

ELEMENTARY AND SECONDARY EDUCATION AMENDMENTS 1693

The pattern of assignment of teachers to school can seriously subject students to discrimination on the ground of race, such as in a case where teachers with Class "A" teaching certificates were assigned only to white or predominantly white schools. The discrimination affecting Negro students in all-Negro schools that would result from such a policy would obviously be contrary to § 601. Even if the provision later added by § 604 were considered to be not internally ambiguous, in spite of its broad but undefined term "employment practice," this provision is certainly in conflict with § 601. To read the two provisions harmoniously, the pertinent legislative history must be consulted.

Accordingly, § 604 can only be understood by reference to the Attorney General's letter and other relevant portions of the legislative history of § 604 discussed above. And § 601 must be read in the light of the statements made prior to the addition of § 604, and at the time it was introduced, showing that § 601 had been expressly understood to extend to the racial allocation of faculty in the public schools affecting educational opportunities of students, and that the later amendments were not considered to make changes of substance in Title VI. See the discussion on page 6 above.

In cases such as this, the well-settled principles of statutory construction apply. Where there is ambiguity in a statute, especially in highly remedial legislation such as the Civil Rights Act, a limiting proviso like § 604 must be read in such a way as to avoid defeating the primary purpose of the Act. *Miller v. Robertson*, 266 U.S. 243, 248 (1924); cf. *Phillips Petroleum Co. v. Wisconsin*, 347 U.S. 672 (1954); *Interstate Gas Co. v. Power Commission*, 331 U.S. 682, 691 (1947); *United States v. Scharton*, 285 U.S. 518 (1932).

The only court that has so far specifically considered the applicability of § 604 is the Fifth Circuit in the *Jefferson County* case (now being reheard). The conclusion reached in the December 29, 1966 opinion was the same as in this memorandum. No court has reached the Senator's conclusion.

MARCH 2, 1967.

Hon. RUSSELL B. LONG,
Chairman, Finance Committee,
U.S. Senate, Washington, D.C.

DEAR SENATOR LONG: During the course of Secretary Gardner's testimony before your Committee on February 23, 1967, you raised the question whether the Supreme Court's decision in the *Brown* case requires the desegregation of a public school faculty in which teachers have previously been assigned on a racial basis as part of a dual racial public school system. You asked that this Department furnish the Committee a memorandum discussing the case law in this area. The case law, I believe, clearly imposes on public school authorities the affirmative, constitutional duty to desegregate their faculties so that the rights of pupils to the "equal protection of the laws" under the Fourteenth Amendment will no longer be denied.

In 1954 the Supreme Court of the United States declared that the segregation of public school students according to race violates the Fourteenth Amendment. *Brown v. Board of Education*, 347 U.S. 483 (1954). A year later, the Court, in determining how judicial relief could best be fashioned, mentioned the problem of reallocating staff as one of the reasons for permitting the desegregation process to proceed with "all deliberate speed." *Brown v. Board of Education*, 349 U.S. 294, 301 (1955).

Two cases decided by the Supreme Court in late 1965 indicate that school boards may no longer postpone the responsibility owed their students of desegregating faculty. In *Bradley v. School Board of Richmond, Virginia*, 382 U.S. 103 (1965), the Court took the view that faculty segregation had a direct impact on a desegregation plan, and that it was improper for the trial court to approve a desegregation plan without inquiring into the matter of faculty segregation. In reaching this conclusion the Court, in a unanimous opinion, commented that "there is no merit to the suggestion that the relation between faculty allocation on an alleged racial basis and the adequacy of the desegregation plans is entirely speculative." And in ruling that there should be no further delay in a hearing on the question of faculty desegregation, the Court further emphasized that "delays in desegregation of school systems are no longer tolerable." 382 U.S. at 105.

In *Rogers v. Paul*, 382 U.S. 198 (1965), the Supreme Court extended the undelayed right to challenge teacher segregation to students who had not yet