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## Constitutional Law—Equal Protection—School Segregation Revived

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**CONSTITUTIONAL LAW—EQUAL PROTECTION—SCHOOL  
SEGREGATION REVIVED**

Plaintiffs brought suit for themselves and all other taxpayers in Wagoner County, Oklahoma, to enjoin the Board of County Commissioners from delivering to purchasers school bonds which were voted for the acquisition, maintenance, and repair

<sup>10</sup> *Flies v. Fox Bros. Buick Co.*, 196 Wis. 196, 218 N.W. 855, 60 A.L.R. 357 (1928); see Annot., 60 A.L.R. 371 (1929).

<sup>11</sup> Restatement, Torts § 385 (1934).

<sup>12</sup> *Allen, Learned and Unlearned Reason*, 36 Jurid. Rev. 254, 263 (1924); Prosser, Torts §§ 37, 241 (1st ed. 1941).

<sup>13</sup> 38 Am. Jur., Negligence §§ 317-319 (1941).

of segregated schools. The lower court ruled that the recent decision of the United States Supreme Court in *Brown v. Board of Education of Topeka*<sup>1</sup> which nullified statutes providing for segregation of races in schools did not negate other statutes<sup>2</sup> providing for the acquisition, maintenance, and repair of separate schools under a segregated system, and that such an acquisition was legal. Plaintiffs appealed to the Supreme Court of Oklahoma. *Held*: affirmed.<sup>3</sup>

This case is one of the first examples of a successful attempt by a state to circumvent the decision against segregation.

The plaintiffs alleged that the bond issue was illegal as repugnant to the Fifth and Fourteenth Amendments of the Federal Constitution.<sup>4</sup>

An early decision established the "public purpose" doctrine relating to bond issues.<sup>5</sup> This doctrine prohibits municipal taxation for purposes not primarily beneficial to the community *as a whole*.<sup>6</sup> For the same reason, bonds cannot be issued for purposes which would not support valid tax assessments, the theory being that bonds, when issued, are merely an anticipation of the taxes needed to pay them.<sup>7</sup> Thus, under the recent Supreme Court decisions, it would seem that public taxes for the support of segregated schools would be unconstitutional.

The Oklahoma court based its decision on the grounds that the statutes under which the bonds were issued provide for the maintenance of the public school system. The fact that schools thus maintained will be segregated was purported to have no bearing on the issue.<sup>8</sup> Thus, the legal fiction of accomplishing by indirection what cannot be done directly was successfully employed.

<sup>1</sup> 347 U.S. 483 (1954).

<sup>2</sup> Okla. Stat. tit. 70; §§ 15-7 to 15-13 (1951).

<sup>3</sup> *Matlock v. Board of County Comm'rs*, 281 P.2d 169 (Okla. 1955).

<sup>4</sup> *Bolling v. Sharpe*, 347 U.S. 497 (1954), held that segregation in public schools is a deprivation of liberty in violation of the due process clause of the Fifth Amendment. *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954), held that segregation deprived the plaintiffs and others similarly situated of the equal protection of the laws as guaranteed by the Fourteenth Amendment.

<sup>5</sup> *Sharpless v. Mayor of Philadelphia*, 21 Pa. 147, 168-169, 174 (1853) (upholding the investment of municipal funds in the bonds of a privately owned railroad).

<sup>6</sup> *People ex rel. Detroit & Howell R.R. v. Salem*, 20 Mich. 452, 474-494 (1870); see *Lowell v. Boston*, 111 Mass. 454 (1873).

<sup>7</sup> *City of Clearwater v. State*, 108 Fla. 623, 147 So. 459, 460 (1933).

<sup>8</sup> *Matlock v. Board of County Comm'rs*, 281 P.2d 169, 171 (Okla. 1955).

It is submitted that if the acquisition of new school grounds was to provide for the ever increasing number of school children, and with the full intent of integrating all schools as soon as practicable, the bond issue would be for a valid purpose. The period of transition to desegregated schools should not require the school systems to remain static.

However, in the light of strong southern feeling against the Supreme Court decision, especially as evidenced by recent cases involving similar problems, it does not seem that such an intention can be assumed.

A Florida court upheld the validity of a bond issue for the purpose of building segregated schools and stated that the *Brown* decision was a great mistake and that the state legislature should determine whether the doctrine of "separate but equal" has a place in the field of public education.<sup>9</sup> In addition, Negroes have been denied their right to attend integrated public schools on the ground that the Supreme Court's decision does not require *immediate* desegregation of schools.<sup>10</sup> Thus, the Oklahoma court has joined a general southern refusal to carry out promptly the mandate of the Supreme Court.

Any action by a state intended to prolong segregation, or at least to postpone desegregation, is clearly inconsistent with the mandate of the Supreme Court. This was unequivocally established in May, 1955, by a supplemental decision to the first *Brown* case.<sup>11</sup> The Court stated that Negroes should be admitted "as soon as practicable," that school authorities must "act in good faith" and make a "prompt and reasonable start" toward desegregation, that Negroes should be admitted on a nondiscriminatory basis "with all deliberate speed," and that only in extremely difficult cases will an extension of time be granted.

In compliance with this clear statement of intent, a recent Virginia case held that taxpayers could enjoin the issuance of bonds which were to finance segregated schools, stating that in the future the state can operate only nonsegregated schools.<sup>12</sup>

It is submitted that if the present decision is not reversed,

<sup>9</sup> Board of Public Instruction v. State, 75 So.2d 832 (Fla. 1954).

<sup>10</sup> Steiner v. Simmons, 111 A.2d 574 (Del. 1955); reversing decision in 108 A.2d 173 (Del. 1954).

<sup>11</sup> Brown v. Board of Education of Topeka, 349 U.S. 295 (1955).

<sup>12</sup> Shelton v. County School Bd. of Hanover, 23 U.S.L. Week 2630 (June 2, 1955).

it will result in segregation in Oklahoma taking on a new "legal" status which is in direct conflict with the Supreme Court decisions holding segregation unconstitutional.

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