

CAPE OUTLOOK



Private School Discrimination Ruling

The Supreme Court has decided that private schools practicing racial discrimination cannot qualify as tax-exempt institutions under Section 501(c)(3) of the Internal Revenue Code, and that the Internal Revenue Service has acted properly in denying such status to them.

The Court handed down its 8-1 ruling in the case of *Bob Jones University v. United States* on May 24, affirming earlier decisions by the Fourth Circuit Court of Appeals which had held that neither Bob Jones nor Goldsboro Christian Schools were entitled to tax-exempt status because their racial practices violated government policy against discrimination.

The Court held that the agency had correctly interpreted the Internal Revenue Code in 1970 when it determined that in order for an organization to be tax-exempt, its activities had to provide a benefit to society and be consistent with fundamental national principles.

Writing for the majority, Chief Justice Warren E. Burger declared that the tax Code is clear in its intent "that entitlement to tax exemption depends on meeting certain common law standards of charity—namely, that an institution seeking tax-exempt status must serve a public purpose and not be contrary to established public policy."

Burger cited an "unbroken line" of a quarter-century of Supreme Court decisions, Congressional enactments and Executive Orders as proof that "... There can no longer be any doubt that racial discrimination in education violates deeply and widely accepted views of elementary justice." He continued, "It would be wholly incompatible with the concepts underlying tax exemptions to grant the benefit of tax-exempt status to racially discriminatory educational entities. . . . Whatever may be the rationale for such private schools' policies, and however sincere the rationale may be, racial dis-

crimination in education is contrary to public policy."

Arguing that Congress had had ample opportunity since 1970 to correct any IRS misunderstanding of its intent, Burger observed that the legislature had been presented with 13 different bills in 12 years, all of which would have overturned the IRS's interpretation of the Code, and none of which had emerged from committee. He added that Congress had reaffirmed the IRS position in 1976 when it added a provision to Section 501(c)(3) denying tax-exempt status to discriminatory social clubs.

The Court dismissed the contention of the petitioner schools that their rights of free exercise of religion under the First Amendment had been violated by the government's refusal to give them tax-exempt standing. Although "denial of tax benefits will inevitably have a substantial impact on the operation of private religious schools," Burger wrote, "(it) will not prevent those schools from observing their religious tenets. . . . The Government has a fundamental, overriding interest in eradicating racial discrimination in education. . . . That governmental interest substantially outweighs whatever burden denial of tax benefits places on petitioners' exercise of their religious beliefs."

The Court's opinion drew varied reactions from interested parties. While civil rights leaders greeted the opinion with jubilation, more conservative elements voiced the fear that the Court had set itself up as the arbiter of the national public interest. Bob Jones II decried the work of the Court as the deed of "eight evil old men. . . and a vain and foolish woman." CAPE's published statement hailed the decision, saying, "The Court reaffirms the view that racial discrimination is such an overwhelming human injustice that no school should be given tax-exempt status if it practices it for any reason. We fervently trust the day will soon come when racial discrimination will be nothing but a bad memory in every facet of our society."

Tuition Tax Credits in the Senate Finance Committee

By a vote of 11-7, the Senate Finance Committee reported out the tuition tax credit bill on May 24. The bill, S. 528, would give tax credits to par-

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ents sending their children to private schools, beginning in 1983 with \$100 and climbing by 1985 to \$300.

For four days, Committee members exchanged heated views on the controversial legislation, speaking in phrases so reminiscent of their markup session held last fall that Chairman Dole (R-Kan.) was prompted to say, "We just went through this last September. It seems like last week."

The Committee altered the Administration's bill to include fewer wealthy, and more poor, people. It passed an amendment lowering the ceiling of participation from families who earn \$60,000 a year to those earning \$50,000, and it agreed to offer a "refundability amendment" on the Senate floor which would allow families who are either too poor to pay taxes or who pay less tax than the size of the credit to participate in the program through a direct federal subsidy of a percentage up to 50% of their private school tuition costs. In addition, the Committee strengthened the wording by which Congress states its intent that the tax relief afforded by tuition tax credits may not be used to promote racial discrimination.

The rhythm of the markup took on a sort of anti-phonal pattern, with opponents of the credit plan offering amendments one moment, and roll-call votes bringing them down the next. Senators John Chafee (R-R.I.) and David Boren (D-Okla.) proffered a series of amendments designed to hold private schools to current public school standards of racial, sexual, religious and handicapped antidiscrimination. They also submitted provisions for involving private schools in the same compulsory attendance, safety code, teacher certification, school accreditation and bilingual requirements as apply to public schools.

The Committee was put on notice by Senators William Roth (R-Del.) and David Durenberger (R-Minn.) that when the bill reached the Senate floor they would attempt to extend credits to college and other postsecondary tuition, and to expenses for books and fees as well.

An effort by Durenberger to broaden the tax plan to include parents of public school students foundered also, opponents voicing fear that such an addition would add to the cost of the bill and

might prompt public schools to begin charging tuition.

Two amendments presented by Sen. John Danforth (R-MO) aimed at holding down the cost of the tax credit plan were also defeated. One would have required the government to give evidence, either by increasing its revenue or reducing its spending, that it could pay for the plan before allowing it to go into effect, and the other would have required the credit system to come to a halt once its cost had reached \$1 billion a year.

Koffee Klatches on Educational Excellence

The work of the National Commission on Excellence in Education may have reached its formal conclusion, but the task of the nation is going to continue over the long haul, according to Milt Goldberg, the Commission's executive director.

Addressing Chuck O'Malley's Koffee Klatch on May 5, Goldberg said, "Since the publication of the report, people have been asking me, 'What's next?' and my answer has been, 'That's as much your obligation and decision as it is ours.'"

Many have apparently taken that obligation seriously, because when Goldberg met with the Koffee Klatches again on June 27, he reported with evident pleasure that "actions are bubbling up throughout the country" in response to the Commission's report. He cited state education departments' evaluation of state-mandated curricula, and commented that local school districts are engaged in similar activities. He announced that some public school systems have modified their programs and changed their policies in response to the report, and described a situation in North Carolina in which two districts have agreed to experiment for three years with a longer school day and year. Goldberg spoke also of the many educational organizations, including those dealing with elementary and higher education, which have taken significant actions of leadership and responsibility in following up on the report.

"On the whole," said Goldberg, "more people seem to be comfortable engaging in open and visible discussion of the issues raised by the report."

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COUNCIL FOR AMERICAN PRIVATE EDUCATION/1625 Eye Street, N.W., Washington, D.C. 20006

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He suggested that groups already debating those issues among themselves might profit from talking to other bodies with whom they do not have regular communication, observing that "the very existence of the document conveys a powerful message that people with differing views can share their common concerns and arrive at consensus."

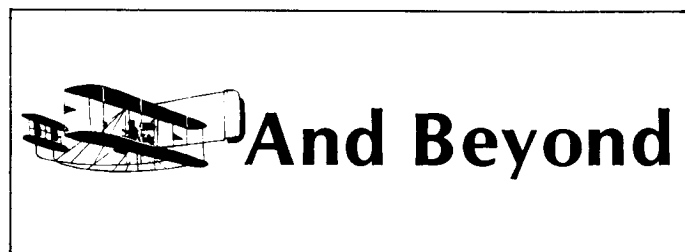
In response to a question about the role of private education in such conversations, Goldberg said, "Private schools have a lot to say about the essential issues raised by the report and they've got to do more than say them to each other. . . . They must also be prepared to hear from other groups about their views as well."

Handicapped Reauthorization

On Tuesday, July 26th, the House Select Education Subcommittee unanimously approved H.R. 3435, a bill to amend and extend certain programs authorized by P.L. 94-142, The Education for All Handicapped Children Act.

Part B of this provision requires state and local education agencies to identify, locate, evaluate and provide special education and related services to handicapped students in regular private elementary and secondary schools. Because participation has historically been poor or nonexistent, a by-pass amendment was added, introduced by Congressman Clay and Coleman of Missouri. This administrative mechanism will help improve the participation of handicapped students from private schools in programs and projects authorized by the Act.

The by-pass enables private school handicapped children, who are not being served by the state (either due to prohibiting state law or noncompliance on the part of the state), to go directly to the Secretary of Education. The Secretary will then arrange, via resources from his discretionary fund, for the provision of services to such children.



Creative Financing

The Robin Hood syndrome, dictating that the rich should pay the way of the poor, has vanished from New York City's Manhattan Country School. It had never been fully operative there, anyway. For one thing, at MCS, as at most private schools, wealthy parents received a form of subsidy from

the school made up of the difference between the "full tuition" they were paying and the actual cost of educating their children. And for another, MCS actually asked more of its poor families than its affluent ones: the less well-off had to document their need for financial aid and accept the arbitrary condition that they spend between 10% and 15% of their income on education while families with more money just paid their tuition and were asked no questions about the disposition of their earnings.

Even so, the Robin Hood words were being used: "full tuition"; "scholarships"; "have and have not families." This the school found "patronizing and divisive," and set out to change both the nomenclature and the concepts behind it.

MCS, dedicated to a complete economic and racial mix of its student body, sought a tuition/scholarship program that would preserve its diversity and at the same time require all its families to assume an appropriately "equal" share of the school's financial support. With the aid of a Ford Foundation grant, and with significant participation by its parents, it evolved the Manhattan Country School Plan, a procedure which bases school fees on an "ability-to-pay" principle.

The plan calls for families below the poverty line to pay 3% of their income in school fees and requires those at median income or above to pay 10%. However, the school has developed a schedule of graduated maximum compulsory fees for each age group to "make possible income tax deductions for parents who can afford to make contributions to the school after paying their compulsory fees."

"It is a better way of financing schools," says MCS. "It is better because it frees schools from the indignity of having the education they provide students. . . . treated simply as a commodity to be priced as the market determines. It is better because it doesn't waste subsidies on the wealthy and it doesn't treat the inclusion of lower income families as a luxury."

Copies of the MCS plan are available at a cost of \$3 from the school at 7 East 96th Street, New York, N.Y. 10028.

Legislative Update

Tuition Tax Credits

S. 528 (Dole, R-KS).

Passed Senate Finance Committee. Pending.

H.R. 1730 (Gradison, R-OH).

Pending in House Ways and Means.

Math-Science

H.R. 1310 (Perkins, D-K).

Passed House. Anticipated consideration in the Senate this fall.

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Fringe Benefits

H.R. 3525 (Stark, D-CA)

Hearings held August 1. Legislation provides for the permanent tax treatment of fringe benefits.

Charitable Contributions Law

S. 331 (Packwood, R-OR; Moynihan, D-NY; Durenberger, R-MN; Heinz, R-PA).

H.R. 1315 (Conable, R-NY; Gephardt, D-MO).

To make permanent the CCL.

Capelog

CAPE has just published a new brochure, "Private Schools In America: Myth and Reality". The single biggest problem private education organizations such as CAPE have are gross public misconceptions as to the nature, constituency and purposes of non-public schools. We hope that this brochure will not only help to inform the "movers and shakers" but the public at large.

The private school brochure is available free of charge from the CAPE office at: 1625 Eye Street, N.W., Washington, D.C. 20006; (202) 659-0016.

CAPE has also updated its tuition tax credit brochure. The updated version is available from the CAPE office as well. To offset the printing costs, we ask \$.05 per copy.

Bob Smith has been appointed by Congressman Carl Perkins (D-KY) to serve as private education's representative on the National Task Force on Merit Pay. Chaired by Congressman Paul Simon (D-IL), the Task Force heard testimony on July 11 and 12. After a preliminary report is written, it will meet on September 13 to determine its final recommendations. The report is due on October 1.



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