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OFFICIAL OPINIONS

OF THE

ATTORNEY GENERAL

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C. FERDINAND SYBERT
ATTORNEY GENERAL

CONSTITUTIONAL LAW—STATE TRAINING SCHOOLS—STATUTES REQUIRING SEGREGATION IN CORRECTIONAL TRAINING SCHOOLS NOT SO CLEARLY INVALIDATED BY EXISTING JUDICIAL DECISIONS AS TO WARRANT EXECUTIVE DEPARTMENT DISREGARDING EXPRESS LEGISLATIVE WILL.

September 10, 1959.

Mr. Thomas J. S. Waxter, Director,
State Department of Public Welfare.

Receipt is acknowledged of your recent letter requesting our present view as to the constitutionality of Sections 657 and 659-661 of Article 27, Annotated Code of Maryland (1957 Edition).

These statutes relate to the State training schools, namely, Boys' Village, Maryland Training School, Montrose School, and Barrett School, and provide that such institutions are public agencies for the care and reformation of minors committed thereto under the laws of this State. The statutes further provide that Maryland Training School shall be for white boys, Boys' Village for colored boys, Montrose School for white girls, and Barrett School for colored girls.

The precise constitutional issue presented in your letter is whether the legislative mandate requiring operation of Maryland's training schools on a racially segregated basis violates the equal protection clause of the Fourteenth Amendment to the Federal Constitution.

By opinion dated January 11, 1956 (41 Opinions of the Attorney General 120) we considered this same question in light of judicial decisions as of that time, particularly the decision of the Supreme Court of the United States in *Brown v. Board of Education*, 347 U. S. 493 (1954), holding segregation of children in public schools solely on the basis of race to be unconstitutional. We there held, in pertinent substance, that a presumption of constitutionality attaches to each act of the Legislature and that the Office of Attorney General, as an arm of the executive branch of our government, was constrained to denounce an existing

law as violative of state or federal constitutional guarantees only in those situations where a fair interpretation of a court decision indicates that a challenged law is constitutionally invalid. We then noted that the training schools were primarily intended as places to separate erring minors from the corrupting influence of improper circumstances and associates and that these institutions were both legislatively and judicially declared to be reformatories. While we fully recognized that education was a part of the process of reforming the individuals committed to the training schools, and that to a degree the institutions have been considered as educational institutions, it was our view that they did not fall within the purview of the term "public education" in the sense that such term was used by the Supreme Court in the Brown case. Specifically, we said:

> ". . . the distinguishing characteristic of such institutions (training schools), to our mind, is that inmates are there under legal compulsion and are denied the privilege of leaving the school. The inmates are, in other words, *confined* to these institutions. This is a situation different from that which was before the Supreme Court in the Public School cases, in that *educational* equality was the problem before the court. Here, desegregation of the institution, contrary to express legislative intent evidenced by the statutes creating the institutions, could have the effect of enforcing social as well as *educational* association among the inmates for twenty-four hours a day."
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> "One further point is worthy of mention. Basically the argument in the public education cases turned on the issue of whether to retain or reject the 'separate but equal' doctrine laid down in *Plessy v. Ferguson,* 163 U. S. 537, 41 L. Ed. 256. We are not aware of any instance in which the doctrine of 'separate but equal' has been applied to the field of correctional institutions such as those here under discussion. Even though the effect of

> the public education cases is to abolish the doctrine in all fields to which it was heretofore applicable (which has been questioned), we do not believe it can be fairly said the effect would be carried over into still other fields of activity never heretofore included within the doctrine."

We have found nothing in the present law as it has developed since our opinion of January 11, 1956, which is at variance with our earlier views, and we consequently reaffirm the same, restating herein our ultimate conclusion in that opinion as follows:

> ". . . the present case is not such a clear one as to warrant our taking the extraordinary action of advising your Department to ignore the express will of the Legislature".

We think that the opinion of the United States District Court in *Nichols v. McGee*, 169 F. Supp. 721 (N. D., Calif., 1959) bears sufficient relationship to the present question to include a reference thereto in this opinion. In that case the petitioner, an inmate of a State prison, contended that his constitutional guarantee of equal protection of the law was denied him in that he was required to join an exclusively Negro line formation when proceeding to his assigned cellblock for daily lockup and to the prison dining hall, and that he was required to eat in a walled-off and exclusively Negro compartment in the prison dining hall. He contended that such systematic segregation caused him a loss of self-respect, thereby making it difficult for him to effect the same degree of rehabilitation possible for unsegregated prisoners of other races. He relied principally on *Brown v. Board of Education, supra.* The Court there held: "By no parity of reasoning can the rationale of *Brown v. Board of Education* be extended to state penal institutions where the inmates, and their control, pose difficulties not found in educational systems. Federal courts have long been loath to interfere in the administration of state prisons."

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