Texas Legislators Pass Pupil Assignment Law

AUSTIN, Texas

A PUPIL ASSIGNMENT law and a requirement for approval at elections before other school districts integrate were passed by the legislature and signed by the governor. (See "Legislative Action.")

A modified permanent injunction against the National Association for the Advancement of Colored Peop'e was issued by a state judge at Tyler. (See "Legal Action.")

A federal court heard the Houston school board's plea for delay before ordering integration. (See "Legal Action.")

The University of Texas received national publicity because a Negro girl was dropped from the public performance of an opera, where she was to sing a romantic part opposite a white boy. (See "In the Colleges.")

Dallas public school staff members in an "opinionaire" showed more than 71 per cent opposing immediate integration. (See "Under Survey.")

Two laws sponsored by pro-segregation East Texas legislators were signed by Gov. Price Daniel, effective Aug. 22, 1957.

These are *HB 65* by Rep. Jerry Sadler of Percilla and *HB 231* by Rep. Virginia Duff of Ferris.

HB 65 prohibits future integration until it is approved by a majority at a school district election. More than 100 Texas districts already desegregated will not be affected, although the new law provides the means for elections to be called to restore segregation, upon petition of 20 per cent of the electors.

HB 231 is a Pupil Assignment Act similar to laws passed by several other southern states, notably North Carolina.

BOTH SIDES PLEASED

Both pro- and anti-segregation legislators seemed fairly well satisfied with the results of their battle. The segregationists predict that the two bills will permit local wishes to prevail and will give school administrators guidance. Disputes on pupil assignment will be appealed to state courts, before getting into federal courts.

The anti-segregation minority was pleased that 10 of the bills sponsored by segregationists failed to pass. These mostly died in the Senate, where two-thirds majority was needed to bring up the bills. Filibusters were conducted against the bills by two south Texas senators, whose districts contain many Latin-Americans.

Atty. Gen. Will Wilson declared one bill to be unconstitutional, *HB 239* by Rep. Joe Chapman of Sulphur Springs. It would have required state registration of those organizations whose principal activity is to advocate integration or segregation. Wilson said the bill violated rights of free speech and free press.

This was the only bill of the segregation series to be sent to the attorney general. That was done by a Senate committee.

DANIEL APPROVES TWO

Gov. Daniel, a former attorney general, said the two laws he signed were constitutional. He disregarded pleas by opponents of the bills to send them to Atty. Gen. Wilson for a ruling. Daniel said he would have requested an opinion if he had any serious question about constitutionality.

Daniel declared that objections have been "leveled at the manner in which the bills will be applied rather than at the language and provisions of the bills themselves.

"It is conceivable that these and many other bills could be administered and applied in an unconstitutional manner, but that is not the question before a governor or a court when called upon to decide upon the language contained on the face of a legislative act," he continued.

NO ASSIGNMENT CHANGE

The governor asserted that the pupil assignment law would not change previous laws prohibiting segregation of Texas children of Mexican descent in the schools. On the contrary, Daniel quoted language in the assignment act which prohibits any evaluation based on "national origin of the pupil or the pupil's ancestral language."

Under *HB 65* (election law) Texas school boards must decide promptly if they intend to order integration without an election. The effective date is Aug. 22, or 90 days after the legislature adjourned.

Under the election law, a district partly integrated by board order apparently can abolish segregation entirely without an election.

ELECTIONS REQUIRED

Otherwise, the law says: "No board or trustees nor any other school authority shall have the right to abolish the dual public school system nor to abolish arrangement for transfer out of the districts for students of any minority race, unless by a prior vote of the qualified electors residing in such district the dual school system therein is abolished."

An election could be called on petitions signed by at least 20 per cent of the qualified voters in the district. If the election fails, at least two years must elapse before another is called. The same procedure is set up for an integrated district to renew segregation.

The law provides that any district violating its provisions shall lose its state school aid. A person violating the act could be fined up to $1,000.

17 ASSIGNMENT FACTORS

A new law which attracted more attention in the legislature is the pupil assignment act. Seventeen standards are set for placing children in schools. Included are availability of space and transportation, adequacy of a pupil's preparation, scholastic aptitude and relative intelligence, psychological effect on the student and on other students, possibility of friction, health, morals, personal standards and sex.

Rep. Duff of Ferris, where schools have more Negro than white pupils enrolled, said her bill will strengthen local authority and will provide for disputes to be taken to state courts before going into federal courts.

"This is *not* a flat-out segregation bill," she added. "Under this, a school district may be integrated if it chooses. Until now, our schools have had no state law to rely on in this field."

10 OPPOSED ALL

Sen. Wardlow Lane of Center, who led the Senate segregationists, said the assignment bill is "basic... by far the most important." Seven segregation proposals passed by the House died in the Senate, where at least 10 of 31 senators opposed every one. Lane was able to muster a two-thirds majority on the two bills only, and both of these ran into filibusters.

Sen. Abraham Kazen, Jr. of Laredo, one of the filibusterers, said he felt the proposals are unconstitutional. He commended his opponents as "high type people."

Another opponent, Sen. Henry Gonzalez of San Antonio, said "the harm was minimized" because only two of the 12 bills passed.

"Time worked in our favor," he added. "We did serve the purpose of focusing public opinion on this type of legislation."

GALLERIES HEAR FILIBUSTER

The main filibuster was conducted by Sens. Kazen and Gonzalez against *HB 231*. They spoke continuously for thirty-six and one-half hours, after which the Senate passed the bill at 2:25 a.m. The filibusterers had a gallery of white and Negro citizens. At one night session, the galleries were ordered cleared by the presiding officer for ignoring repeated warnings against demonstrations.

It was a pro-integration crowd largely. Kazen and Gonzalez received many telegrams of encouragement.

The segregationists also have received much favorable mail and many messages during the session. Both groups also have received critical and even scurrilous communications. Segregation leader Chapman said that letters encouraging his stand were received by many persons from northern and eastern states.

LEGAL ACTION

State Dist. Judge Otis T. Dunagan of Tyler issued an order permanently enjoining the National Association for the Advancement of Colored People from certain acts, but he did not require the group to stop operating in Texas as requested in a lawsuit filed by former Atty. Gen. John Ben Shepperd. (*State v. NAACP*, see SSN, October-November, 1956.)

The final trial was conducted by assistants under Atty. Gen. Will Wilson, including Davis Grant, who had handled the case from the beginning. C. B. Bunkley Jr. and W. J. Durham of Dallas represented the NAACP, with assistance from its national counsel, Thurgood Marshall.

Durham said after Judge Dunagan's decision: "Officers and committee members of the Texas conference [NAACP] are not seriously aggrieved by the judgment of the Tyler court. They feel they are not enjoined from any act they could have done lawfully under our charter before the Tyler suit."

APPROVAL PREDICTED

Judge Dunagan said that NAACP has "been enjoined from all of the abuses that they have been charged with in this state." He predicted also that the judgment would stand in the highest court.

The injunction bars the NAACP, its branches and personnel from:

1) Engaging in the practice of law or financing a suit in which they have no direct interest.

2) Engaging in political activities or in lobbying activities contrary to state law.

3) Soliciting lawsuits, either directly or indirectly.

4) Hiring or paying any litigant to bring, maintain or prosecute a law suit.

The order also held that the NAACP, which has done business in Texas since 1915, is a non-profit organization and as such is not required to obtain a state permit but "under the law is required to file franchise tax reports or returns and to pay franchise taxes for the privilege of operating as a corporation." The NAACP was ordered to pay all accrued franchise taxes, plus interest and penalties, within 30 days after the amount due the state is determined. Failure to comply will mean the forfeiture of the right to do business in Texas.

The next step will be an appeal to the Court of Civil Appeals in Texarkana. And if the district court ruling is upheld an appeal to the supreme court of Texas would be the next move.

At Houston, U. S. Dist. Judge Ben Connally took under advisement the petition to end segregation. (*Benjamin et al v. Houston ISD*). After a four-day trial, Judge Connally directed attorneys to file briefs by June 20 giving their arguments.

Attorneys for the Negro plaintiffs contended that the Houston school board had not proceeded in good faith and with deliberate speed toward complying with the U. S. Supreme Court's decisions.

NEED UNTIL 1960

The school board majority replied that it needs until 1960 to complete a $30 million building program. Any earlier order would be "forced integration," according to Glenn Fletcher, administrative assistant to Supt. W. E. Moreland. Present crowded conditions in the Houston schools would prevent a liberal transfer policy which the board contemplates, Fletcher told the court. At one point, Judge Connally observed that there is a distinct difference between racial desegregation and "forced integration." "You are talking about a system of forced integration as distinguished from desegregation aren't you?" Judge Connally asked in reference to a school system map showing residence of each school child. "You understand the difference, don't you? The decision of the Supreme Court does not in any sense require that schools be integrated, but it does require that forced segregation be abolished, the distinction being thus: there is no prohibition, so far as I know, against a liberal transfer policy.

"That is, if a Negro child wishes to go to school used totally by white students, and if he lives nearest that school, he may do so. And if a white child wants to go to a school used totally by Negro children, he may do so. That's a vastly different thing from saying you have got to put every white child and every Negro child that live side by side in the same block side by side in the same school."

GOOD FAITH ARGUED

Attorneys for the school board presented additional witnesses to support the board's position that it is proceeding with good faith and reasonable speed toward eventual desegregation.

Dr. Alexander Frazier, assistant superintendent for curriculum and instruction, testified about the results of achievement tests which showed a disparity between white and Negro students which widened as they advanced in school.

Mrs. Jewel Askew, director of elementary schools, told the court of the pioneering work being done to develop a remedial program in the Houston schools to reduce this disparity. She said that it is a long-term program and that it would be complicated by immediate, complete desegregation.

ON LEARNING CAPACITY

Frazier, in his testimony, said under cross-examination that psychologists and sociologists are agreed that there is no difference between races in the capacity to learn. He was asked by the court for his explanation of why the disparity between white and Negro students in the Houston schools, as shown by testing, increased the higher they went in school.

"Is it due to inability to learn or not getting the same opportunity to learn?" Judge Connally asked.

Dr. Frazier suggested that the explanation was a very complex one with many factors, perhaps including less teaching skill by Negro teachers and differences in pressures and values which children encounter in their homes.

Attorneys for the Negro plaintiffs attempted to discredit the Houston tests, contending that the nationally standardized tests were not designed for use in a segregated school system. Frazier readily admitted that the national sample used as a basis for the tests probably did not include 25 per cent Negro students, which is about the percentage in Houston.

Dr. Frazier earlier had quoted a committee report listing these as some of the instructional problems which would be encountered under a program of desegregation: Provision for a wide range of individual differences among students, extension of remedial services, consideration of grouping students by achievement or ability, adjustment (particularly by Negro students) to new standards of achievement and adjustment to new standards for control and discipline.

REPORT ON STANDARDS

Dr. Harry J. Walker, professor of sociology at Howard University, told the court that integration of public schools in the District of Columbia had not lowered standards but had resulted in great improvement in the performance of Negro students.

Questioned about a congressional sub-committee report on Washington schools, Dr. Walker said that the committee's report was contrary to facts which he personally knew about. At one point, Dr. Walker said: "I know more about it than the committee did."

Board attorney Bert H. Tunks tried to keep Walker from testifying and then to get his testimony stricken. This was overruled by Judge Connally. Tunks complained that the school board had refrained from getting into sociological aspects of the problem.

15-YEAR PROGRAM

Other witnesses included Supt. of Schools W. E. Moreland and Joe Kelly Butler, chairman of the study committee which recommended that desegregation be carried out over a period of about 15 years.

Opinion was expressed in court that some mandatory order will be required for the present Houston school board to desegregate. The present board has a pro-segregation majority, and most of these were said to feel they "will not voluntarily vote for any plan of desegregation." Five of the seven board members are classed as pro-segregation.

A committee proposal for a 12-year integration plan, to begin after the building program is completed, was discussed by the board in a closed meeting.

—United Press Photo

Sen. Henry B. Gonzalez of San Antonio, who filibustered futilely against the Texas pupil placement law last month, is shown here talking to the empty seats of his colleagues during the 36-hour talkathon. Sen. Abraham Kazen of Laredo also spoke at length.

Year-End Summary

1) Integration continued but at somewhat slower pace than in the previous school year. An estimated 3,400 Negroes—of 248,532 enrolled in public schools—attended classes with white pupils. Some 40 schools began integration during the year, making a total of more than 100.

2) Resistance to integration seemed stronger in East Texas, whose legislators successfully sponsored new laws providing for pupil assignment and banning further desegregation until approved by local voters.

3) Five senior and 14 public junior colleges were accepting Negroes as well as white students. The University of Texas took the lead in abolishing segregation at all levels. Some 150 Negroes enrolled at the state university with about 18,000 white students. Because of scholastic difficulties, school officials do not expect any important increase in Negro enrollment next fall.

4) The National Association for the Advancement of Colored People was enjoined by a state district court from alleged unlawful acts, including promotion of integration lawsuits. But the association won its fight to stay in Texas.

5) Negro patrons, backed by white ministers and some others, continued their pressure to end segregation in other places, notably Houston and Dallas. Lawsuits were being maintained in both cities.

A group of Negroes meanwhile asked the U. S. Fifth Circuit Court in New Orleans to set aside the decision of Dist. Judge W. H. Atwell that Dallas public schools needed more time to plan for desegregation. Judge Atwell had dismissed a lawsuit seeking to admit Negroes to white schools in Dallas (*Bell v. Rippy*).

Attorneys for the Dallas board told the Circuit Court that the board is actively studying problems associated with integration. "The school board view is that there must be a compliance with the Supreme Court holding but they must do it at the same time mindful of their obligation to furnish adequate education," the court was told.

The Dallas board meanwhile made public the results in the sixth of a series of surveys concerning integration.

225 QUERIED

It covered a cross-section "opinionaire" of 225 members of the Dallas school staff, including about 60 Negroes. This is approximately the ratio of white to Negro pupils in the Dallas district.

The survey showed that 71.7 per cent of the staff is opposed to immediate desegregation. Supt. W. T. White called the opinions "representative" of those held by people who would actually handle the children when Dallas desegregates.

Broken down, the study showed that 48.5 per cent of the group indicated "a definite disfavoring of integration. An-

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