifically provides that

". . . no person shall be denied the enjoyment of any civil right merely on account of his religious principles."

It was this clause that was generally regarded as *the* "civil rights clause" of the 1844 Constitution; and this is borne out by the fact that, as will appear later herein, the framers of the 1947 Constitution concentrated their efforts upon a broadening thereof.

It is not our purpose here to reconcile with the 1844 Constitution the declaration in Section 2 of our Law Against Discrimination to the effect that the enactment thereof shall be deemed to be in fulfillment of the provisions of the Constitution of this State guaranteeing civil rights. The history hereinabove recited has been set forth merely for the purpose of establishing that when our Law Against Discrimination was enacted, in 1945, the word "creed" was intended to be synonymous with the term "religious principles" as used in our 1844 Constitution.

In the New Jersey Constitution of 1947, Article I (Rights and Privileges), Paragraph 5, it is provided:

"No person shall be denied the enjoyment of any civil . . . right, nor be discriminated against in the exercise of any civil . . . right . . . because of religious principles, race, color, ancestry or national origin.

Upon adoption of the 1947 Constitution by the people, the declaration in section 2 of our Law Against Discrimination became clarified by reason of the embodiment in our new fundamental law of the prohibited reasons for discrimination contained in the statute. (The Law Against Discrimination prohibits discrimination based on race, *creed*, color, national origin or ancestry, while the civil rights paragraph of the 1947 Constitution prohibits discrimination based on *religious principles*, race, color, ancestry or national origin.)

It is of moment in our consideration of this issue that the 1945 Legislature also enacted laws amending R. S. 10:1-3 and 10:1-6 (prohibiting discrimination in places of public accommodation), 10:1-8 (prohibiting disqualification of citizens for jury service), 10:2-1 (prohibiting discrimination in employment on public works), 18:14-2 (prohibiting exclusion of children from any public school), 30:9-17 (prohibiting preference in the admission of patients to certain municipal institutions), and P. L. 1942, c. 114 (prohibiting discrimination in defense industries), so that in each instance the range of prohibited reasons for discrimination was made the same as that which it (the Legislature) was writing into the Law Against Discrimination. Aside from the significance of these amendatory acts as establishing law *pari materia* (on the same subject), there is import in the circumstance that the one Legislature purposely inserted in our then existing statutes a uniform range of prohibited reasons for discrimination (race, creed, color, national origin or ancestry). By its comprehensive action in this regard, the 1945 Legislature fashioned a policy for this State; and it becomes apparent that the framers of the 1947 Constitution sought to perpetuate that policy when they integrated the substance thereof in the new fundamental law they were framing.

True, we are not here called upon to construe the provision of our 1947 Constitution concerning civil rights (Art. I, Par. 5). Parenthetically, our comment is that the framers' retention of the term "religious principles" rather than their use of the word "creed", in the civil rights paragraph, would seem to have obviated the necessity, at any time, of a constitutional construction involving an issue similar to the one under consideration here but arising from statute law. Accordingly, since our concern is one of statutory, and not constitutional construction, it might be said that recourse to the proceedings of the Constitutional Convention is not in order. In view of the fact, however, that (as we have hereinabove shown) the framers carried over into our new fundamental law the then existing statutory pattern of prohibited reasons for discrimination, we conceive the Convention's proceedings to be available toward ascertaining the meaning commonly attributed to the word "creed" as contained in our laws, inasmuch as the delegates were pointedly dealing with the problem of broadening the then controlling constitutional clause relating to civil rights, and also toward ascertaining the effect, if any, the Constitution of 1947 had upon such meaning.

The record of the discussions among, and of presentations by public representatives at hearings before, the Constitutional Convention's Committee on Rights, Privileges, etc., indicates that the word "creed" was generally accepted as connoting religious principles only, or in the sense thereof as used in the Law Against Discrimination—to which law (incidentally but significantly) reference was made several times before the Committee.

The Committee's proposal to the Convention (see printed Report and Proposal, dated July 31, 1947) included, under Rights and Privileges, the following:

"No person shall be denied the enjoyment of any civil right, nor be discriminated against in any civil right on account of religious principles, race, color, ancestry or national origin."

And in its accompanying report to the Convention, the Committee's comment upon its own proposal was:

". . . This section is an all-inclusive statement of principle on the enjoyment of civil rights and on the question of no discrimination in civil rights, and is self-explanatory."

The mimeographed transcript of the Convention proceedings reveals that when this subject was being debated by that body, Mr. Schenk, Chairman of the Committee, in defending his Committee's proposal against projected amendments, said in part (page 17-30A):

“. . . We struck the ambiguous word “creed” out of that recommendation, which can mean communism, or . . . can mean just an off-shoot of a particular religion. We added the words “ancestry or national origin”, and we broadened the word “religion” to “religious principles” to include agnostics and nonbelievers. . . .”

Mr. Schenk was referring to a proposal which had been made to his Committee and which, as quoted by him immediately before he spoke the comments above reproduced, was substantially the same as the provision contained in the New York Constitution.

Our examination of the proceedings of the 1947 Constitutional Convention has served to satisfy us that, in relation to civil rights, the word “creed” was commonly recognized as comprehending religious principles only; and that the delegates, in integrating into the proposed fundamental law they were drafting the prevailing statutory range of prohibited reasons for discrimination, saw fit to preserve therein the term “religious principles”, as contained in the 1844 constitutional clause anent civil rights, rather than to use in place thereof the word “creed” which, although recognized as commonly signifying religious principles only, might sometime be construed more broadly than intended.

Having shown to what extent considerations cognate to the Law Against Discrimination influenced the language written into the civil rights paragraph of the 1947 Constitution, reference to the “saving clause” of that instrument might be thought superfluous. Yet, our reasoning would not be complete unless we directed attention to Article XI (Schedule), Section I, Paragraph 3, in which it is decreed that

“All law, statutory and otherwise . . ., in force at the time this Constitution . . . takes effect shall remain in full force until . . . superseded, altered or repealed by this Constitution or otherwise.”

We conclude by saying that we have examined the provisions of Assembly Bill No. 65 (second official copy reprint), and that there is nothing therein that specifically or impliedly would change the meaning of the word “creed” as used in the original law (P. L. 1945, c. 169).

Very truly yours,

THEODORE D. PARSONS,
Attorney General,

By: DOMINIC A. CAVICCHIA,
Deputy Attorney General.