

said that cutting off these services would make it far more difficult for the school to operate and that it was no purpose of the first amendment to bring about such a result.⁵³ He noted that such services were "indisputably marked off from the religious function," but he did not clarify this point or what he meant by "the religious function."⁵⁴ However, at an earlier point in his opinion he explicitly recognized the full force of the *Cochran* case, discussed *supra*, saying: "It is much too late to argue that legislation intended to facilitate the opportunity of children to get a secular education serves no public purpose. *Cochran v. Louisiana State Board of Education*."⁵⁵ It would therefore appear clear that Justice Black did not include the education in secular subjects given in church-related schools within the term "religious function" which he employed. The careful avoidance by the majority of any rule which would preclude aid to church-related education so far as the secular subject training in such education is concerned is to be noted in the following oft-quoted section of the opinion: "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."⁵⁶ The foregoing language excludes aid in support of (a) the teaching or practicing of religion ("religious activities,"

⁵³ 330 U.S. at 18.

⁵⁴ Similarly indistinct is the expression of the Vermont Supreme Court in *Swart v. South Burlington Town School Dist.*, 122 Vt. 177, 167 A.2d 514 (1961), cert. denied sub nom. *Anderson v. Swart*, 366 U.S. 925 (1961). That court held violative of the first amendment the practice of school districts of making tuition payments to certain state-approved Catholic parochial high schools where the districts in question did not have public high schools. This practice was authorized by state statutes, which did not, however, state whether the tuition should be paid to the parent or to the child or to the school. The plaintiff taxpayer sought an injunction to restrain the continuance of payments to the schools. The court cited the *Bradfield*, *Cochran*, and *Everson* decisions. In the *Swart* case, although the court stressed that the high schools in question were an "integral part" of the Catholic Church, this was also true in *Cochran*, which case the court professed to follow. Undoubtedly the real reason for the decision in *Swart* lay in the fact that the tuition payments, which were made directly to the schools, were not in some manner apportioned to support of the nonreligious instruction given. This view finds support in the particularity with which the court noted that in *Cochran* none of the books furnished by the state was "expected to be adapted to religious instruction." Even so, *Swart* does not hold that tuition payments made to pupils or parents for use in obtaining in church-related schools a state-approved education would be unconstitutional. The court's extensive citation of the "citizen-benefit" cases points to the contrary.

⁵⁵ 330 U.S. at 7.

⁵⁶ *Id.* at 16. (Emphasis added.)