

OPINION 22

OFFICIAL OPINION NO. 22

October 10, 1975

Honorable Joan M. Gubbins
Indiana State Senator
1000 East 81st Street
Indianapolis, Indiana 46240

Dear Senator Gubbins:

This is in response to your request for an opinion as to whether the Private School Accreditation Act, Indiana Code of 1971, Sections 20-1-19-1 through 20-1-19-24, requires private Bible Colleges located in Indiana to obtain accreditation from the Indiana Private School Accrediting Commission and, if so, whether that requirement violates constitutional provisions concerning the free exercise of religion.

ANALYSIS

Indiana Code of 1971, Section 20-1-19-5 provides, in part, the following:

“. . . [N]o person shall do business as a private school in the state without having obtained accreditation.”

Since Code section 20-1-19-1(b) defines “person” to mean “any individual, partnership, association, corporation, joint venture, trust, receiver or trustee in bankruptcy,” a private Bible College presumably would be a “person.” Whether a private Bible College is a “private school” depends upon the construction of Code section 20-1-19-1(a), which defines a private school as

“. . . any person doing business in this state by offering to the public for a tuition, fee or charge, instructional or educational services or training in any technical, professional, mechanical, business or industrial occupation, either in the recipient’s home, at a designated location or by mail . . .”

Since a private Bible College teaches primarily religious or traditional liberal arts subjects, its offerings would not be

educational services or training within the meaning of the Act.

However, even if the Act were construed to include a private Bible College within the definition of "private school," it would run afoul of Article 1, Sections 2, 3, and 4, of the Constitution of Indiana, and the First Amendment to the United States Constitution, which place strict limitations on permissible government regulation.

Article 1, Section 2 of the Constitution of Indiana, provides the following:

"All men shall be secured in their natural right to worship Almighty God, according to the dictates of their own consciences."

Article 1, Section 3 of the Constitution of Indiana, provides the following:

"No law shall, in any case whatever, control the free exercise and enjoyment of religious opinions, or interfere with the rights of conscience."

Article 1, Section 4 of the Constitution of Indiana, provides, in relevant part, the following:

"No preference shall be given, by law, to any creed, religious society, or mode of worship . . ."

The First Amendment to the United States Constitution provides, in relevant part, the following:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof . . ."

In *Lemon v. Kurtzman* (1971), 403 U.S. 602, 612, the United States Supreme Court stated three tests which must be applied to state statutes which touch upon religion: "[f]irst, the statute must have a secular legislative purpose; second, its principal or primary effect must be one that neither advances nor inhibits religion . . .; finally, the statute must not foster 'an excessive governmental entanglement with religion'."

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The intent of the Indiana General Assembly in enacting the Private School Accreditation Act was to protect students from economic loss they might incur as a result of enrolling in a school which takes tuition payment and fails to provide instruction in return. That purpose plainly is secular and permissible. Protection against fraud is provided for all in other laws also. But the provision of Code Section 20-1-19-14, which requires suspension of the accreditation of a private school which denies enrollment on the basis of "creed" is not related to that purpose and, instead, inhibits the free exercise of religion by those schools which condition admission on adherence to particular doctrinal beliefs. That provision, therefore, may not be applied to private religious schools to prohibit them from requiring adherence to a doctrinal statement.

CONCLUSION

It is, therefore, my Official Opinion that private Bible Colleges are *not* subject to the so-called Private School Accreditation Act (Indiana Code of 1971, Sections 20-1-19-1 through 20-1-19-24). Article 1, Sections 2, 3, and 4, of the Constitution of the State of Indiana, as well as the First Amendment to the Constitution of the United States, would render inapplicable to a private Bible College the provision of the Private School Accreditation Act which would attempt to withhold accreditation to a private Bible College which adheres to a particular religious doctrine.