Texas Supreme Court Knocks Out School Segregation Law

AUSTIN, TEXAS

THE TEXAS Supreme Court has ruled that schools may proceed with desegregation without regard to state laws.

It declared invalid provisions of the state constitution and the school laws which require racial segregation. This came in the Big Spring case *(R. E. McKinney et al v. W. C. Blankenship et al)* where the district authorized Negroes to attend white elementary schools.

Twenty-one Negroes were eligible to attend the white schools at Big Spring. Seven actually enrolled and 14 chose to attend the segregated Negro school.

Big Spring is one of 65 districts which started integration in Texas this fall. Unofficial estimates indicate that between one and two per cent of the state's Negro scholastics are affected by these orders.

The test at Big Spring was filed by four citizens, one of them a school trustee, and by the Texas Citizens Council, a pro-segregation group. Ross Carlton, Dallas attorney and head of the Council, represented the plantiffs in the Big Spring lawsuit.

'NO SPEED-UP'

Gov. Allan Shivers and Atty. Gen. John Ben Shepperd made public statements pointing out that the state Supreme Court's decision does not call for any speed-up of desegregation.

The state court upheld the judgment of District Judge Charlie N. Sullivan of Big Spring, who denied the injunction sought to stop the local board desegregation order. Also upheld was Sullivan's opinion that state laws and the constitution must yield if they conflict with the United States Supreme Court's anti-segregation decision.

In the Texas court's main opinion, Associate Justice Few Brewster labeled as "utterly without merit" the argument that Texas segregation laws were unaffected by the U. S. Supreme Court decision.

A concurring opinion by Associate Justices Meade F. Griffin and Ruel C. Walker added deletion of the Texas Gilmer-Aikin school law's segregation provision leaves a "fully and completely effective" method of financing schools.

Atty. Gen. Shepperd had argued that if a portion of the financing law is invalid, the whole act is invalid until revised by the legislature. The court did not rule directly on Shepperd's point that a restriction upon a legislative appropriation cannot be erased by court action.

EXPECT NO APPEAL

Gov. Shivers said that "developments of the next few months will dictate whether a special session of the legislature will be necessary." But the court's decision apparently headed off any prospects for an early legislative session on the segregation question.

No appeal is expected from the Texas Supreme Court's opinion.

Atty. Carlton declared that the only hope for victory in the Big Spring case lay in the Texas Supreme Court. An appeal to the U. S. Supreme Court —which held segregation to be unconstitutional in the first place — is considered futile.

Atty. Gen. Shepperd likewise took the Texas court's ruling as final.

"This settles the law in Texas on a statewide basis, but integration will still be a district-by-district matter," said Shepperd. "As attorney general I will, of course, as I have in the past, uphold the law as declared by the court or such new laws on the subject as may be passed by the legislature."

SHIVERS COMMENT

Gov. Shivers pointed to the Dallas case, where Negroes lost an application for immediate entry into white schools.

The governor commented:

"Faced with a demand that colored students be admitted to certain Dallas schools, Judge (William H.) Atwell held that the U. S. Supreme Court had required school officials to work out proper plans for desegregation, but, while this is being done, 'when similar and convenient schools are furnished to both white and colored that there then exists no reasonable ground for requiring desegregation.'

"In the light of these decisions, no school district should feel compelled to take hasty or unnecessary action."

Justice Brewster wrote that Section 7, Article VII of the Texas constitution and Article 2900 of the statutes are unconstitutional "to the extent that . . . they require segregation of the white and Negro students in the public schools."

"It does not follow, however, that (these articles) are unconstitutional and void as applied to other subject matter which by their terms they were intended to cover."

The constitutional article says: "Separate schools shall be provided for white and colored children, and impartial provision shall be made for both."

Article 2900 of Texas law says white and Negro children may not attend the same schools.

The state court asserted that declaring the two articles entirely unconstitutional "would destroy the safeguards found therein which guarantee equal and impartial provision for students in schools not yet integrated."

"No judgment which would lead to that result should be rendered unless it is necessary, and we find it unnecessary," wrote Judge Brewster.

LAW ANALYZED

The Court also analyzed Article 2922-13 of the Gilmer-Aikin laws. It provides that payments based on attendance shall be "separate for whites and separate for Negroes." Brewster referred to other sections of the same law and concluded: "We find in the act no language which would deny the use of such funds to integrated schools."

The concurring opinion by Justices Griffin and Walker agreed with the majority view except on construction of Article 2922-13.

The two judges said the law's requirement for spending separately on white and Negro schools is unconstitutional under the U. S. Supreme Court's decisions. But they said the language "is severable and when applied to a case of this character does not affect or impair the validity and operation of the remainder of the statute."

LEGAL ACTION

Parents of three Negro pupils in the Mansfield, Tarrant County, Independent School District filed suit in the U. S. Supreme Court seeking admission to the high school there.

The plantiffs said they are required to travel 40 miles a day to attend high school in Fort Worth, 20 miles from Mansfield. They asked for an injunction to abolish the Mansfield district's policy of keeping Negroes out of its high school.

The case is styled *Nathaniel Jackson, a minor, et al v. O. C. Rawdon, president of the Mansfield trustees, et al.* It is set for hearing Nov. 7 before U. S. District Judge Joe E. Estes at Fort Worth.

WHAT THEY SAY

Dr. Frederick Eby, long-time member of the College of Education faculty, University of Texas, suggested that the most intelligent Negro students should be put into white schools first.

A long-time foe of segregation, Dr. Eby said it must be recognized that the average Negro pupil is unequal to the average white student.

"Could even nine sage judges of the Supreme Court of the United States make all men equal in intelligence?" asked Dr. Eby at the annual meeting of the Texas Association of School Boards.

The speaker added: "We must recognize that the great majority of Negroes have not demanded integration for the Negro."

ASSOCIATE JUSTICE BREWSTER
Texas Race Bars Void

Dr. Eby said that present conditions of overcrowding and teacher shortages make desegregation an extra-difficult problem.

The San Marcos school board revealed a problem which has come up there. The Negro high school was abolished this fall, and the students permitted to attend the white high school.

Now the board is faced with the problem of policy on transferred students. San Marcos has accepted students from rural areas in the past. The board now is concerned over whether it must accept transfers of all races if it accepts white transfers.

In Dallas, Supt. W. T. White asked white and Negro parent-teachers associations to study the possibility of integrating their groups. He requested both PTA Councils to appoint study committees and report to the Dallas school board next spring.

The Dallas board declined to order desegregation this year, but outlined its program of areas to be studied in making policies for the future. A federal court in September declined to order Dallas to admit Negro students immediately.

At Garland, in Dallas County, Russell T. Sanborn wrote letters to state and federal officials complaining that the Negro high school is inferior to the white high school. He listed several courses taught at Garland High which are not available to Negro students at Carver High.

SCHOOL BOARDS AND SCHOOLMEN

Dr. W. R. Goodson, director of accreditation for Texas Education Agency, reported that Carver High at Garland "has a clear standing" after completing a new building and making other improvements. He said it is not necessary for every school to teach the same courses in order to have accredited standing.

Leslie J. White, executive secretary of the Teachers State Association (Texas Negro teachers group), said five Negro teachers lost their jobs in Texas this year through integration. They were employed last year in Karnes County, whose 120 Negro students now attend desegregated schools.

A spokesman at Texas Education Agency pointed out that the Negro teachers in Karnes County did not receive contracts for 1955-56 and were notified last spring that the schools might be integrated this fall. At El Paso, Corpus Christi, San Marcos and other desegregated systems, Negro teachers were given contracts earlier and are being retained in this school year, the spokesman said.

IN THE COLLEGES

A survey conducted for the University of Texas Student Assembly, using student interviewers, found few operators of housing units stating definitely they would accept Negro students.

The board of regents has announced that students will be accepted without regard to race at all levels of the university in September 1956, subject to aptitude tests to be given all new students. The tests are necessary to prevent overcrowding, the regents said.

The student survey committee found that 11 of 131 housing units contacted are willing to admit Negroes. Most of the others were noncommittal.

Three of 16 restaurants in the university neighborhood will allow Negroes to eat there, but two said restrictions may be imposed.

Academic organizations, not maintaining houses, reported almost unanimously that Negroes will be accepted. Only two out of 47 indicated reluctance to admit Negroes.

Negroes are being admitted now to all-university dances, sponsored for all students, and are allowed to attend other functions without seating restrictions. Negroes now are enrolled in graduate and professional courses at the University of Texas.

At Southern Methodist University, a panel sponsored by the National Association of Christians and Jews, approved desegregation in the South.

Text of the Texas Ruling

This is a direct appeal in an action for a declaratory judgment as well as an injunction, filed by R. E. McKinney, Ted O. Groebe, John W. Currie, and Roy Bruce, residents of Big Spring, Texas, and McKinney and Bruce as representatives of a group organization of Dallas, Dallas County, as plaintiffs; against Clyde Angel, R. W. Thompson, Tom McAdams, Omar Jones, Robert Stripling, and John Dibrell, composing the Board of Trustees of Big Spring Independent School District, W. C. Blakenship, superintendent of Big Spring Independent School District, J. W. Edgar, state commissioner of education, and R. S. Calvert, comptroller of public accounts, as defendants.

Appellants alleged in their petition that the board of trustees of Big Spring School District had made and entered an order integrating white and Negro students in grades one through six in the elementary schools of the district. They sought an injunction to restrain the allocation or expenditure of public free school funds in any manner inconsistent with and contrary to the provisions of Section 7 of Article VII, Constitution of Texas, Article 2900, Revised Civil Statutes of Texas, and Section 1 of Article 2922-13, Vernon's Annotated Texas Civil Statutes. They also sought a declaratory judgment declaring that the foregoing constitutional and statutory provisions were valid and enforceable, and declaring the rights, duties and obligations of the defendants thereunder. In their answer to the petition the board of trustees and superintendent of Big Spring School District also asked a declaratory judgment declaring their rights, duties and legal obligations "under all appropriate and applicable laws and statutes." The attorney general of Texas intervened and aligned the state with the plaintiffs except in so far as the state commissioner of education and the comptroller of public accounts were concerned.

The trial court denied the injunction and by its judgment declared unconstitutional and void Section 7 of Article VII of the Constitution, Article 2900, R.C.S., and certain language, to be noted later, of Section 1 of Article 2922-13. It then declared the remaining portions of Article 2922-13 valid and enforceable.

Appellants' first three points of error assert that the trial court should have granted the injunction to restrain the various defendants from certifying, paying and expending public free school funds in any manner inconsistent with the constitutional and statutory provisions.

The duties of the commissioner of education to certify the funds to which a school district is entitled and of the state comptroller to issue and transmit warrants therefor are purely ministerial and mandatory . . . The injunction against these parties was properly denied. To this all parties agree.

As to the other defendants, the trial court's judgment was undoubtedly predicated on the decision of the Supreme Court of the United States in *Brown v. Board of Education of Topeka, Kansas* . . . Rejecting the doctrine "separate but equal," announced in 1896 in *Plessy v. Ferguson* . . . the Supreme Court held . . . that separate educational facilities are inherently unequal, and that, therefore, the plaintiffs and others similarly situated for whom the four suits were brought had been, by reason of their segregation, deprived of the equal protection of the laws as granted by the Fourteenth Amendment.

In its final decree the court said it had declared in its original opinion "the fundamental principle that racial discrimination in public education is unconstitutional," and it then proceeded to declare that "all provisions of federal, state or local law requiring or permitting such discrimination must yield to this principle."

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At the threshold of our consideration of the issues in this case we are met with the argument that since the constitutional and statutory provisions requiring segregation in Texas schools were not before the Supreme Court in the Brown case they were not condemned, and we should hold them valid and enforceable. That proposition is so utterly without merit that we overrule it without further discussion . . .

Section 7 of Article VII of the Constitution and Article 2900 of our statutes, declared unconstitutional and void by the trial court, read as follows:

"Sec. 7. Separate schools shall be provided for the white and colored children, and impartial provision shall be made for both."

"Article 2900. All available public school funds of this state shall be appropriated in each county for the education alike of white and colored children, and impartial provision shall be made for both races. No white child shall attend schools supported for colored children, nor shall colored children attend schools supported for white children. The terms 'colored race' and 'colored children' as used in this title, include all persons of mixed blood descended from Negro ancestry."

To the extent that these constitutional and statutory provisions require segregation of white and Negro students in the public schools they are unconstitutional and void and cannot stand as a bar to the expenditure of public funds in integrated schools. It does not follow, however, that Section 7 of Article VII of the Constitution and Article 2900 of the statutes are unconstitutional and void as applied to other subject matter which by their terms they were intended to cover.

Even a casual reading of Section 7 of Article VII of the Constitution and Article 2900 of the statutes will make clear that they have a two-fold purpose: They require segregation of white and Negro students in the public schools of this state, and they require that equal and impartial provision be made for the education of both. The extent of their invalidity should be determined in the light of what was said by the Supreme Court of the United States as limited by the facts of the cases before it. When the language of the court is so limited it will be evident that what the court condemned as unconstitutional and void, and all it condemned, was constitutional, statutory, and local law provisions which require or permit forced segregation through and by governmental officers and agencies.

The Supreme Court did not direct immediate and complete integration in all schools. To declare Section 7 of Article VI of the Constitution and Article 2900 of the statutes unconstitutional and void in their entirety would destroy the safeguards found

(Continued on Page 7)

School Desegregation Put in Background in Mississippi

JACKSON, Miss.

AGITATION for integration in Mississippi's public schools has been more or less submerged in a backwash of controversy stemming from the recent acquittal of two white men of murder charges in connection with the slaying of a 14-year-old Negro youth.

The school issue, after coming to the front following filing of integration petitions in five cities, moved into the background as leaders in both races centered attention on other aspects of the racial question.

As a result, Mississippi's segregated schools opened in September without incident. Not a single effort was made by Negroes to enroll in white schools as the fall term commenced. The status quo developed after school boards in five cities remanded to the files without action petitions by parents of Negro children asking immediate reorganization of the school systems along non-segregated lines. Since filing of the petitions, many of the signers have had their names withdrawn.

TO CLOSE 'GAP'

Meanwhile, two steps to equalize the dual system by closing the "gap" between white and Negro schools were taken in line with assertions from state officials that segregation will be maintained in Mississippi.

Mississippi's latest official pronouncement on the segregation issue came from state Rep. Ney Gore, Jr., of Quitman County, secretary of the 25-member Legal Educational Advisory Committee, headed by Gov. Hugh White, and created at the 1954 legislative session to devise ways and means of bypassing the United States Supreme Court's integration decisions. Gore, an attorney who is drafting bills embodying a recent six-point approved legislative program, said on Oct. 19:

"Mississippi is giving no thought to any sort of desegregation, either gradual or otherwise. All our efforts are concentrated on the maintenance of segregated schools in this state on a permanent basis."

The two equalization steps were:

1. Approval of a $250,000 bond issue by voters in Bolivar County (68.3 percent Negro), for construction of a new Negro school at Cleveland.

2. Dedication of a new $125,000 ultra-modern parochial school for Negroes by the Catholic church in a rural section of Madison County (73.6 percent Negro), believed to be the only Catholic Negro agriculture high school in the South.

The only legislative action in Mississippi was drafting of a six-point program to tighten Mississippi's hold on segregation as adopted by the Legal Educational Advisory Committee. Committee Secretary Ney Gore has been put on full-time to draft bills embodying the program for submission to the 1956 biennial session of the Legislature which convenes Jan. 3.

Final approval will be given the proposals by the LEAC at a December meeting.

LEGAL ACTION

No legal action has been made of record since rejection in August of petitions for reorganization of the school districts in five cities in conformity with the United States Supreme Court's integration decisions. Petitions were filed by Negro parents on the school boards of Vicksburg, Jackson, Clarksdale and Yazoo City. The school authorities received them and placed them in the files without action.

Mississippi will send 18 delegates, three of them Negroes, to the White House Conference on Education, meeting in Washington Nov. 28-Dec. 1.

At a meeting in Jackson on Oct. 19, the participants in a statewide meeting presided over by J. M. Tubb, state superintendent of education, instructed the biracial group to endorse federal aid for school buildings "without federal control."

The delegation goes to Washington pledged to the proposition that "education should be provided for all children, giving every child advantages to the extent of his ability through a more comprehensive program."

Another action states the "we believe that the state should establish and enforce high minimum standards and let the local community work out its own situations in terms of its need."

Mississippi's Legal Education Advisory Committee has ordered copies of the pleadings and all testimony in the Memphis "gradual integration" school case recently decided in federal court there. However, committee Secretary Gore said the action is in keeping with the committee's customary procedure "since our committee is attempting to keep abreast of every development and every aspect of the segregation problem all over the South."

ATTENDED HEARING

"I attended the hearing of the Memphis State case in the federal court in Memphis on Monday, Oct. 17, but only as an observer and at the direction of the LEAC, and in the hope that it might be possible to increase our knowledge of the problem we face and thus avoid the very thing which has been ordered to be done in Tennessee," Gore said in a statement Oct. 19. "The LEAC has no intention of following the course of action that has been taken by the State Board of Education of Tennessee in recommending the gradual desegregation of Memphis State and other institutions in Tennessee."

"Our efforts," the state legislator added, "are being exerted so as to keep segregated schools at all levels in Mississippi."

WHAT THEY SAY

The Rev. L. J. Twomey, S.J., director of the Institute of Industrial Relations of Loyola University of New Orleans, told the Mississippi Federation of Labor in annual convention at Jackson Oct. 4 that "nonwhites hold the balance of power in the world."

Twomey said one-third of the world's population is under dominatinn of the Communist party, another one-third believes in the democratic way "and the other one-third doesn't believe either way and holds the balance of power."

Asserting that 99 percent of the latter one-third are non-white, the Catholic priest said "in order to survive, we the people of the world must create their goodwill for without it the people of the world will be digging themselves out from under the rubble of an atomic war."

Responding to southern United States senators who have criticized the United States Supreme Court's integrations decisions, Father Twomey told the Labor delegates:

"I am a southerner but no United States senator who states that the decision handed down by the United States Supreme Court regarding segregation is desecrating Southern traditions is speaking for me."

URGES COOPERATION

Stating that racial prejudices will forever stand in the way of world peace, Father Twomey urged the labor union members "to work together and be loyal to the United States before they were to Mississippi." He said, "the actions of the people in Mississippi are flashed across the world to the Communists and they use our actions as clubs to beat us over the head."

He said that the non-white people of the world could never believe that democracy was right "when we don't even live it at home."

"We have failed to live up to our own mode of life and unless we realize that the little people of the world are tired of being pushed around and do away with racial prejudices, we are lost," Father Twomey said. "We in the labor unions must organize and show them that the little people of the United States have rights."

According to the *Jackson Daily News*, Twomey's talk "brought a rousing ovation from the delegates."

Meanwhile, a handbill campaign urging continuance of segregation among Negroes and whites on a "voluntary basis" was opened by a Negro minister of south Mississippi.

MISCELLANEOUS

A statewide organization movement is under way by Mississippi Citizens Councils of "white males dedicated to preservation of segregation." New councils have been organized at Greenville, Tupelo, Batesville, Mendenhall. Officials claim over 60,000 members, statewide.

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therein which guarantee equal and impartial provisions for students in schools not yet integrated . . . We conclude that Section 7 of Article VII of the Constitution and Article 2900 are unconstitutional and void in so far as they require segregation of white and Negro students in the public schools of Texas.

The most difficult problem in the case involves a determination of whether Article 2922-13, V.A.C.S., one of several articles (Article 2922-11 through Article 2922-22, V.A.T.C.S.) which were a part, and together constituted the whole, of the Foundation School Program Act (Acts 1949, 51st Leg., p. 625, ch. 334) popularly known as the Gilmer-Aikin Law, prohibits the expenditure of public funds in integrated schools. It is asserted by appellants that it does.

The trial court's declaratory judgment held certain portions of the first two sentences unconstitutional. These two sentences, with the parts declared unconstitutional being italicized are as follows:

"The number of professional units allotted for the purpose of this act to each school district, except as herein provided, shall be based upon and determined by the average daily attendance for the next preceding school year, separate for whites and separate for Negroes. *Such allotments based upon white attendance shall be utilized in white schools, and allotments based upon Negro attendance shall be utilized in Negro schools.*"

Evidently the trial court held the italicized language unconstitutional on the theory that it prohibited the use of public funds in integrated schools and, in practical effect, required segregation of white and Negro students. If that were the proper interpretation of that language we might be faced with the same serious constitutional questions which confronted the trial court of (a) whether the denial of public funds to a school district which undertook a program of integration *required* segregation, and (b) if so, whether the offending language rendered the entire Act unconstitutional and void. But we do not agree that that is the proper interpretation of the language. The language must be interpreted in its context with the remaining provisions of the act . . . we find in the act no language which would deny the use of such funds to integrated schools . . .

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This brings us to a consideration of Article 2922-13. The article deals only with the allocation of teachers and administrative personnel. The language declared unconstitutional by the trial court does not stand alone. We have no right to declare it unconstitutional until we determine what it means. To ascertain its meaning we must look to the provisions of Article 2922-12 and the remaining provisions of Article 2922-13.

The parties have treated the word "allotments" in the second sentence of Article 2922-13 as meaning "funds." It does not mean funds. Article 2922-12 defines the term "professional units" as teachers and administrative personnel, who will be referred to hereafter as "teachers" . . .

As reconstructed in this setting, the second sentence provides: "Such teachers based upon white attendance shall be utilized in white schools, and teachers based upon Negro attendance shall be utilized in Negro schools." It follows that the limitation, if any, imposed by the sentence on the use of public funds applies only to their use in the payment of salaries to teachers assigned to teach in integrated schools . . .

Our remaining question is this: Does the second sentence of Section 1 of Article 2922-13 as we have reconstructed it, properly interpreted, prohibit the utilization of teachers in integrated schools and, incidentally, the use of public funds in paying salaries of teachers thus assigned? We answer the question no. We arrive at our answer from a consideration of the sentence considered in its legal and factual context.

To give an affirmative answer to the question might well lead to the further holding that the sentence was unconstitutional as *requiring* segregation, and it is elementary that a statute will not be interpreted in such a manner as to render it unconstitutional if by any reasonable construction it may be held constitutional . . .

The language of the sentence is mandatory to accomplish its purpose but it is not prohibitory. While it requires the use of teachers allotted on the basis of attendance of white students in white schools, and the use of teachers allotted on the basis of Negro attendance in Negro schools, it does not provide that none of such teachers may be used in integrated schools.

There are other considerations. The legislature has made appropriations to finance the state's share of the Foundation Fund Program for the school years of 1955-56 and 1956-57; it has authorized the certification and payment to school districts of all funds necessary for operating costs of all schools, with no restriction or prohibition against use of such funds in integrated schools; it has authorized the certification and payment to school districts of all funds necessary to defray the cost of transporting students to all schools, with no restriction or prohibition against use of such funds to transport students to integrated schools; it has authorized the employment of and the payment of salaries to all of a given number of teachers in each school district and has appropriated money to help pay their salaries; it is a matter of law . . . that teachers work under contracts of employment and a matter of common knowledge that such contracts are usually and customarily executed several months before the beginning of the school year for which they are executed. Under these circumstances to hold that officials of a school district may not utilize the whole number of teachers, employed and entitled to their salaries under contract, by assigning some of them to teach in integrated schools, not proscribed by the Constitution and laws of this state, once the need for teachers in the segregated schools in the district, if any, has been satisfied, would lead to a foolish result. It would mean that the legislature had authorized the use of public funds to transport students of both races to a common building and had authorized the use of public funds to pay all operating costs of the integrated school thus established, but that a number of teachers, employed under contract for the full school year and entitled to demand their salaries thereunder, could not teach in the integrated school thus established but would remain idle and the students in the school would be left without instruction. Unless there is no alternative, a statute will not be interpreted so as to lead to a foolish or absurd result . . . While the law controls the number of teachers allotted to a school district, the assignment of teachers, once the need for teachers in segregated schools is reasonably satisfied, is a matter left largely to the discretion of local school authorities.

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The dominant purpose of the Gilmer-Aikin Act was, by its own terms, "to guarantee to *each* child of school age in Texas the availability of a minimum Foundation School Program for nine full months of the year, and to establish the eligibility requirements applicable to school districts in connection therewith." The construction we have given the second sentence of Section 1 of Article 2922-13 will fulfill, not defeat, that purpose.

From what has been said it follows that no funds of the school district are being expended in a manner inconsistent with the valid provisions of Section 7, Article VII, of the Constitution or Articles 2900 and 2922-13 of our statutes, and the judgment of the trial court denying an injunction is therefore affirmed.

The trial court's declaratory judgment is modified as follows:

Section 7 of Article VII of the Constitution is declared unconstitutional and void to the extent that it requires segregation of white and Negro students in the public schools.

The first sentence of Article 2900 is declared constitutional and valid. The second sentence of the article is declared unconstitutional and void. The third sentence is immaterial.

The first two sentences of Article 2922-13 are given a construction consistent with this opinion and are declared constitutional and valid.

FEW BREWSTER
ASSOCIATE JUSTICE

CONCURRING OPINION

I concur in the result which has been reached by the majority and agree with the majority opinion except as to the construction of the provisions of Art. 2922-13. If an act of the Legislature can be given any reasonable construction which will permit the law to be sustained as constitutional and valid, that construction should be adopted. But we should not adopt a strained and unreasonable construction simply to enable us to say that the act is constitutional.

It is my opinion that the language "such allotments (whether of funds or teachers) based upon white attendance shall be utilized in white schools, and allotments based upon Negro attendance in Negro schools" is mandatory and exclusionary. I can think of no stronger language than "shall be utilized." It requires in no uncertain terms that the allotments or teachers be used in either Negro schools or white schools, and there is nothing in the act authorizing the school authorities to use them in integrated schools.

To hold this second sentence valid would in this case give force and effect to a law requiring separate schools for whites and Negroes. The object of this particular suit is to enjoin the use of foundation school funds in schools which have been integrated by the local school board. The result of the injunction, if granted, would be the abandonment of the limited desegregation policy thus voluntarily adopted by the local school authorities, unless the trustees should choose the unlikely alternative of operating without foundation school funds. It is my opinion, therefore, that under the decision of the United States Supreme Court in the Brown case, the quoted provisions of Art. 2922-13 are unconstitutional when applied to the facts of this case . . .

MEADE F. GRIFFIN
ASSOCIATE JUSTICE

ASSOCIATE JUSTICE WALKER JOINS IN THIS OPINION.