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PUBLIC REGULATION OF THE RELIGIOUS USE OF LAND

by James E. Curry

The Michele Co., Virginia, 1964. Pp. 429. \$12.50.

Reviewed by

EDWARD T. FAGAN*

This book is an exhaustive manual of law for persons engaged in the litigation of attempts to regulate churches, church schools, and other religious institutions under zoning laws. However, it will provide lively reading for anyone in city planning, land utilization, or church-state relations.

Public regulation of religious use of land is a new and complicated phase of an extremely controversial modern development in the law. Comprehensive land-use regulation was validated in 1926 by the "old" (pre-New Deal) United States Supreme Court. *Village of Euclid v. Ambler Realty Co.*¹ came as a surprise, and gave local officials even greater control over private life than those radical proposals for socialization which were largely rejected during the Roosevelt era. Regulation of trade, industry, and social relations affects most of us only indirectly and superficially; yet, for good or evil, zoning controls reach into every man's own back yard as well as every clergyman's churchyard.

Mr. Curry's complete historical and legal analysis of the church zoning cases (approximately one hundred of which have reached the higher courts of the various states) is sure to evoke further controversy. This is especially true since the author goes beyond digesting the court decisions. He

expresses his own views fully, thereby adding a valuable contribution to the jurisprudence. Where suitable, he criticizes views expressed by lawyers, legal writers, and courts. Without partiality and without timidity, he opposes or endorses positions adopted by the parties, be they private individuals, public officials, or religious leaders.

At the same time, Curry presents each side of every disputed point, analyzing the views of more than sixty other writers—legal, sociological and political. He draws from more than a hundred books and articles and reviews not only the church zoning cases but many others in which the courts—including the United States Supreme Court—have shed light on the subject.

The book's usefulness as a manual of law is enhanced by its reference tables and index, occupying 90 closely-printed pages. The table of references contains 248 separate items, cited thousands of times, but in a manner that avoids cluttering the main text with footnotes.

The subject index is extremely thorough, providing ready reference, not only to the author's discussion of each topic, but also to particular church zoning cases. The textual sources of information are listed separately under authors, periodicals, and titles. The cases are listed under religious denominations, states, and municipalities.

The extensive reference tables and in-

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¹ 272 U.S. 365 (1926).

dex do not detract from the book's interest for the general reader. Each church zoning controversy posed a crisis, minor or major, in the life of the community and church involved. The story of each makes exciting reading. Legal jargon is avoided.

Especially interesting to lawyers is the summary in Chapter 11 indicating twenty-five cases where religious discrimination actually existed, sometimes in favor of secular enterprises, but more often in favor of other denominations. The author finds that in few of these cases, if any, did the court or counsel for the churches pay adequate attention to violations of the equal protection clause. He suggests guidelines for more successful invocation of these rights in future church zoning cases. Mr. Curry then proceeds to review those cases where exclusion from an entire municipality (or "practically" an entire municipality) was attempted; finding elements of discrimination in all of them. He concludes that churches may properly be excluded from strictly residential areas but usually not from areas where other private nonresidential uses are permitted.

Chapter 14 expresses strong suspicions, which the author insists are well grounded, that intolerance, prejudice and bias exist in church zoning cases, and that they have an important effect on judicial decisions. He suggests that hearings are often "field days for bigots." Mr. Curry, drawing from nineteen cases, reveals such elements as: sharply unequal treatment of different denominations; procedural harassment; sudden changes in requirements when a disfavored application is filed; harsh language and other manifestations of hostility; lack

of rational basis for decision; truculence of church representatives that the author says would "try the patience of angels"; and adverse action against racial groups notoriously the victims of intolerance. He finds that, at present, suspicions of prejudice usually cannot be confirmed or denied because technical rules forbid evidence as to the motives of official action. Judicial remedies are therefore proposed for this evil situation.

There seems little likelihood that the Supreme Court will soon lay down any strict guidelines as to the regulation of religious uses of land. The best available guide to the law on this subject must therefore be a work which analyzes and evaluates the state decisions in depth. Mr. Curry's new volume ably supplies this need, being the only serious effort thus far to do so. It will be helpful to attorneys who represent or advise cities, churches, neighboring property owners or interested citizens engaged in disputes about religious-use building permits. It will also be of assistance in drafting laws or ordinances on this subject. While officials concerned with planning, zoning, and the granting or withholding of building permits are not always lawyers, they must often have an acquaintance with the law in these areas. They will find this book useful, eminently usable, and extremely interesting. It can also serve the purposes of clergymen and others concerned with church building programs.

Finally, this book should attract numerous readers among persons generally interested in problems of city planning, land use, and church-state relations.
