

# LEGAL UPDATE

## Whom Do We Hire?

Do Adventist schools have the right to discriminate on the basis of religion?

The call came from the business office of an Adventist college in North America. Near the campus is a college-owned and operated gas station. The caller had found a desirable candidate for a job opening at the station. "But," he said, "there's just one thing: he isn't a Seventh-day Adventist. Could that cause us any problems?"

The answer involves perhaps the least publicized but potentially most far-reaching church-state issue currently before the courts: the right of church-affiliated organizations to make employment decisions based on religion.

Title VII of the Civil Rights Act of 1964 makes it unlawful for an employer in the United States to discriminate on the basis of any of five factors, including religion. But the Act also provides this exemption:

This subchapter shall not apply to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution or society of its activities.

Just what does "carrying on . . . its activities" mean? One federal court ruled that an editorial secretary at a religious publishing house was not covered by the exemption. A Methodist children's home was held to be a nonexempt secular organization. A seminary could not engage in commercial activities and claim the exemption for those so employed, but could do so where the job was necessary to the operation of the institution. And a Mississippi court ruled that although the relationship between a church and its minister is exempt, that between a religious college and its faculty is not.

A case recently filed with the Supreme Court may clarify the scope and reach of the exemption when applied to nonreligious positions. Bearing the unwieldy title of *The Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter Day Saints v. Amos*, this case alleges that such an exemption is an unconstitutional establishment of religion except as applied to employment that is closely related to the doctrine and

religious activities of the parent church.

The *Amos* case challenges the employment practices of a gymnasium, a garment factory, and a sheltered workshop, all owned by the Mormon Church. These organizations require their employees to be church members in good standing. Because the plaintiffs in *Amos* were not in good standing, they were fired. They subsequently sued, alleging religious discrimination.

In a preliminary decision the federal district court ruled that the Title VII exemption was unconstitutional except as applied to religious activities, and devised a three-part test to determine that status.

First the court looks for an operational or managerial tie between the religious organization and the challenged activity. Second, the court looks for a link between the primary activity of the challenged organization and the doctrine of the parent organization. If both of these are present, the entity is declared religious and thus qualified for the Title VII exemption. If either is lacking, the court proceeds to a third inquiry: Is there a relationship between the individual job in question and church doctrine? If so, that job is religious and exempt.

How would these tests be applied to an Adventist campus? The first test is easily met: Any denominationally owned entity can show a close managerial tie to the church. In Adventism the doctrinal imperative motivating the operation of our educational system would satisfy the second test—at least as far as academic activities are concerned. But what about a furniture factory operated on or near a campus solely to provide student employment? Or a service station operated for the convenience of students and faculty? Do these activities spring from a religious motivation? We argue that they must be treated as integral parts of a unified religious institution. Others disagree. At least two states have taken the position that even on religious campuses only those jobs that are strictly religious in nature are exempt.

There is also the question of consistency. The *Amos* court held that exempt status may be lost by inconsistent application. Adventist colleges and universities traditionally assert that religion is incorporated in every class and every activity, and that such institutions must be free to make religious belief a standard for employment. Yet occasionally they are tempted to hire a nonmember on a

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# SOURCES FOR IDEAS AND MATERIALS

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A listing of software judged to be of excellent quality; includes science and other areas.

## Miscellaneous

### *A Creationist View of Dinosaurs*

Atlantic Union Office of Education  
P.O. Box 1189  
South Lancaster, MA 01561  
(617) 368-8333

A two-volume guide for grades 3-6

### *Aviation for Elementary Level*

Beach Aircraft Corp.  
Dept. L86  
P.O. Box 85

Wichita, KS 67201

A teaching kit with background and lesson plans on aviation history, elements of flight and careers in aviation, \$5. Free—a set of 17-16 x 20-inch color photographs of airplanes.

Elementary Science Experiments Kit  
Educational Insights  
19560 S. Rancho Way  
Dominguez, CA 90220

A box of cards showing 135 experiments and projects—\$10.95.

## Hospitals

Hospital labs are good locations for field trips, as well as offering the possibility of free supplies for certain types of experiments.

## NASA

NASA has a wealth of resources available for schools including films (see film section), pamphlets, posters, pictures, videotapes, slides, tours, and a variety of other materials. Several of the space centers provide curriculum labs where teachers may copy video-

tapes, slides, and print materials at no charge. Teachers must bring their own blank videotapes and 35mm film. The center provides cameras, copy machines, and technical help. Many centers have prepared programs and tours for students (schedule these ahead of time). A letter to the National Aeronautics and Space Administration, Educational Publications Services, LEP, will produce much information. Ask for the address of the NASA center that serves your state. All materials from NASA centers are free. Write to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 and ask for "NASA Publications." There is a minimal charge for the documents in this catalog.

## Origins

NAD Department of Education  
Supplementary material on the Creation of the world to be used in secondary biology classes (available in 1987). □

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contract basis to teach a course or two (it's cheaper than adding another full-time faculty member). Have these institutions weakened their claim to Title VII exemption? Having hired a nonmember to work in the service station, can they consistently argue that, for religious reasons, they may refuse to hire another nonmember in a similar job?

In Canada these issues have been substantially clarified. In 1984 the Supreme Court of Canada ruled in *Caldwell v. St. Thomas Aquinas High School* that good standing with the church is a *bona fide* occupational qualification for employment in a religious school. This effectively gave such schools wide latitude in their hiring practices.

It is hoped that the *Amos* case will provide a similar clarification of American law. The Supreme Court has agreed to review the case. A decision is expected by July 1987. □

## OF INTEREST TO TEACHERS

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some. They went into the hall and lined up and found 100 kids took the entire length of the hall. They made a picture with 100 pieces of macaroni, and finally got to eat—100 pieces of popcorn."—*It Starts in the Class-*

*room*, March 1986. Reprinted by permission from *It Starts in the Classroom*, Copyright 1986, National School Public Relations Association.

## Illiteracy Rate High in U.S.

One in seven Americans is illiterate, according to a survey conducted by the U.S. Department of Education. Illiteracy is highest in some of the most populous states. New York and Texas join Mississippi and Louisiana as the states with the highest adult illiteracy rates—16 percent of their residents could not pass a literacy test. California is not far behind, with an illiteracy rate of 14 percent.

Utah leads the states in literacy, followed by Alaska, Colorado, Montana, Oregon, Washington, and Wyoming. The illiteracy rates in these states is less than half that of New York and Texas.

Overall, the national illiteracy rate is 13 percent. Between 17 and 21 million American adults are illiterate.—Reported in *American Demographics*, August 1986.

## Surge in School Computer Use

A Johns Hopkins University study finds that between 1983 and 1985, the number of computers used in U.S. schools skyrocketed from 250,000 to more than one million. Other findings: Three-quarters of the schools that previously had no computers got one or more machines during the two-year period; more than half of the elementary schools had more than five computers; and a majority of secondary schools had at least 15 computers.—Reported by *The American School Board Journal*, October 1986. □