

1692 ELEMENTARY AND SECONDARY EDUCATION AMENDMENTS

It should be added that a number of key decisions involving consideration of faculty desegregation were handed down before either the 1966 or the 1965 guidelines were prepared, some of them even before the passage of the Act. See *Mapp v. Board of Education, City of Chattanooga*, 319 F. 2d 571 (6th Cir. 1963); *Northercross v. Board of Education, City of Memphis*, 33 F. 2d 661 (6th Cir. 1964); *Jackson v. School Board, City of Lynchburg*, 321 F. 2d 230 (4th Cir. 1964); *Augustus v. Board of Public Instruction, Escambia County*, 306 F. 2d 862 (5th Cir. 1962); *Braxton v. Board of Public Instruction of Duval County*, 326 F. 2d 616 (5th Cir. 1964); and *Christmas v. Board of Instruction of Harford County*, 231 F. Supp. 331 (D.C. Md. 1964). This listing is not exhaustive.

Among the more significant of the decisions handed down since the May 20 memorandum that concerns faculty desegregation are the *Clark* and *Dowell* decisions in the Eighth and Tenth Circuits. In both cases the school districts were ordered to bring about the elimination of the racial identifiability of schools arising from the racial composition of their faculties, on the same principles as those expressed in the guidelines. A district court in the Sixth Circuit has just followed these same principles and ordered a series of specific steps promptly implemented to bring about the transfers and new assignments of personnel necessary to eliminate the racial identifiability of schools. See *Robinson v. Shelby County Board of Education*, Civil Action No. 4916 (W.D. Tenn. January 19, 1967).

Senator Stennis' final concern in this connection is that the May 20 memorandum cites only a letter from the Attorney General to Senator Cooper as authority for "flying in the face of the plain language of Section 604" of the Act by requiring steps toward faculty desegregation in each plan.

The letter in question appears at 110 Cong. Rec. 10076 (1964). In it the Attorney General explained that § 602 would generally not cover an employer (not "employee;" the Senator's letter has what is apparently a typographical error here) receiving Federal aid who discriminates in his employment practices. In order to make this clear, the Senate added § 604 to the bill.

The limited application of this provision has been pointed out in an earlier portion of this memorandum. The exception it provides was intended to cover situations where those subjected to discrimination are not the beneficiaries of the Federal assistance involved. Such is the example cited in the Attorney General's letter, where the farmer need not adhere to nondiscrimination policies in employing farm hands because they are not the beneficiaries of the Federal assistance extended to the farmer.

It is true that the Attorney General did not specifically refer to school faculties as presenting a different case, as the Senator notes, probably because no one had thought of exempting school systems from requirements to eliminate the subjection of students to discrimination that is inherent in maintaining segregated faculties.* Nothing has been found in any portion of the legislative history of Title VI, including § 604, which shows that any part of the intent of Congress was to authorize Federal assistance to school districts that failed to comply with such requirements for faculty desegregation. If it had been intended to reverse an understanding already arrived at, and to carve out a major exception from the broad nondiscrimination purposes of § 601, surely some explicit statement to that effect would have been made. For prior to the addition of § 604, it was the clear understanding that the Commissioner would be justified in requiring elimination of racial allocation of faculty where it affected educational opportunities of students, as the courts hold it does. See Senator Humphrey's statement to this effect at 110 Cong. Rec. 6545 (1964), in which he cited the *Braxton* case referred to above. No contrary statement appears anywhere else. In this connection, see Hearings, Committee on Rules, House of Representatives, on H.R. 7152, 88th Congress, 2d Sess. (1964), pages 94, 226.

But the Senator's position is that no question of statutory construction arises, because "there is no ambiguity in Section 604." He points out that § 604 begins with the phrase "Nothing contained in this Title shall be construed to authorize action . . . with respect to any employment practice . . ."

The heart of Title VI, which is set out in § 601, reads in pertinent part, "No person . . . shall on the ground of race . . . be subjected to discrimination . . ."

*When the Attorney General was specifically asked for his formal opinion on this question, he provided a thorough analysis in Mr. Clark's letter of October 4, 1966, to Chairman Smith of the House Rules Committee, in which it is concluded that the Commissioner of Education is not only authorized but required under Title VI to prescribe faculty desegregation provisions in voluntary desegregation plans.