

INTRODUCTION

May the federal government, as part of a comprehensive program to promote educational excellence in the nation, provide secular educational benefits to the public in private nonprofit schools, church-related as well as nondenominational? This is the general constitutional question to which this study is addressed. Three related questions are not treated: the basic constitutionality of federal aid to education; the constitutionality of federal aid to education exclusively in public schools; and the constitutionality of federal aid to religious instruction.¹

The providing of secular education is unquestionably a public service and may be financed with public monies. It is equally unquestionable that secular education is provided in private nonprofit schools, church-related as well as nondenominational. Accordingly, the public may provide transportation for school children to private nonprofit schools.²

Whether the public may also help provide the secular education itself in private nonprofit schools, both church-related and nondenominational, is the precise question left open by the Supreme Court by its denial of certiorari in the Vermont school tuition case.³

Two contentions deserve summary disposition at the outset. One is that whatever helps religion is unconstitutional. The other is that religious benefit or detriment is irrelevant to the constitutionality of non-religious governmental programs. Both contentions have been flatly rejected once again by the Supreme Court in the Sunday Law Cases.⁴

The question actually is not whether religion is helped or hurt by the providing of secular educational benefits in all private nonprofit as well as public schools, but whether the help or hurt that results from such a nonreligious educational program is the kind of benefit or detriment forbidden by the first amendment. This study does not deal with the constitutionality of legislation which has financial benefit to church-

¹ It should be noted that this study makes no attempt to explore the further practical question of whether there in fact exists a need for large-scale federal aid to education. While, as is stated *infra*, there is no doubt that the nation now faces an educational crisis, there are, notoriously, radical differences in views as to the means necessary to resolve that crisis. These involve economic, educational, and political factors which it is not a purpose of the study to evaluate.

² *Everson v. Board of Educ.*, 330 U.S. 1 (1947); *Snyder v. Town of Newton*, 365 U.S. 299 (1961) (appeal dismissed for want of a substantial federal question).

³ *Anderson v. Swart*, 366 U.S. 925 (1961).

⁴ *McGowan v. Maryland*, 366 U.S. 420 (1961).