



POSITION LETTER

Theodore E. Clater, Executive Director
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THE ILLEGAL ACCESSING OF BIBLE-BASED TEXTBOOKS AND

AFFIRMATION OF OUR POSITION REGARDING GOVERNMENT AID PROGRAMS FOR STUDENTS ENROLLED IN CHRISTIAN SCHOOLS

The specific situation that causes the KCEA Board to issue this Position Letter is the significant increase in the illegal practice of requisitioning and receiving Bible-based textbooks and instructional materials through the state's textbook and instructional materials loan program. The secondary cause for the Board's issuance of this Letter is the need to repeat the historic position of biblical fundamentalists and to indicate that our position has not changed.

HISTORY

With the rebirth of the Christian school movement in the 1960s and 1970s, there was a universally accepted axiom in biblical fundamentalism: keep your kids, families, and schools away from government education programs. The positive side of the argument was based upon the biblical teaching (doctrine) that the family and the church are responsible for the education/rearing of the next generation of believers. The negative side of the argument was that a consistent Christian philosophy of education displaced reliance upon government, unbelievers, and secular influences in education and warned of the inevitable, but not necessarily immediate, consequences of relying upon any of these entities.

The Commonwealth of Pennsylvania undertook several initiatives for government to pay for sectarian education. Several of these were struck down as unconstitutional. Modified, refined statutes were upheld. Other efforts, such as a scheme to have the state pay for the buildings and utilities where students were being instructed in math, English, etc. (but not religion), were abandoned.

It should be noted that the influence of the Roman Catholic Church is unmistakably present in these initiatives. Catholic doctrine teaches that it is the responsibility of the government to aid the Church in its mission. This is in sharp contrast to the position of historic fundamentalism.

In 1989, the KCEA Board issued a Position letter that outlined its position; the subtle differences between bussing, health services, and education services; and the dangers of the programs. The KCEA Board has not changed its position. Subsequent to 1989, the Board and Staff have supplied their position and advice on other programs as they have developed, including the state's testing program. In 2005, KCEA conducted a series of meetings throughout the state with Dr. Dale Hayes and Dr. Ted Clater to warn of the contemporary trends in public education curriculum and the dangers of the state programs available to students at Christian schools.

A SUMMARY OF KCEA'S POSITION AGAINST INVOLVEMENT BY CHRISTIAN SCHOOLS WITH STATE EDUCATION PROGRAMS

Let's start brief comment in these six areas:

1. The legal rationale for these programs is that government is responsible for the child's education. This contrasts with the teachings of Scripture and, hopefully, contrasts with the teachings a church/school would be including in its literature and parental instruction. Involvement in these programs could undermine future legal claims on this point. Additionally, participation could confuse many weaker believers.
2. The practice, once started, will create dependence. Once the program is withdrawn, parents will be more likely to believe that they cannot afford Christian education.
3. The practice shifts the focus of parents away from the biblical injunction to educate/train their children and focuses on "how I can save money." The ultimate means of "saving money" in education is to select the "free" one. Far too many believers succumb to the temptation to allow "price" to be the chief determiner of the quality and qualities of the education being received. "Cheapest" is usually not "best."
4. The more a Christian school utilizes, mirrors, and cooperates with public school programs, the more the parents will not see the importance of a Christian education. After all, if the public school system is good enough for tutoring, for sports, for testing, for electives, for health screenings, for buying textbooks, etc., why isn't it good enough for full-time enrollment by a student?
5. Sooner or later, the "strings" that accompany government money will be drawn taut. When this occurs, Christian ministries dependent upon the money will be hard pressed to abide by principle over cash. (The April, 2005 KCEA seminar discussed the differences between institution-wide and program-specific controls.)
6. Everything about government programs is required to be secular including personnel, materials, and philosophy. In Christian education, an individual fact may be amoral, but education is never amoral. There is never allowance for "half-way obeying" Deut. 6 and Prov. 22:6. Similarly, for the Christian there is no allowance for dualism.

We recommend the same position on all programs that deal directly with the teaching of our children – direct education. Our position on government programs involving student health and safety is somewhat different, but philosophically related. Our position on other government programs is based upon their particulars.

THE ISSUE OF SECULAR BOOKS

Is the KCEA Board saying that they are opposed to using these government programs for more reasons than just their secular nature? Correct. The secular nature of the program might be the easiest reason for folks to understand, but there is a lot more to our position than that item.

Is the KCEA Board saying that all secular books and secular materials are to be avoided by Christian schools? No. Our best Christian colleges, high schools, and elementary schools all find instances when the best available texts or other materials are secular, not Bible-based. However, in such institutions, the academic leaders work with the faculty to integrate Bible into

the education so that the students see truth through God's eyes. Certainly, quality Christian institutions should and will use quality Christian books and materials as they are available.

THE LEGAL STATUS OF REQUISITIONING SECTARIAN TEXTBOOKS

It must be remembered that in the United States of America, it has been and is illegal (based upon Court decisions concerning the Constitution) for any government entity to engage in sectarian education. We in Pennsylvania cannot have missed the outcome of the 2005 Intelligent Design case at Dover, PA, wherein this prohibition was again emphasized. As any government entity in the U.S. develops programs to aid the students enrolled in sectarian schools, they must carefully design those programs to be non-sectarian, neutral, secular. In Pennsylvania, statutes, regulations, and even the administrative manuals are all consistent and lawful. All of these documents are freely available to the public and are written in clear, easy-to-understand English. KCEA has also addressed this legal requirement to affiliating schools and others, including during the past two years as the violations have escalated. *Attached you will find two timely memos from highly respected attorneys who address this issue for us all.*

THE "BOTTOM LINE"

In recent months, it has been clear that more than a few ministries have engaged in requisitioning and receiving Bible-based textbooks and materials through the government loan program. Even if these ministries proceeded with good intention or in innocence, we, as leadership in KCEA, have an obligation before God and man to address this activity.

1. We have presented professional testimony that the requisitioning and receiving of religious material is and has been illegal – clearly, unmistakably illegal. That has been our long-standing position based upon advice of legal advisors and our own research. We have found no professional testimony to the contrary.
2. We have presented professional testimony that continuation of the practice of requisitioning and receiving religious materials could have significant impact upon the testimony of our movement and religious liberty. Again, we have found no professional testimony to the contrary.
3. We have reaffirmed our opinion that participation in the textbook loan program, even requisitioning books that are legal, is ill-advised. It is our opinion that gaining a few dollars worth of government aid is not worth the risk to our doctrinal, philosophical, and practical position; and "saving" of those few dollars will bring long-term injury to the ministry. The same opinion applies to the other government programs that are directly related to the minds and souls of our children. Proper biblical stewardship requires saying, "NO," to these "free" government programs. Our position is not different from the position historically held by our predecessors in biblical fundamentalism.

THE REQUISITION PROCESS AND VIOLATIONS

Over the past three decades, it has periodically come to the attention of KCEA that a school (here or there) was publicly bragging about how they were saving money by getting the government to pay for Christian textbooks, and typically, these schools encouraged other schools to do the

same. (Each got “caught,” it seems!) By comparison we are currently experiencing an epidemic.

So, how could religious schools receive any religious books if the law was/is so clear? The answer is contained in one or more of the following: (1) The school’s leaders may be ignorant of or are ignoring the laws concerning religion being banned from public schools and public financing of education in the United States. (2) They may not have read materials accompanying the Pennsylvania requisition process. (3) They may have purposely hidden the religious content from government officials. (4) They may have followed the advice of a trusted friend (who gave terribly wrong advice). (5) Their order may have been processed by a government agent who did not know what he was doing. (6) A government agent may have acted illegally and approved the requisition for a variety of reasons (i.e., he may have had the personal desire to help the religious ministry). It is clear from the attorneys’ memos that Christian leaders carry responsibility for the current level of illegal activity (points 1, 2, 3, and 4); and they carry that responsibility even if a government agent has erred (points 5 and 6).

GOING FORWARD FROM HERE

Unfortunately, in ministries where leadership has engaged in illegally requisitioning religious books, those leaders are in a precarious position. While some may fuss and fume that the civil laws are wrong or that they were only doing what “everyone else” was doing or that there was justification to proceed or that..., others will have the insight to observe that their leaders did not practice due diligence and/or followed wrong advice. Others will have the insight to observe that Scripture has been violated in such obvious areas as obeying civil law and shunning ill-gotten gain. Others will have the insight to observe that they were not told the truth during the decision-making process. Having spoken to several who have participated in this illegal requisitioning, we provide a salient summary of the damage that we fear is before us:

If Christian leaders have engaged in rationalizing their way around the written laws of man, they can expect the children and laymen to be just as creative in rationalizing their way around the Bible and other authorities. Our movement is not immune to the spiritual disease of post-modernism, and actions in the instant matter have all of the characteristics of the disease. Not surprisingly (for the same trend is widespread in a variety of ecclesiastical issues), a new system of decision-making is influencing many individuals and ministries. It is acceptable “now” to develop a rationale to do “anything and everything.” The rationale is typically based upon pragmatic experience. “It works.” “It must be good, because it produces something good.” “It saves money.” Etc.

What is the full impact, both in doctrine and practice, as ministries have started using these government programs, including some illegal usage? We may never know; but as anyone needs to make amends for the past, he needs the character to get it “fixed” before both God and man. Then, having learned, he needs to press forward for the cause of Christ and Christian education.

By the Board

5/06

See further:

KCEA Position Letter: Local District, Intermediate Unit, and State Programs Available to Students Attending KCEA and other Private Schools. 10/89

KCEA Seminar Notes: Government Education Programs from the Viewpoint of a Philosophy of Christian Education. 4/05

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May 18, 2006

MEMORANDUM TO: Rev. Theodore E. Clater
Executive Director
Keystone Christian Education Association

RE: Pennsylvania Textbook Loan Program

State legislative bodies have long sought constitutionally valid methods of providing publicly-funded assistance to all elementary and secondary students residing within the boundaries of the State, whether those students attend public or nonpublic schools. One of the more popular methods of affording equitable treatment for nonpublic school students has been the purchase of textbooks by public agencies, and the subsequent loaning of those textbooks to those students.

Pennsylvania's statute that authorizes the loan of textbooks and instructional materials to nonpublic school pupils is found at 24 P.S. §9-973, and is formally designated as §923-A of the Public School Code. It was first adopted in 1972, following a decision of the U.S. Supreme Court upholding a similar program that was established in New York. The Pennsylvania statute was last amended in 2000.

Textbook loans to students who attend nonpublic schools were specifically approved by the U.S. Supreme Court in *Board of Education v. Allen*, 392 U.S. 236 (1968). In that case, New York's Education Law, which required local public school authorities to lend textbooks free of charge to all students in grades 7 to 12, including to those students in private schools, was found to be compatible with the Establishment Clause of the First Amendment. The books authorized by the statute for purchase and loan were textbooks that "are designated for use in any *public*, elementary or secondary schools of the state." 392 U.S. at 240 (Emphasis added).

In upholding the New York Law in *Allen*, the Supreme Court was careful to point out that the statute in question "merely makes available to all children the benefits of a general program to lend school books free of charge." The Court took specific note of the fact that the NY statute "does not authorize the loan of religious books, and the State

claims no right to distribute religious literature.” 392 U.S. at 243-244. The Court expressly found that no religious books were loaned, and proceeded to rule in favor of the program “on the assumption that books loaned to students are books that are not unsuitable for use in the public schools *because of religious content*.” The Court therefore rested its favorable Establishment Clause ruling on the fact that the textbooks being loaned were entirely secular in content. Had the books being loaned to nonpublic school students been infused with religious matter, the statute would have fallen.

In the case of *Meek v. Pittenger*, 421 U.S. 349 (1975), the Supreme Court considered an Establishment Clause challenge lodged against a Pennsylvania statute (known as Act 195) which authorized the State to loan to nonpublic school students textbooks “acceptable for use in” the public schools.

The Supreme Court found that the textbook provisions of Act 195 were constitutionally valid, because (1) the financial benefit of the program was to parents and children, not to the nonpublic schools; and (2) Act 195 limited the books that may be lent “to textbooks which are acceptable for use in any public, elementary or secondary school of the Commonwealth.”

Therefore, the *Meek* decision reinforced the earlier holding of the *Allen* case: the loaning of textbooks to nonpublic school students will not violate the Establishment Clause, so long as the textbooks themselves are free of religious content.

Two years after the *Meek* decision, the Supreme Court again ruled on a textbook loan program in the case of *Wolman v. Walter*, 433 U.S. 229 (1977). In that case, the Court considered an Ohio statute authorizing the state to provide nonpublic school pupils with books, instructional materials and equipment, standardized testing and scoring, diagnostic services, therapeutic services and field trip transportation.

The Court noted that the textbooks loaned to the nonpublic school students “will be the same as the textbooks used in the public schools of the state. Common suppliers will be used to supply books to both public and nonpublic school pupils.” 433 U.S. at 237. The Court found this provision of the statute to be constitutional, as it determined the system for the loan of the textbooks “to bear a striking resemblance to the systems approved in *Board v. Allen* and *Meek v. Pittenger*.” 433 U.S. at 237. Once again, the absence of religious content from the publicly-provided textbooks was of critical importance to the Court in upholding the loan program.

While the Supreme Court has consistently approved the constitutionality of the loaning of secular textbooks to nonpublic school pupils, it was only recently that the Court upheld a statute that provided instructional materials to nonpublic schools. In *Mitchell v. Helms*, 530 U.S. 793 (2000), the Court upheld the longstanding Federal school-aid program, known as Chapter 2. Under this program, the Federal Government distributes funds to state and local governmental agencies, which in turn lend educational materials and equipment to public and private schools.

Critical to the Court's ruling was its determination that Chapter 2 contained several restrictions that applied to aid to private schools. Most significantly, the materials and equipment provided to private schools must be "secular, neutral, and nonideological." 530 U.S. at 802 "In addition, the private schools may not acquire control of Chapter 2 funds or title to Chapter 2 materials, equipment or property."

The Court stated further that "so long as the governmental aid is not itself *unsuitable for use in the public schools because of religious content*...and eligibility for aid is determined in a constitutionally permissible manner, any use of that aid to indoctrinate cannot be attributed to the government and is thus not of constitutional concern." 530 U.S. at 820.

The Court concluded that "Chapter 2 does not result in governmental indoctrination, because it determines eligibility for aid neutrally, allocates the aid based on the private choices of the parents of schoolchildren, *and does not provide aid that has an impermissible content.*" *Ibid.*

The Court also dealt with an argument, raised by the program's opponents, that the program was invalid because some religious books had actually been improperly loaned to several religious schools and that the governmental monitoring programs were insufficient to prevent such errors. The Court, however, found that the violation was minor and inadvertent, and that the government's monitoring programs had ultimately detected the improper lending and remedied the situation.

The *Mitchell* decision thus stands once again for the bedrock Establishment Clause principle that government may provide textbooks and instructional materials for the use of nonpublic school students, but *only if* the texts and materials are themselves "secular, neutral and nonideological," *i.e.*, are devoid of religious instructional content.

§923-A of the Pennsylvania Public School Code was amended shortly after the *Mitchell* decision in order to codify the explicit limitations announced in the *Allen*, *Meek*, *Wolman* and *Mitchell* cases, discussed above. §923-A thus specifically requires that instructional materials that are loaned must be "secular, neutral and nonideological in character." It also states that the loaned textbooks must be "acceptable for use in any public, elementary or secondary school of the Commonwealth."

No legislative body or executive agency has any power to authorize a governmental action that violates the United States Constitution. §923-A of the School Code must therefore be read in consonance with the constitutional restrictions that circumscribe programs involving the loan of textbooks and instructional materials. It cannot be interpreted without reference to, or in ignorance or outright defiance of, those restrictions and limitations.

As a result, no governmental official has any authority to waive or ignore the provisions of §923-A that are intended to assure that textbooks and instructional materials

purchased by the Commonwealth for loan to nonpublic school students bear no religious content.

The Pennsylvania State Board of Education has adopted regulations governing the administration of the textbook loan program. Those regulations are set forth in Chapter 114 of Title 22 of the Pennsylvania Code (relating to Textbooks for Nonpublic School Students). The definition of “textbook,” found in §114.1, specifically states that “*Such textbooks shall be textbooks which are acceptable for use in any public, elementary, or secondary school of the Commonwealth.*”

Chapter 115 of the State Board regulations deals with Instructional Materials for Nonpublic School Students. §115.1 defines “instructional materials” as “prepared learning materials which are *secular, neutral, and nonideological in character* and are of benefit to the instruction of school children on an individual basis *and are presently or hereafter provided for public school children of the Commonwealth.*”

The provisions of these regulations thus also reinforce the principle that it would be unlawful to purchase or loan textbooks containing religious instructional matter for loan to nonpublic school students in Pennsylvania.

In addition, a “Guidebook” for ordering textbooks and instructional materials has been developed and distributed by the Pennsylvania Department of Education. The Introduction to the Guidebook states that it is for “teachers and administrators of nonpublic schools to help them in their understanding, responsibility and use of the TEXTBOOKS and INSTRUCTIONAL MATERIALS loan programs offered under Act 195-1972 and Act 90-1975.” The Introduction further states that “teachers and administrators should become familiar with this guidebook since *they are responsible for requesting only items that are eligible for purchase.*” The teachers and administrators are told to refer to the Guidebook to answer any questions they may have when “determining the eligibility of textbooks and materials.”

As set forth in the Guidebook, the eligibility of textbooks for use in the program is limited to “books...intended for student use as principal source of study material for a given class or group. *Such books would be those acceptable for use in any public elementary or secondary school in the Commonwealth.*” Following the pages of examples of eligible items in the Guidebook is an explicit warning: “NOTE: all items ordered must be totally NONSECTARIAN in nature.” (Emphasis in the original.)

Consequently, all of the constitutional, statutory, regulatory and administrative prescriptions and prohibitions that govern the Pennsylvania textbook loan program are consistent and very clear. Only those textbooks that are nonsectarian and suitable for use in the public schools are eligible under the loan program.


School administrators who knowingly place purchase orders for textbooks that may not be lawfully purchased and loaned under §923-A of the Public School Code,

because of their religious content, risk violating the provisions of §4904 of the Pennsylvania Crimes Code (relating to Unsworn Falsification to Authorities).

Widespread abuse of the textbook loan program, in the form of the knowing requisition of religious textbooks, can also lead to adverse consequences for the program itself, and for the many students that it could legitimately benefit.

We would therefore recommend that nonpublic school administrators scrupulously observe the legal limitations imposed on the textbook loan program, and avoid requisitioning items they know to be ineligible, due to their religious content.

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May 25, 2006

Pastors and School Administrators
Keystone Christian Education Association

Re: Taxpayer funded religious textbooks

Gentlemen:

I have had a professional and personal relationship with many Pennsylvania pastors, school administrators, churches and Christian day schools since 1976. Often the issues involved routine contractual and real estate matters. At other times the issues involved religious freedom and government interference with ministries in the form of zoning restrictions, teacher certification, building code regulations and even home school cases before the statute was held unconstitutional.

I have learned that it has become common practice for some Pennsylvania Christian school administrators to issue requisitions to the Pennsylvania Department of Education for textbooks which contain explicit Biblical instruction. The longer I ponder this practice the more it concerns me.

I must emphasize what this correspondence is and is not about. It does not address whether parents who pay burdensome real estate taxes and Christian school tuition are morally or ethically entitled to receive textbooks paid for with tax dollars. It does not address the historic meaning of separation of church and state or whether it is constitutional to prohibit the purchase of religious based textbooks with tax dollars. It does not address the fairness or equities of the matter. This correspondence is solely intended to address the harm that may result from Christian schools ordering "free" religious textbooks from the Commonwealth of Pennsylvania.

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One more caveat. During almost 30 years of practicing law I have learned that it is not wise for me to attempt to dictate to clients their Biblical convictions or lack thereof. According to I Timothy 2:5 there is only one Mediator between God and man; that is Christ Jesus only. My task is to advise, inform and counsel. The ultimate decisions are made by my clients and those I counsel. Therefore, this letter is not designed to dictate or coerce a particular course of action. If that were the case, I would passionately wail against any participation in any government aid programs. Rather, this correspondence is intended to inform, instruct and warn.

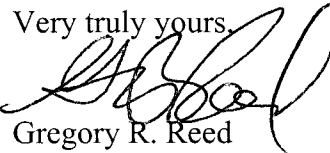
Specifically, whether you or I like it or not, the existing law is that tax dollars may not be used to purchase religious based textbooks. There is a basis for legitimate debate as to whether that law is right, constitutional, fair or equitable. However, there is no basis for legitimate debate regarding the current status of the law; it is illegal.

Therefore, the Pennsylvania Department of Education may not knowingly and intentionally approve religious based textbooks for purchase with tax dollars. Nevertheless, it is my understanding that the practice of obtaining taxpayer "funded" religious textbooks is promoted by some publishers of those books as well as some Christian school administrative staff members. Apparently the system established by the Pennsylvania Department of Education is inadequate to exclude or deny all requests for religious based textbooks. Some schools have succeeded with requests to allow the purchase of religious based textbooks with tax dollars. Under any circumstances, it remains contrary to well established law.

It is a virtual certainty that this small, taxpayer-funded "windfall" to Christian schools will come to an end. Somewhere, someplace, sometime it will stop. When it does, it will likely leave ministries who have become dependent upon it frustrated and angry. More importantly, it will leave the Bible-based Christian community "bloodied" and "marred" by hypocrisy. Thereafter, when a church or association of Christian schools appears in a courtroom or before a committee of the state legislature, claiming or demanding relief from burdensome laws or regulations in the name of religious freedom, the abuse of the "textbook program" will be used to shame and embarrass that church or association. In all likelihood, the textbook "grab" will be counter-productive to all of our efforts to limit governmental interference with religious instruction and practice.

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Regardless of your philosophy or mine, it may be better for you to stop requesting government paid-for religious textbooks before the Department of Education or Attorney General's Office stops it. Otherwise, the short-term financial gains of a few will probably limit the long-term religious freedom of all.

Very truly yours,

Gregory R. Reed

GRR/na