

considerations were not involved in *Cochran*, it is also true that that case established that the use of government funds to provide secular textbooks for church-related school students was justifiable as being an expenditure for a public purpose. Importantly, the Court per Justice Hughes, stated:

The schools, however, are not the beneficiaries of these appropriations. They obtain nothing from them, nor are they relieved of a single obligation because of them. The school children and the state alone are beneficiaries The legislation does not segregate private schools or their pupils, as its beneficiaries, or attempt to interfere with any matters of exclusively private concern. Its interest is education, broadly; its method comprehensive. Individual interests are aided only as the common interest is safeguarded.¹⁵⁶

The *Cochran* opinion therefore recognizes that the teaching of secular subjects in a church-related school is the performance of a public function and that such program may therefore be governmentally aided.

Here, obviously, the Department might have discovered a contradiction to its repeated assertion that grants, loans, and tuition payments may not be made to church-related schools upon the supposition that these aid in the carrying out of the school's "religious function." The Department states that "religious considerations are intertwined in the entire fabric of sectarian education" and therefore "moneys raised by taxation cannot be used to support such education."¹⁵⁷ The Supreme Court, however, was able to distinguish the public aspect of education in church-related schools from its private (religious) aspect and held, in effect, that whatever benefit might accrue to the institution from the aid given, such was incidental to the public benefit conferred upon the citizen-student and therefore constitutionally without significance.

Pierce v. Society of Sisters

The Memorandum pays little heed to the Supreme Court decision in the *Pierce* case. It is true that *Pierce* was decided before it was clear that the first amendment is made applicable to the states by the fourteenth amendment. It is also true, as Professor Howe and others have noted, that decided in a single opinion with *Pierce* was the companion case of *Pierce v. Hill Military Academy*, which involved the application of the same Oregon Compulsory Education Act to a nonreligious school. However, the case plainly involved freedom of religion. The issue was specifically raised in the Society's complaint and in its brief before the

¹⁵⁶ 281 U.S. 370, 375 (1930).

¹⁵⁷ HEW Memorandum 361.