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# Zoning Restrictions, Comic Books, Motion Picture Censorship

# POSTSCRIPTS

### *Zoning Restrictions*

The Supreme Court of the United States dismissed the appeal in *Wisconsin ex rel. Sinar* v. *Wisconsin Lutheran High School Conference,* 75 Sup. Ct. 604 (1955), for want of a substantial federal question. In this case, noted in 1 CATHOLIC LAWYER 153 (April, 1955), the Wisconsin Supreme Court held that a zoning ordinance which permitted public high schools, but prohibited private high schools, in a residential area, did not violate the Federal Constitution.

In New York [*Great Neck Community School* v. *Dick,* 140 N.Y.S. 2d 221 (Sup. Ct. 1955)], the plaintiff applied for a permit to construct an extension to a private school. The zoning ordinances permitted the construction of public schools, but granted this right to private schools only upon approval of the zoning board. Upon being refused a permit, plaintiff instituted a proceeding to compel its issuance on the ground that the zoning ordinance was an unfair discrimination against private schools. The court, in dismissing the petition because petitioner had not exhausted his administrative remedies, noted that the ordinance was not discriminatory as the public school system is controlled by the state, and the state had not delegated to villages the right to determine the locality of public school buildings. Since villages are created by the state, they can only exercise powers delegated to them by the state. Private schools, on the other hand, are not "the state in action." They do not have the governmental powers of eminent domain and taxation; hence, they have less prerogatives than the public school. This, said the court, was a valid basis for the distinction.

In a proceeding to review the Town Board of Brighton's refusal to permit the erection of Catholic Church buildings under a zoning plan, the Diocese of Rochester contended that the action of the Town Board was arbitrary and unreasonable and that the zoning ordinance itself was violative of the Fourteenth Amendment. [*Diocese of Rochester* v. *Planning Board of Town of Brighton,* Sup. Ct., Monroe County, June 6, 1955; see 1 CATHOLIC LAWYER 64 (Jan., 1955)].

In upholding the Board's determination, the court stated that a mere showing of inadequacy of existing church facilities was not enough to render the refusal of a permit to build unreasonable. The court dismissed the Diocese's objection that the ordinance itself was unconstitutional, stating that the question was not properly raised in the proceeding.

A notice of appeal has been filed by the Diocese.

### *Comic Books*

The New York Legislature amended the Penal Law, by adding new Sections 540-543 entitled "Comic Books" (Laws of N. Y. 1955, c.836). [See 1 CATHOLIC LAWYER 160 (April, 1955)]. The publication or distribution for resale of comic books which are devoted to pictures of accounts of illicit sex, horror, brutality, or physical violence is a misdemeanor. In addition, "a person who willfully or knowingly sells, lends, gives away or distributes commercially to any person under the age of 18 years" (or has in his possession with intent to give, lend, etc.) any pornographic motion picture, picture or "pocket book" principally made up of discussions of illicit sex or which is lascivious, filthy, indecent or immoral is guilty of a misdemeanor.

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### *Motion Picture Censorship*

The Kansas Supreme Court declared unconstitutional the 1955 law which abolished the State movie review board.

The statute, included as an amendment to a bill to repeal an obsolete motor vehicle carriers license act, was successfully challenged on the ground that the act covered more than one subject, and the varied points in it were not related.

Previously, in *Holby Productions* v. *Vaughn,* 282 P. 2d 412 (1955), the Supreme Court held that under the Kansas Constitution, state officials may prohibit the exhibition of obscene movies, reversing the district court's ruling that such censorship was illegal. [See 1 CATHOLIC LAWYER 159 (April, 1955)].