

fight with a lot of people about the constitutionality of the Elementary and Secondary Education Act went along with putting in these restraints.

Now we are faced with a program, with 500,000 kids in it already and another 125,000 in the on-going program and we are talking about transferring it.

What I want to know is whether in your recommendations for the transfer you do not contemplate that the transfer will have the result of putting the nonpublic school and nonpublic agencies out of the Headstart business?

Mr. FULLER. I would say that the Office of Education should operate under the same rules that it operates under in its other educational business.

Mr. FORD. Then you agree with me it would not be proper for the Office of Education to fund the program to the archdiocese for the operation of project Headstart?

Mr. FULLER. I think it would be fully as proper and fully as constitutional as it is for any other Federal agency. I am not avoiding the question.

Mr. GURNEY. If I may make this comment, I don't think it is fair to ask these State school superintendents how they think the constitutionality of operating a Headstart program under any contemplated change of the law would be.

I think what they have recommended is that they agree with the fact that it is a good idea to change the operation of the program from the Office of Economic Opportunity to the Office of Education. Beyond this I don't think it is incumbent upon them to comment on whether private agencies should still stay in the business or not.

This is what you want them to say.

I don't think it is appropriate that you ask them that. Certainly we here in Congress will have to decide that. Maybe it is a good idea, maybe it is not. But this is not testimony that you ought to elicit from these State school superintendents, with a leading question such as you are doing.

Mr. FORD. I appreciate the gentleman's concern but I think I ought to tell you that in 1965 when we wrote this act the gentleman to whom my question is now addressed was one of those who appeared before this committee and was as responsible as any other man in the country for the specific language going into this act that concerns me.

I am not asking for a constitutional opinion. I know what his constitutional opinion is. He has been involved in sufficient litigation to make that clear. I am asking him as a recognized expert on the fine lines that are drawn throughout the country in this regard if he believes that the language we put into this act in 1965 would prevent a Headstart program from being administered under the Elementary and Secondary Education Act by anyone other than a public school agency.

It is that simple.

Mr. CHRISTIAN. Would that not be more appropriate for the U.S. Office of Education to answer? The way the language is in the act would they not be the ones to say whether they could make the contract with the private or parochial agency for Headstart.