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Zoning Restrictions, Tort Immunity of Charities

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POSTSCRIPTS

Zoning Restrictions

The Appellate Division has held that the constitutionality of a zoning ordinance may not be attacked in a proceeding brought under Article 78 of the Civil Practice Act to review the Town Board of Brighton's refusal to permit the erection of a Catholic Church in what is termed a Class A section of the town. The Court also refused to upset as arbitrary and unreasonable the Town Board's decisions, stating that the court "may not substitute its judgment for that of the board, or interfere in the determination unless there is a clear abuse of discretion," which the Court did not find after a review of the zoning ordinance and the facts. The Diocese of Rochester is seeking permission to appeal the case to the Court of Appeals, the highest court of the State. [*Diocese of Rochester v. Planning Board of Town of Brighton*,—App. Div.—(4th Dep't 1955)].

In the meantime, the Diocese is proceeding with its action for a declaratory judgment declaring the ordinance unconstitutional. See 1 CATHOLIC LAWYER 64 (Jan. 1955); *id.* at page 254 (July 1955); *id.* at page 340 (Oct. 1955).

A bill was introduced in the New York Legislature (S. Int. 257, Pr. 257 by Mr. Milmoë; same as Assem. Int. 474, Pr. 474, by Mr. Brook) on Jan. 10, 1956 which would provide that municipal zoning ordinances "shall not prohibit or limit the use, erection or improvement of churches, synagogues and schools and for residences and other uses related thereto, or the use or improvement of lands in connection there-

with." The bill was introduced independently of the *Rochester* case. A similar bill failed to pass in 1955.

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The City of Piedmont appealed the decision of the District Court of Appeals, which held unconstitutional an ordinance excluding from certain zones all schools except those under the jurisdiction of the Board of Education. See 1 CATHOLIC LAWYER 153 (April 1955). The Supreme Court granted a peremptory writ of mandate to compel the issuance of a building permit for the construction of a building to be used for an elementary school in which secular and religious subjects were to be taught. It held that the zoning ordinance was void because of its "arbitrary and unreasonable discrimination against private schools," and denied the respondent City a rehearing. *Roman Catholic Welfare Corp. of San Francisco v. City of Piedmont*, 289 P. 2d 438 (1955). Thus, a parochial school may be constructed in any part of the community in which public schools are allowed. The American Civil Liberties Union, the American Jewish Congress, and the Protestant Episcopal Bishop of California all filed briefs, *amici curiae*, supporting the Roman Catholic Welfare Corporation, the petitioner in the proceeding.

Tort Immunity of Charities

The Supreme Court of Washington held that ". . . a benevolent, religious or charitable institution is not liable for torts committed against a patron, in the absence of a showing that it failed to exercise reason-

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POSTSCRIPTS (*continued*)

able care in the selection or retention of a servant." [*Lyon v. Turnwater Evangelical Free Church*, — Wash. —, 287 P. 2d 128 (1955)].

The defendant transported children without charge, to and from Sunday school, in order that they might receive spiritual education and eventually become members of the church organization. The infant plaintiff was severely injured by a log which came through the window of the bus and

struck him. The plaintiff contended that the rule of charitable immunity had been rejected in *Pierce v. Yakima Valley Memorial Association*, 43 Wash. 2d 162, 260 P. 2d 765 (1953) which held a hospital liable for injuries to *paying* patients caused by negligence of employees of the hospital. See 1 CATHOLIC LAWYER 329, 331 (Oct. 1955). The Supreme Court specifically rejected the plaintiff's contention and limited the *Pierce* case to its own facts.
