126.

APPROVAL, BONDS OF CUYAHOGA COUNTY, $152,167.91, ROAD IMPROVEMENT.

COLUMBUS, OHIO, March 7, 1923.

Department of Industrial Relations, Industrial Commission of Ohio, Columbus, Ohio.

127.

READING OF BIBLE IN PUBLIC SCHOOLS IS NOT VIOLATION OF CONSTITUTIONAL RIGHTS.

SYLLABUS:

The provisions of House Bill No. 271 relative to the reading of the Holy Bible in the public schools are not in violation of any constitutional rights, or within any constitutional inhibitions.

COLUMBUS, OHIO, March 8, 1923.

HON. C. H. FREEMAN, *Chairman, Committee on Common Schools, Ohio House of Representatives, Columbus, Ohio.*

DEAR SIR:—You have requested the advice of this department on the constitutionality of House Bill No. 271, Mr. Buchanan. This bill is entitled:

> "A bill to provide for the reading of the Holy Bible in the public schools."

The Federal Constitution does not control in the matter of public schools or in what instructions shall be given therein; but the regulation of public schools, as well as their support, rests with and devolves upon the several states. Nor is there any inhibition imposed by the Constitution of the United States in this respect on the states. (Permoli v. New Orleans, 3 How. 589, 11 L. Ed. 739).

The question, therefore, to be decided is:

Is the reading of the Bible in the public schools of this state prohibited by our state constitution?

The Bible is not mentioned in the Constitution, nor is there found therein any express inhibition against the giving of religious or moral instruction in the public schools, and it has been from the formation of our state government to the present time universally recognized by the people that there are certain fundamental principles of religion and morality which the safety of society requires should be imparted to the youth of our state, and that those principles may be properly taught in our public schools as a part of the secular knowledge which is their province to instill into the youthful mind.

The people were admonished by George Washington in these words:

"Let us with caution indulge the supposition that morality can be maintained without religion."

And also in the words following:

"Whatever may be conceded to the influence of refined education on the minds of peculiar structure, reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principles."

Even as early as the ordinance of 1787, the men who framed that great charter of liberty sought to secure to the inhabitants of the Northwest territory, and to their posterity, the inestimable blessing of religion and moral instruction. It is therein provided that:

"* * * religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged."

The ordinance of 1787 was readopted by Congress, August 7, 1789. 1 U. S. Stat. at Large 50. The act of Congress, April 30, 1802, for the admission of Ohio into the Union, sets forth, as a proviso to section 5, that the constitution and the state government shall not be repugnant to the ordinance.

The common schools are derived, therefore, from the ordinance of 1787, as perpetuated in the constitution of 1802. The first laws establishing a general system were the act of February 5, 1825 (2 Chase's Stat. 1466) and the act of February 10, 1829 (3 Chase's Stat. 1632). In the preamble of both, the General Assembly declared as their intent and motive in enacting them that:

"* * * it is provided by the constitution of Ohio that schools and the means of instruction shall forever be encouraged by the legislature."

Section 2 of article VI of the Constitution of Ohio provides as follows:

"The General Assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the state; but no religious or other sect, or sects shall ever have any exclusive right to or control of, any part of the school funds of this state."

The supreme courts of Maine, Massachusetts, Michigan, Iowa, Kentucky, Kansas and Texas have each held the Bible to be nonsectarian in character in its entirety and that no part of it could be excluded from the public schools on constitutional grounds.

Donahoe v. Richards, 38 Me. 379, 61 Am. Dec. 256;
Pfeifer v. Board of Education, 118 Mich. 560, 77 N. W. 250;
Spiller v. Woburn, 12 Allen 127;
Moore v. Monroe, 64 Iowa 367, 52 Am. Rep. 444, 20 N. W. 475;
Hackett v. Brookville Graded School Dist. 120 Ky. 117, 87 S. W. 792;
Billard v. Bd. of Ed. 69 Kan. 76 Pac. 422;
Church v. Bullock (Tex.) 109 S. W. 115.

There is no essential difference between the constitutions of these states and the Constitution of Ohio. Section 7 of article I of the Ohio Constitution is as follows:

"All men have a natural and indefeasible right to worship Almighty God according to the dictates of their own conscience. No person shall be compelled to attend, erect, or support any place of worship, or maintain any form of worship, against his consent; and no preference shall be given, by law, to any religious society; nor shall any interference with the rights of conscience be permitted. No religious test shall be required, as a qualification for office, nor shall any person be incompetent to be a witness on account of his religious belief; but nothing herein shall be construed to dispense with oaths and affirmations. Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the General Assembly to pass suitable laws to protect every religious denomination in the peaceable enjoyment of its own mode of public worship, and to encourage schools, and the means of instruction."

A rule of a school board requiring a portion of the Bible to be read as an opening exercise of the school does not violate the constitutional provision that:

"No person shall be compelled to attend, erect, or support any place of worship, or maintain any form of worship against his consent."

Nessle v. Hum. 1 Ohio N. P., page 140.

The reading of the Bible as a book used in teaching reading in public schools is not an interference with religious belief.

Donahoe v. Richards, 38 Me. 379.

A school does not become a place a worship, nor a teacher a minister of religion, within the constitutional provisions, by the offering of prayer at the opening thereof, by the teacher.

Hackett v. Brookville Graded School Dist., 120 Ky. 117.

A rule of school authorities requiring pupils among other things, to learn the Ten Commandments and repeat them once a week, is not a violation of a constitutional provision which secures to the citizens liberty of conscience and worship.

Com. ex. rel. Wall v. Cooke (Mass.), 7 Am. Law Reg. 417.

The question of the reading of the Bible in the public schools was directly before the Supreme Court of Ohio in the case of Minor v. Board of Education, 23 O. S. 140, and the court held that it was a matter entirely within the discretion of the Board of Education, under the existing law. However, Justice Welch, who delivered the opinion of the court, used the following language:

"Nor can we without usurping legislative functions, undertake to decide what religious doctrines, if any ought to be taught, or where, when, by whom, or to whom it would be best they should be taught. These are questions which belong to the people and to other departments of the government."

Again he says:

"The truth is that these are matters left to legislative discretion, subject to the limitations on legislative power, regarding religious freedom, con-

tained in the bill of rights; and subject also to the injunction that laws shall be passed such as in the judgment of the legislature are suitable to encourage general means of instruction, including among other means, a system of common schools."

And he further says:

"Equally plain is it to us, that if the supposed injunction to provide for religious instructions is to be found in the clauses of the constitution in question, it is one that rests exclusively upon the legislature. In both sections the duty is expressly imposed upon the General Assembly. The injunction is to pass suitable laws. Until these laws are passed, it is quite clear to us that the courts have no power to interpose. The courts can only execute the laws when they are passed. They cannot compel the General Assembly to pass them."

The constitution of Pennsylvania is essentially similar to the constitution of Ohio. In 1913 the legislature of Pennsylvania enacted sections 5093 and 5094, Statutes of Penna., which are identical with sections 1 and 2 respectively of House Bill 271, now under consideration and in so far as the courts have considered these sections, they have been held constitutional.

In the case of Stevenson v. Hanyon, 16 Pa. Co. Ct. 186, 7 Pa. R. 586, it is held that:

"Reading the Bible in the schools, without note or comment is not sectarian."

The constitution of the state of Maine in regard to the rights of conscience and religious belief is almost identical with those of our own constitution, and in the case of Donahoe v. Richards, 38 Maine, page 379, the court held that the school board had the right to make and enforce the order requiring pupils to read the Bible in the schools, and expel them on their refusal so to do; and in the syllabus of that case the court says:

"No scholar can escape or evade such requirement when made by the committee, under the plea that his conscience will not allow the reading of such book. Nor can the ordinance be nullified, because the church of which the scholar is a member, hold, and have so instructed its member, that it is a sin to read the book prescribed.

"A law is not unconstitutional, because it may prohibit what one may conscientiously think right, or require what he may conscientiously think wrong.

"A requirement by the superintending school committee, that the Protestant version of the Bible shall be read in the public schools of their town, by the scholars who are able to read, is in violation of no constitutional provision, and is binding upon all the members of the schools, although, composed of divers religious sects."

From the foregoing discussion of authorities, it is evident that the provisions of House Bill No 271 are not in violation of any constitutional rights, or within any constitutional inhibitions, and you are advised that such is the opinion of this department.

Respectfully,
C. C. CRABBE,
Attorney General.