

EXPLANATORY NOTE

On August 23, 1901, the American transport "Thomas" steamed into Manila harbor carrying about 700 public school teachers from the United States. These sturdy and sanguine group—now fondly referred to as the "Thomasites"—had left their native America and come to the Philippines to "lay the foundations for Philippine Democracy." No one disputes today either their courage or their generosity or the significance of their achievement. It is common knowledge today that the Philippines owe to them and to their successors—a language, a system of education and indeed, an entirely new way of life.

What is perhaps not as well known is that this country owes to these same men and women from America a problem as well, a problem that is only now being slowly and painfully resolved. For the presence of the Thomasites in the Philippines created a peculiar situation—they were a small group of devoutly Protestant teachers in a predominantly Catholic population.

The difficulty of the situation was at once realized. In 1902, the Secretary of Public Instruction observed:

One of the most serious obstacles which the American system of education has had to encounter and is now encountering in the Philippine Islands is the suspicion of the native inhabitants that the school is to be used to undermine and destroy the faith of their children . . .

To remedy this situation and allay "the suspicion of the native inhabitants," the Secretary laid down the "first commandment of the Insular Government." It was: "Respect all religions, war with none, favor none, teach none."

The solution was a drastic one. It was plainly a curtailment of the teacher's freedom of religion. The teacher, under Section 16 of Act 74, could not "teach or criticize the doctrines of any church, religious sect, or denomination, or . . . attempt to influence the pupils for or against any church or religious sect in any public school." The law was strictly interpreted. "The law," it was stressed by the Secretary, "cannot be construed to mean that it was intended to regulate the conduct of the teacher in public only, and that privately, not to say secretly, the purpose of the enactment might be defeated beneath the shadow of his own roof with impunity."

There was thus established in the public school system of the Philippines a policy which seemed to constitute a serious restriction of a fundamental right—the teacher's right to freedom of religion. But this abridgment of a fundamental freedom appeared to be justified by the situation then existing. The American Government was trying to put into operation in these islands a new system of public instruction. The fate of the operation plainly depended on the response of the people to it. This response could hardly have been favorable so long as the suspicion lurked in Filipino minds that the system America was attempting to establish was in reality one vast Protestant conspiracy. To break this suspicion, the strict prohibition against religious instruction and activity by American teachers was indispensable.

One could thus argue that public policy *then* dictated the prohibition and to this policy even the teacher's right to full freedom of religion, in certain of its aspects, had to be sacrificed.

One could argue besides that the situation of the early 1900's itself justified the restriction. The great mass of the people were then dependent almost solely on the "Thomasites" and their immediate successors for the instruction and education of their young. To have permitted these teachers to teach religion even outside the classroom and even to those who were not their pupils and thus to have allowed them to use their undoubtedly powerful moral influence over both pupil and parent in favor of any religion or against any other would have amounted, in no unreal sense, to a serious violation of the people's own right to freedom of religion.

Since then, however, the situation has changed. The public school system is now well entrenched and is today entirely in Filipino hands. The two compelling reasons therefore for the sharp restriction imposed upon public school teachers seem no longer to be present. Yet, the policy that was established at the beginning of

the century to deal with a situation peculiarly—uniquely peculiar—to the 1900's, continued to be, until very recently, the policy that guided Department of Education officials and their superintendents all over the Philippines. For the radically changed conditions of the 1940's and the 1950's, the policy of the 1900's was still being enforced!

This month (August), however, the Under Secretary of Justice, the Honorable Roberto A. Gianzon, issued Opinion No. 157, 1953, which appears to depart sharply from certain important features of the old policy. The Opinion lays the groundwork for what, it is hoped, will be a new structure, a realistic and imaginative new policy, wrenched at last from the past, that will make whole once again, as far as is Constitutionally possible, the teacher's right to religious freedom.

The Opinion follows.

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OPINION No. 157, 1953

2nd Indorsement

August 10, 1953

Respectfully returned thru the Honorable, the Secretary of Education, to the Director of Public Schools, Manila.

Opinion is requested on the following:

1. Whether or not a public-school teacher may teach a class in religion on Sunday or any day outside his school hours in the church of his own religion or outside of the public-school building without violating the law and the Constitution.

2. Whether or not the Division Superintendent can legally authorize a priest, minister, or designated teacher or teachers of one sect to teach religion in a public school

for more than one thirty-minute period a day, three times a week, to different groups of public-school pupils whose parents or guardians desire their attendance in a class in religion and have so expressed such a desire in writing.

Anent the first query, Section 927 of the Revised Administrative Code provides as follows:

"No teacher or other person engaged in any public school, whether maintained from national, provincial, or municipal funds, shall teach or criticize the doctrines of any church, religious sect, or denomination, or shall attempt to influence the pupils for or against any church or religious sect. If any teacher shall intentionally violate this section he or she shall, after due hearing, be dismissed from the public service."

And Section 928 of the same Code, insofar as pertinent, reads:

"x x x But no public-school teacher shall either conduct religious exercise or teach religion or act as a designated religious teacher in the school building under the foregoing authority, and no pupils shall be required by any public-school teacher to attend and receive the religious instruction herein permitted. x x x."

Section 927, above-quoted, prohibits public-school teachers from teaching or criticising the doctrines of any church, religious sect or denomination, or from attempting to influence pupils for or against any church or religious sect. The provision of Section 928 above-cited, on the other hand, is a qualification of the authority granted by the first portion of the same section authorizing the use of public-school buildings for the teaching of religion at such periods of time as therein stated. It prohibits public-school teachers from conducting religious exercises or teaching religion in the public-school building otherwise allowed to priests or ministers of any church established in the town where a public school is situated.

The Constitution guarantees to every person the free exercise and enjoyment of religious profession and worship. Freedom of religion, as thus guaranteed by the fundamental law, includes not only the full and free right to entertain any religious belief and to practice any religious principle, but also the right "to teach any religious doctrine which

separation of Church and State, prohibits the application or use, directly or indirectly, of public money or property for the use, benefit or support of any sect, church, denomination or system of religion. On the other hand, Art. XIV, Sec. 5, also of the Constitution provides that "optional religious instruction shall be maintained in the public schools as now authorized by law." The effect of this provision, it has been held, was to incorporate the letter and spirit of Sec. 928 of the Rev. Adm. Code to the Constitution. (Op., Sec. of Justice, No. 208, s. 1950; Sinco, Pol. Law, 2nd Rev. Ed., p. 391). Hence, Sec. 928 of the Rev. Adm. Code became an exception to the general prohibition contained in Art. VI, Sec. 23, par. 3, of the Constitution and, by virtue of the authority therein granted, public-school pupils were allowed to be taught religion in the public schools according to the desire of their parents.

It cannot be seriously considered that the framers of the Constitution incorporated to the fundamental law the provisions of Sec. 928 of the Rev. Adm. Code simply to satisfy a priest or minister of a religious sect or denomination by giving him free access to the public-school building in which to preach the tenets of his faith. The fact that the constitutional convention has to provide an exception to a time-honored principle suggests that cogent and impelling reasons inspire such a deviation from the general rule. Delving deeper into the spirit of the provision under consideration and the philosophy that underlies its incorporation to the constitution, it is evident that optional religious instruction was authorized in the public schools in recognition of the great need of spiritual training among the school population. The elevating influence that religion plays in instilling into the minds the purest principles of morality must have impelled the framers of the Constitution in authorizing optional religious instruction in the public schools as an exception to the doctrine of the separation of the Church and State. Indeed, it may be safely assumed that optional religious instruction in the public schools was decreed as a constitutional mandate not so much for the benefit or support of any particular sect or system of religion as for the development and upbuilding of the spiritual standard and moral values of the public-school pupils with the end in view of producing straight-

thinking, morally-upright and God-fearing citizens of the nation.

The intent of the statute is the law and, once ascertained, the statute should be given such a construction as would carry out and effectuate in the fullest degree the intention of the lawmakers. (50 American Jurisprudence, 201-202). Statutes should be construed so as to give expression to its intendment, where its language is susceptible of a construction which preserves its usefulness. (*Armstrong Paint v. Nu-Enamel Corp.*, 305 U. S. 315, 83 L ed 195.)

It is a fact that the number of pupils now enrolled in the public schools runs to millions. The constitutional guaranty of religious freedom has enhanced the growth and propagation of various forms of religious worship. With the formation of these different religious sects and denominations, it is not surprising to note that the public schools are at present populated by children of various creeds and religious persuasions. One could easily realize how ineffective and futile optional religious instruction in the public schools would be if the provisions of Sec. 928 of the Revised Administrative Code were to be given such a narrow and restricted meaning as to limit the period therein stated only to the time during which public-school buildings may be made available for use for the teaching of religion. Such an interpretation would not serve the purpose of the constitutional mandate, but rather, would reduce it to an idle and empty precept. But in order to carry out more effectively the intent of the law and to derive the fullest benefit from what is authorized by the Constitution, I believe the provision in question should be construed in the sense that the period therein fixed refers to the maximum length of time that pupils may be given religious instruction in the public schools according to the desire of their parents.

Premises considered, I am of the opinion that the second query should be answered in the affirmative.