

STATE COLLEGES:
SCHOOLS:

in parochial or private schools as part of the student teaching programs at Northeast Missouri State College.

There is nothing in the Missouri Constitution or statutes or the United States Constitution prohibiting the placing of student teachers

OPINION NO. 56

February 4, 1970

Mr. Clyde Burch, General Counsel
Northeast Missouri State College
Kirksville, Missouri 63501



Dear Mr. Burch:

This letter is in response to your request for an official opinion of this office on the following question:

" . . . our Directors of Student Teaching have inquired as to the legality of placing unpaid practice teachers (teacher interns) in parochial or private (non-sectarian military academies). In this situation our college teachers do not perform services at the parochial school except to furnish guidance and assistance to the unpaid teacher intern who is not an employee of either the state or the parochial school."

You enclosed with your opinion request certain materials providing a description of the student teaching program at Northeast Missouri State College. From this information, the following facts concerning the program have been obtained. The student teaching program is part of an overall program for the preparation of public school teachers. In fact, student teaching experience is a prerequisite to obtaining the degree of Bachelor of Science in Education from the college. The facilities for student teaching are provided by elementary and secondary schools throughout the State of Missouri cooperating with the college as teacher education centers. These schools provide typical situations in which prospective teachers may, through observation and participation, learn teaching methods and principles of administration. However, because of the increasing demand for student teaching positions, there is a problem in finding positions for all student teachers. A student teacher is not paid a salary. Each student teacher is assigned to a cooperating teacher in a secondary or elementary school. The cooperating teacher assists and directs the student teacher. Near the end of the student teaching experience, the cooperating teacher and the

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college supervisor confer together to evaluate the work of the student teacher. Each cooperating teacher or her school is awarded a sixty-five dollar honorarium by Northeast Missouri State College.

College supervisors are members of the academic divisions of Northeast Missouri State College. These supervisors observe the work of student teachers and, during their visits to the classroom in which the student teacher is working, confer both with the cooperating teacher and the school administrator.

With the foregoing as a basic outline of the student teaching program at Northeast Missouri State College, we will now examine whether there is any Missouri constitutional or statutory prohibition on placing student teachers in parochial or private schools.

The Missouri Constitution prohibits the granting of public money in aid of any private person or organization.

"The general assembly shall have no power to grant public money or property, or lend or authorize the lending of public credit, to any private person, association or corporation, excepting aid in public calamity, . . ."
Article III, §38(a), Mo.Const)

* * * *

"The general assembly shall not have power:

"(1) To give or lend or to authorize the giving or lending of the credit of the state in aid or to any person, association, municipal or other corporation;

"(2) To pledge the credit of the state for the payment of the liabilities, present or prospective, of any individual, association, municipal or other corporation;" (Article III, §39(1) (2), Mo.Const.)

* * * *

"No county, city or other political corporation or subdivision of the state shall own or subscribe for stock in any corporation or association, or lend its credit or grant public money or thing of value to or in aid of any corporation, association or individual, except as provided in this Constitution." (Article VI, §23, Mo.Const.)

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These prohibitions would apply to Northeast Missouri State College and would prohibit it from granting any money or thing of value to the aid or assistance of any private person or organization.

Furthermore, there are two constitutional sections prohibiting the grant of any state moneys to the aid of religious schools.

"That no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect or denomination or religion, or in aid of any priest, preacher, minister or teacher thereof, as such; and that no preference shall be given to nor any discrimination made against any church, sect or creed of religion, or any form of religious faith or worship." (Article I, §7, Mo.Const.)

"Neither the general assembly, nor any county, city, town, township, school district or other municipal corporation, shall ever make an appropriation or pay from any public fund whatever, anything in aid of any religious creed, church or sectarian purpose, or to help to support or sustain any private or public school, academy, seminary, college, university, or other institution of learning controlled by any religious creed, church or sectarian denomination whatever; nor shall any grant or donation of personal property or real estate ever be made by the state, or any county, city, town, or other municipal corporation, for any religious creed, church, or sectarian purpose whatever." (Article IX, §8, Mo.Const.)

With the exception of the sixty-five dollar payment to the cooperating teacher, the placing of student teachers in private or parochial schools, pursuant to the program outlined above, would not involve the payment, grant, gift or donation by Northeast Missouri State College of public money or thing of value to a private or parochial school. Therefore, we do not believe that the program would violate any of the foregoing constitutional prohibitions on furnishing state aid to private or parochial schools or to private persons. Furthermore, we find it difficult to determine whether any benefit in a form other than monetary would flow from Northeast Missouri State College to a private or parochial school. However, assuming that there is such a benefit conferred on the private or parochial school by the presence in the classroom of a student teacher, the analysis which follows pertaining to the sixty-five

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dollar honorarium awarded to the teacher or the school in which the student teacher is placed would also apply to such other benefit regardless of form.

In Kintzele v. City of St. Louis, 347 S.W.2d 695 (Mo. en banc 1961), plaintiffs contended that the sale of land under the Redevelopment Law (Chapter 99, RSMo 1959) to a private sectarian school violated the state constitutional prohibitions against use of public funds in aid of religion. The court ruled against this contention quoting from a decision of the New York Court of Appeals involving a similar sale to Fordham University.

" . . . '[S]ince this sale is an exchange of considerations and not a gift or subsidy, no "aid to religion" is involved and a religious corporation cannot be excluded from bidding.'

. . ." Id. at 700

The student teaching program of Northeast Missouri State College, described above, involves an agreement between the college and the cooperating secondary or elementary school that the student teacher will be permitted to assist a qualified teacher and thereby obtain valuable on-the-spot experience. In exchange for this opportunity, the college agrees to pay the sixty-five dollar honorariums. Also, the cooperating school receives whatever benefit there is from having the student teacher in the classroom with the regular teacher. In the words of the New York Court quoted above, we believe this represents an exchange of considerations and that no aid to religion is involved. As a matter of fact, it would appear that the benefit accruing to the college's student teaching program and to the student teacher far outweighs any benefit flowing to the cooperating school.

We are enclosing herewith copies of Opinion No. 164, June 2, 1966, and Opinion No. 354, December 19, 1958, in which this office has applied this "contract" theory in ruling on other questions in this area.

Furthermore, we do not believe that this student teaching program conflicts with the establishment clause of the United States Constitution. "Congress shall make no law respecting an establishment of religion. . . ." First Amendment, United States Constitution. This mandate has been made fully applicable to the states by the Fourteenth Amendment to the United States Constitution. Cantwell v. Connecticut, 310 U.S. 296 (1940). In Abington School District v. Schempp, 374 U.S. 203 (1963), the Supreme Court of the United States stated the test to be used to distinguish between forbidden involvement of the state with religion and those permitted by the establishment clause.

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" . . . The test may be stated as follows: what are the purpose and the primary effect of the enactment? If either is the advancement or inhibition of religion then the enactment exceeds the scope of legislative power as circumscribed by the Constitution. That is to say that to withstand the strictures of the Establishment Clause there must be a secular legislative purpose and a primary effect that neither advances nor inhibits religion. . . ." Id. at 222

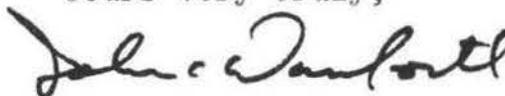
We see no basis to argue that the purpose and primary effect of the student teacher program have anything to do with religion.

CONCLUSION

Therefore, it is the opinion of this office that there is nothing in the Missouri Constitution or statutes or the United States Constitution prohibiting the placing of student teachers in parochial or private schools as part of the student teaching program at Northeast Missouri State College.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, D. Brook Bartlett.

Yours very truly,



JOHN C. DANFORTH
Attorney General

Enclosures: Op. No. 164
6-2-66, Wheeler

Op. No. 354
12-19-68, Morton