

CAPE OUTLOOK



Tuition Tax Credits in the Senate

Dirksen Senate Office Building Room 2221, in which the Senate Finance Committee was holding its July 16 hearings on tuition tax credits, began to sprout bright yellow and red patches of color as witnesses and audience filed in: the struggle was on between the wearers of the yellow buttons (Tuition Tax Credits Now) and the red buttons (Stop Tuition Tax Credits). Despite the cheeriness of the plastic emblems, however, the critical importance of the issue to all present was attested to by the presence of a standing-room-only crowd which included a very large number of reporters and television crew members.

Battle lines were clearly drawn at the outset between Administration representatives Donald T. Regan (Secretary of the Treasury) and Terrel H. Bell (Secretary of Education) and the Senate opposition spokesman, Sen. Ernest F. Hollings (D-S.C.). Finance Committee members present seemed to take a middle position, supporting the principle of tuition tax credit legislation but taking issue with some of the specific provisions of the Administration's bill, S.2673.

Chairman Robert J. Dole, (R-Kan.) opened the hearings by stating, "This bill is a very important piece of legislation, important to the Administration, important to the parents of all children in schools, public or private, and important to me." Speaking to the seriousness of the Administration's commitment to tuition tax credits, Dole noted, "...this bill was introduced just over three weeks ago and...this hearing was announced barely a week after the bill was introduced. While that may not be absolutely blinding speed, I think it is fair to state that this schedule shows no one is dragging his feet."

Nonetheless, Sen. Bob Packwood (R-Ore.), who with Sen. Daniel Patrick Moynihan (D-N.Y.) has been working for a tuition tax credit bill for five years, said, "There is a difference between support

and pushing. . . . The Administration has to want it desperately. . . . It must push and lobby as hard as it did on AWACS (Airborne Warning and Control System) last year."

Treasury Secretary Regan retorted, "Let me assure you and reassure you that the Administration does support this bill. With two Cabinet members up here this morning there should be no doubt about it." But in response to Packwood's query about including the credits in the committee's general tax revenue bill, he said, "We want to keep the tax bill in its current form. Let this come at a subsequent date."

The provisions of S.2673 that seemed to cause the greatest concern were the lack of a "refundability clause" (parents too poor to pay any taxes could not benefit from the bill), the selection of \$75,000 as the upper income limit below which a family could still receive some form of credit, and the strength of enforcement mechanisms to ensure that credits would be denied families sending their children to discriminatory schools.

More basic arguments centered on issues of cost, constitutionality, government control of private schools and the effect of credits on public education.

Fired Private School Employees Lose Civil Rights Case in High Court

Private schools do not take on the civil rights responsibilities of the government even when their income is derived primarily from public sources and their activities are regulated by public authorities.

In its June 25 decision in the case of *Rendell-Baker et al. v. Kohn et al.*, the Supreme Court held that the New Perspectives School, in Brookline, Mass. had not acted "under color of state law" when it discharged a vocational counselor and five teachers.

The employees had claimed that their First Amendment right of free speech and their Fourteenth Amendment right of due process had been violated by their dismissal, but the Court decided that the school's action could not "fairly be seen as state action."

"The school," wrote Chief Justice Warren E. Burger, "...is not fundamentally different from many private corporations whose business depends

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primarily on (government) contracts. . . . Acts of such private contractors do not become acts of the government by reason of their significant or even total engagement in performing public contracts."

Tuition Tax Credit Resolution

The Coalition of Parents and Educators for Tuition Tax Credits, meeting in Chicago on July 7, 1982, passed the following resolution:

WHEREAS, Parents have the fundamental and constitutionally guaranteed right to direct the education of their children;

WHEREAS, This constitutional right of educational choice is increasingly negated by educational costs reflected in part by the double burden of public education taxes and private school tuition;

WHEREAS, The federal government has a responsibility to prevent the erosion of citizens' rights, and also has a history of granting tax relief for activities that directly serve the public interest;

WHEREAS, A strong pluralistic system of education is one of the strengths of American society, and WHEREAS competition and consumer choice have long been recognized as factors promoting quality and accountability;

WHEREAS, Racial discrimination in education is abhorrent and should not receive government encouragement in any form, and WHEREAS large numbers of minority children have been denied access to non-public schools because of financial inability to pay tuition;

RESOLVED, That we, a coalition of parents and educators representing a broad spectrum of educational interests in the nation, while supporting strong and well-funded public schools, also strongly endorse the administration's tuition tax credit legislation (S.2673 and H.R.6701) because it recognizes the rights and needs of citizens and the importance of pluralism, competition, quality and equality in education—and urge the earliest possible passage of this legislation by Congress.

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Among its recent activities on behalf of its constituency, CAPE:

. . . Participated in a panel at the July 27 Chicago meeting of the National Council State Legislatures.

The topic at hand was private schools and state regulatory and legal matters.

. . . Presented the "pro side" of tuition tax credits at a forum on lobbying at Georgetown University. The opposing argument was advanced by an NEA spokesman.

. . . Represented CAPE interests at two discussion meetings held by the Office of Private Education. The sessions involved private and public school leaders in informal conversations with Secretary Bell. Attending CAPE Directors were Tom Gallagher, U.S.C.C.; Fred Stephan, Seventh-day Adventists; and Fred Rhineland, NAES. CAPE organizations were further represented by Bruno Manno from NCEA; Susan Nelson from NAPSEC; and Jack Sanders from NAIS.

. . . Conferred with House and Senate staff members to bring to their attention the omission of private schoolchildren from three bills recently introduced in Congress. The bills deal with math and science education, citizenship education and nationwide improvement of the quality of education.

. . . Met with leaders of educational organizations at a gathering called to discuss curricular and other responses to the dangers of nuclear war. CAPE organizations present were NAIS; U.S.C.C.; and the Friends Council on Education, represented by Louis Knight, Richard Duffy and Don Wells, respectively.

. . . Attended a briefing held by the Department of Education on August 4 to review a draft of the new P.L.94-142 regulations. A task force is being formed in the Department to analyze the special education needs of private school children.

Legislative Update

Tuition Tax Credits

S.2673 (Dole, R-KS).

Initial markup set for August 9, in Finance Committee.

H.R.6701 (Gradison, R-OH). and others.

Pending in Ways and Means Committee.

Clarification:

The new asbestos regulations for private schools exempt proprietary schools (cf. "Schools to Conduct Asbestos Inspections, OUTLOOK, Sept. 1982).

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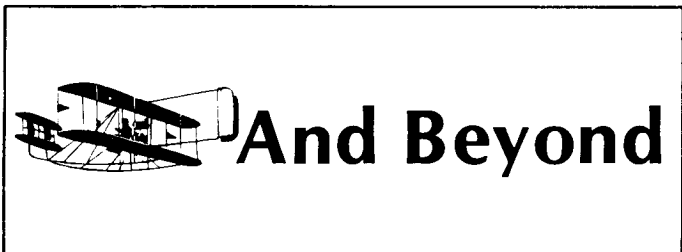
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A coalition of 15 national organizations serving private schools (K-12)

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And Beyond

Arkansas Cave Tours

Arkansas private school children will no longer have to pay a higher price than public school students for a cave tour through Blanchard Springs Caverns in the Ozark-St. Francis National forests.

Until recently, children attending private schools were not allowed to participate in a special group rate of \$1.50 per person for "educational groups from public educational institutions," and were forced, instead, to pay the individual rate of \$2.50.

Protesting the rule, Willard H. Bellin, Principal of Christ Lutheran School in Little Rock, and Arkansas CAPE representative, wrote the Agriculture Department on April 21, "... I am concerned about the opportunities denied the 21,821 students enrolled in the 212 private schools in Arkansas by the higher admission charged them. I desire no special treatment for these students, only the right to be treated as equal to their public school counterparts."

On June 9, Forest Supervisor James R. Crouch issued a press release stating, "... a recent change in the Blanchard Springs Caverns group rate policy will provide a fair and equitable policy for all concerned groups. Provisions in the group rate policy provide reduced rates for *any group organization* (emphasis added) of 10 or more persons. ..."



DC/CAPE Victory in City Council

Had Bill 4-189 not been taken off the June agenda of the District of Columbia City Council and "returned to the Committee on Government Operations for further study," private school administrators in the District would have been subject to a fine of up to \$300 and a jail sentence of up to 90 days for noncompliance with regulations promulgated by the Education Licensure Commission. Moreover, their schools would have had to make a contribution to a newly-established Student Tuition Recovery Fund amounting to ten cents for every \$1000 of tuition charged multiplied by the number of students enrolled in a school. The limit on such a contribution would have been set at \$2.00 per student.

The bill was removed by the Chairman of the D.C. City Council in response to an outcry from the city's private school community. Solon Candage, headmaster of the Sheridan School and president of DC/CAPE, commented to *Outlook*, "This is the first time that DC/CAPE has had to flex its muscles. We are very encouraged by the strong response of support by members of the D.C. government to our concerns about the real threat posed by this bill to private education in the District."

Nebraska Private School Transportation

The Nebraska Supreme Court, in the case of *State Ex Rel. Bouc v. School District of City of Lincoln*, ruled on June 4 that a state statute permitting private school children to ride on public school buses along regular public school routes is, in fact, constitutional.

The statute limits the provision of transportation facilities to private school children "who reside in a district which provides transportation to public school students, "and extends such transportation "only from some point on the regular public school route nearest or most easily accessible to their homes to and from a point on the regular public school route nearest or most easily accessible to the school. . . attended by such children." It further requires that "transportation shall be provided for nonprofit private school children only at times when transportation is being provided for public school children."

The court held that such an arrangement does not bestow "... a direct appropriation of public funds to a nonpublic institution" and that "... any benefit that may inure to the nonprofit private institution is merely incidental. ..."

Father James Dawson, Superintendent of Schools for the Diocese of Lincoln, said, "I am happy and pleased that Nebraska's highest court has upheld this small measure of justice for children attending private schools."

Massachusetts Reporting Requirements

The Massachusetts Supreme Judicial Court upheld the constitutionality of a state law requiring private schools, even those which are church-affiliated and non-approved, to report to local school superintendents the names, ages and residences of their students.

In a decision rendered on June 2 in the case of *Attorney General* (and Commissioner of Education) vs. *Robert W. Bailey* (Supervisory officer of Grace Bible Church Christian School), Justice Ruth Abrams wrote, "We hold that the reporting requirement. . . applies to all private schools, approved and non-approved, religious and secular. In addition, the application of this requirement to schools run by religious organizations is constitutional."

The court dismissed, one by one, the multiple constitutional objections which had been raised by the school:

The "free exercise clause" of the First Amendment: "We believe that the State's need for the required information outweighs the incidental burden on the right of the defendants, parents and children to practice their religion."

The "establishment clause" of the same amendment: "We. . . do not view the primary effect of [the statute] as inhibiting religion [and it]. . . does not foster an excessive government entanglement with religion."

Freedom of association: ". . . the State's interest in compulsory education is so compelling and the information sought so relevant that it justifies the burden on the defendants', the parents', and the children's right to freedom of association."

The right of privacy: "[The statute] does not directly affect the parents' right to send their children to the. . . School or to attend the. . . Church. . . . [and it]. . . does not violate the right. . . to be free from unreasonable government intrusion and surveillance."

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