

Our conclusions in this respect are corroborated by the ruling of the Superior Court in the case of *Commonwealth v. Cohen*, 142 Pa. Super. 199, 202 (1940), wherein it stated:

* * * For the purposes of this appeal it is enough to say that the legislature has seen fit to recognize osteopathy as "a complete and independent scientific system" and in the various acts of assembly, supra, *have given osteopaths the standing of physicians.* * * *. (Italics ours.)

Again at page 203, the court said:

* * * Licensed "osteopathic physicians" are "licensed physicians" and, as such, are excepted from the prohibition of the Anti-Narcotic Act. As a general term "licensed physicians" comprehends licensed osteopaths. * * *

We desire to point out in passing that there is no authority for a fourth class school district to provide medical inspection at its own expense, unless your department is unable to furnish adequate medical inspection because of lack of funds. *Becker et al. v. School District of Upper Moreland Twp., et al.*, 50 Montg. County Law Reporter 244.

While the conclusion reached herein is not the conclusion that would be arrived at by the use of the words and phrases herein analyzed in their usual and ordinary acceptation, yet in view of the decisions of the courts of last resort in Pennsylvania, it is our opinion and you are accordingly advised, that an osteopathic physician, who is licensed as such by the Commonwealth of Pennsylvania, is a "physician qualified to practice medicine" within the meaning and intent of the legislature, and is authorized and qualified to act as a medical inspector in first, second, third and fourth class school districts. However, a fourth class school district may not employ a medical inspector at its own expense, unless the Department of Health is unable to provide adequate medical inspection because of lack of funds.

Very truly yours,

DEPARTMENT OF JUSTICE,

JAMES H. DUFF,
Attorney General.

GEORGE J. BARCO,
Deputy Attorney General.

OPINION No. 457

Training of Nurses—Civilian Defense—Religious Order—American Red Cross—Church and State—Sectarian Instruction—Constitution Article III, section 18.

Members of a religious order may enter certain nurses' training classes being conducted by a State hospital, which is co-operating with the American Red Cross

in allowing nurses' aides to come into the hospital during certain hours of the day to secure their training in aid of civilian defense.

The purposes of Article III, section 18, of the Constitution of Pennsylvania, which prohibits appropriations for charitable, educational or benevolent purposes "to any denominational or sectarian institution," is to prohibit the State from giving any recognition, directly or indirectly, to a religious sect or denomination, in recognition of the set purpose to divorce absolutely church and state.

The proposed program to train nurses for civilian defense does not violate the provisions of the Constitution. There is no appropriation to the religious order whose members desire to enter the training classes. The members of the religious order will attend the classes for the purpose of receiving instructions and not for the purpose of imparting religious or sectarian instruction.

Harrisburg, Pa., May 18, 1943.

Honorable S. M. R. O'Hara, Secretary of Welfare, Harrisburg, Pennsylvania.

Madam: We have your request to be advised whether members of a religious order may enter certain nurses' training classes being conducted by the Hazleton State Hospital which is co-operating with the Hazleton chapter of the American Red Cross in allowing nurses aides to come into the hospital during certain hours of the day to secure their training in aid of civilian defense.

You state that the hospital has not assumed any responsibility for compensating such trainees and that their work and training are voluntary and part of the community war effort.

You further state that the case of the Mercy Hospital at Wilkes-Barre indicates that there could be no constitutional objection to an individual citizen (though a member of a religious order) from participating in such a program.

Your request for advice involves a consideration of the purposes of Article III, Section 18, of the Pennsylvania State Constitution, prohibiting appropriations to any denominational or sectarian institution, which is as follows (Purdon's Constitution, page 278):

No appropriations, except for pensions or gratuities for military services, shall be made for charitable, educational or benevolent purposes, to any person or community, nor to any denominational or sectarian institution, corporation or association.

In the case of *Constitution Defense League v. Baldwin*, 42 Dauphin 169, 177 (1936), it was stated as follows:

The constitutional provisions prohibiting appropriations for charitable, educational or benevolent purposes to any denominational or sectarian institution is well understood, and the decisions in interpretation thereof have been uniform,

starting with *Collins v. Kephart et al.*, 271 Pa. 428, which holds:

The purposes of article III, section 18, of the Constitution of Pennsylvania, which prohibits appropriations for charitable, educational or benevolent purposes 'to any denominational or sectarian institutions,' is to prohibit the State from giving any recognition, directly or indirectly, to a religious sect or denomination, in recognition of the set purpose to divorce absolutely church and state.

The section forbids state aid to institutions affiliated with a particular religious sect or denomination, or which are under the control, domination, or governing influence of any religious sect or denomination.

The ordinary understanding of the phrase "sect or denomination" is a church or body of persons in some way united for purposes of worship who profess a common religious faith, and are distinguished from those composing other such bodies by a name of their own.

When simple words are used in the Constitution, they must be read according to their plain, generally understood, or popular meaning.

The proposed program does not appear to violate the foregoing provisions of the Constitution. There is no appropriation to the religious order whose members desire to enter the training classes of the Hazleton State Hospital. The members of the religious order will attend the classes for the purpose of receiving instructions and not for the purpose of imparting religious or sectarian instruction.

Therefore, we experience no difficulty in deciding that members of the religious order may enter the training classes. Any other conclusion would encroach upon the rights given by Section 3 of Article I of the Constitution, which is the declaration of rights (Purdon's Constitution, page 37) and is as follows:

All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own consciences; no man can of right be compelled to attend, erect or support any place of worship, or to maintain any ministry against his consent; no human authority can, in any case whatever, control or interfere with the rights of conscience and no preference shall ever be given by law to any religious establishments or modes of worship.

As early as the case of *Hysong et al. v. School District*, 164 Pa. 629 (1894), it was held that the exclusion of a Sister of Charity from employment as a teacher of the public schools, because she was a Roman Catholic, was a violation of the spirit of Article I of the Bill of Rights relating to religious liberty.

If by law any man or woman can be excluded from public office or employment because he or she is a Catholic, that is a palpable violation of the spirit of the constitution; for there can be, in a democracy, no higher penalty imposed upon one holding to a particular religious belief, than perpetual exclusion from public station because of it. * * * :
Hysong et al. v. School District et al., 164 Pa. 629 (1894).

From the foregoing, it must be obvious that these individuals may not be prevented from attending the classes because they happen to be members of a religious order.

While you state that the case of the Mercy Hospital at Wilkes-Barre, *Constitution Defense League v. Baldwin*, supra, indicates that there could be no constitutional objection to an individual citizen (though a member of a religious order) from participating in such a program, we do not find this statement in the report of the case, but we are in accord with the view.

We are of the opinion, therefore, that members of a religious order may enter certain nurses' training classes being conducted by the Hazleton State Hospital which is cooperating with the Hazleton chapter of the American Red Cross in allowing nurses' aides to come into the hospital during certain hours of the day to secure their training in aid of civilian defense.

Very truly yours,

DEPARTMENT OF JUSTICE,

JAMES H. DUFF,
Attorney General.

H. J. WOODWARD,
Deputy Attorney General.

OPINION No. 458

Parole—Jurisdiction of Board of Parole—Prisoner serving multiple sentences imposed at different terms—Aggregate maximum sentence exceeding two years—Act of August 6, 1941.

The Pennsylvania Board of Parole does not, under section 17 of the Act of August 6, 1941, P. L. 861, have jurisdiction over a prisoner who has been given two or more sentences at different terms of court where the maximum period of none of those sentences equals or exceeds two years, even though such maximum sentences when totaled do equal or exceed two years.

Harrisburg, Pa., May 20, 1943.

Pennsylvania Board of Parole, Harrisburg, Pennsylvania.

Sirs: This department is in receipt of an inquiry under date of April 9, 1943, in which you ask to be advised whether the Pennsylvania Board of Parole has jurisdiction in a case where a prisoner was