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Opinion No. 63-20
R-245
April 25, 1963

REQUESTED BY: THE HONORABLE JEWEL W. JORDAN
State Auditor

OPINION BY: ROBERT W. PICKRELL
The Attorney General

QUESTION: Does the legislative appropriation which appropriates a certain amount of money for the construction of a chapel at the State Hospital violate the provisions of either Article II, Section 12, Arizona Constitution, Article IX, Section 10, Arizona Constitution, or Article of Amendment No. I, Constitution of the United States?

ANSWER: See body of opinion.

We assume and believe on the basis of information given to us that the proposed chapel will be completely non-sectarian and non-denominational, available to any and all religious groups or denominations or as many of them as may wish to avail themselves of it. We further assume that said chapel will have no decorations, markings, signs, statues or symbols within it which might reflect that it was dedicated to or to be used for exercises connected with any particular religion. With these assumptions in mind, it is our opinion that the construction of said chapel is not in violation of the Constitution of the United States or of this state. The particular constitutional provisions are as follows:

Article II, Section 12 reads in part as follows;

"No public money or property shall be appropriated for or applied to any religious worship, exercise or instruction, or to the support of any religious establishment."

Article IX, Section 10 reads;

"No tax shall be laid or appropriation of public money made in aid of any church, or private or sectarian school or any public service corporation."

Article of Amendment I of the Constitution of the United States reads in part:

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

Article XIV of the same Constitution has been construed to make this applicable to a state.

The Supreme Court of the United States has at various times considered the Establishment Clause quoted above. Its most recent case is Engel v. Vitale, 370 U.S. 421, 8 L.Ed. 2d 601, 82 S.Ct. 1261 (1962). In that case, as you may probably know, the Board of Regents of New York State wrote a form of prayer to be recited by the teacher, and those pupils who wished to, at the opening of public school sessions. This was struck down by the Supreme Court of the United States for the principal reason that it held that the state should not be in the business of writing prayers. However, the practice condemned by the Supreme Court was that the state was interfering in the exercise of religion. Justice Douglas concurring in the language even stronger than the majority opinion used these words:

"Yet once government finances a religious exercise it inserts a decisive influence . . ."
(Emphasis supplied)

and later,

"The First Amendment leaves the Government in a position not of hostility to religion but of neutrality . . . The philosophy is that if Government interferes in matters spiritual it will be a decisive force. The First Amendment teaches that a government neutral in the field of religion better serves all religious interests."

Our own Constitution speaks in terms of prohibiting public funds to be used for any worship, exercise or instruction. It would appear that the construction of a building is not an act of worship, exercise or instruction. It would also appear that if nothing in the building provided by state funds indicated

any particular form or shape of litany or worship nothing there could be held to constitute a state financing a religious exercise.

It would also be clear that the construction of a bare building does not support any particular religious establishment. It is clear beyond doubt that no state government nor the United States itself, can favor one religion over another. This is the heart of the Establishment Clause. It is also clear under Engel v. Vitale, supra, that the attempt of the state to support or impose even a non-denominational religious exercise violates the Constitution. But where no attempt is made to impose an exercise or to interfere in any exercise, it would appear that the building of a place for worship is neutral and may be justified if there is a public purpose involved. The same rationale can be applied to Article IX, Section 10 because obviously a non-denominational building is not any aid of any particular church.

For a case particularly in point, we have State ex rel. Town of Prior v. Williamson, 347 P.2d 204 (Okla. 1959). The case involved the use of public trust funds for the building of a non-denominational chapel at a state educational institution. The Oklahoma Constitution is even more thorough than ours and it reads at Article II, Section 5:

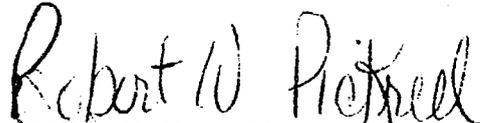
"No public money or property shall ever be appropriated, applied, donated or used directly or indirectly, for the use, benefit, or support of any sect, church, denomination or system of religion, or for the use, benefit or support of any priest, preacher, minister or other religious teacher or dignitary or sectarian institution as such."

The Oklahoma Supreme Court said that this provision did not bar the use of the money of public offices and noted therein that Oklahoma had built, non-denominational, non-sectarian churches at some other state institutions such as Girls Institute, at the State hospital and at its State Prison. It also commented upon the same fact the U.S. Supreme Court has also commented on, to-wit, that public monies have been used since the first Congress to provide for chaplains and for chapels in the armed forces.

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It is our further understanding that in the field of psychiatry and mental illness that religion can play a part in the assistance of the mentally ill and that if the medical authorities of the state hospital see a reason for having such a chapel, their decision as to its utility and public purpose is acceptable.

Therefore, if our caveat concerning the total absence of any denominational indication is observed, the money appropriated may be expended.


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The Attorney General

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