
The State of Wisconsin

CONSTITUTIONAL AMENDMENTS GIVEN
"FIRST CONSIDERATION" APPROVAL
BY THE 1969 LEGISLATURE

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The Amendment Process

The way of constitutional amendment in Wisconsin is exacting by design. In the 1969 Session of the Legislature, only 4 out of 41 first consideration amendments introduced achieved passage.

Passage on first consideration is a mere third of the enactment process. In order to reach the final goal of altering Wisconsin's Constitution, each of these proposals must be stamped with approval by the 1971 Legislature. And, bearing its dual legislative blessing, the proposed amendment then goes to the polls in a state-wide referendum. Only when that obstacle is cleared do you finally change the basic law of the state -- the Wisconsin Constitution.

This lengthy and harrowing procedure has existed in Section 1, Article XII of the Constitution since adoption. It has served the people of Wisconsin reasonably well. Without preventing needed change, the procedure has assured that each proposed amendment receives extensive review before it becomes a part of the Constitution. Of the 39 amendments submitted to the people beginning with the election of April 1960, 32 have been ratified and 7 have been rejected. Thus, while some other state constitutional provisos have been changed again and again, no alteration has ever been effected in Section 1, Article XII in 122 years.

(Article XII) Section 1. "Any amendment or amendments to this constitution may be proposed in either house of the legislature, and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their journals, with the yeas and nays taken thereon, and referred to the legislature to be chosen at the next general election, and shall be published for three months previous to the time of holding such election; and if, in the legislature so next chosen, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the legislature to submit such proposed amendment or amendments to the people in such manner and at such time as the legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors voting thereon, such amendment or amendments shall become part of the constitution; provided, that if more than one amendment be submitted, they shall be submitted in such manner that the people may vote for or against such amendments separately."

The 1969 Wisconsin Legislature, prior to its recess on January 16, 1970, gave "first consideration" approval to 4 of the 41 constitutional amendments submitted to it. The Secretary of State is directed by statute to publish in

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the official state newspaper, the WISCONSIN STATE JOURNAL, on the first Tuesday of each of the 3 months immediately preceding the general election, all proposed constitutional amendments that were approved for the first time by the last legislature (the 1969 session).

Before these 4 proposed amendments can be placed on the ballot to be submitted to the people for ratification or rejection, they must be approved again, in identical fashion, by the 1971 Legislature. Therefore, each step of the legislative process for these proposals must be duplicated in the 1971 session (introduction, committee hearings, a possible public hearing, adoption of the joint resolution in each house by an absolute majority vote and enrollment). Joint resolutions are not submitted to the Governor for approval.

Whether or not any of these 4 proposed amendments receives second consideration by the 1971 Legislature depends on someone reintroducing the proposals. The process is not automatic. No legislator or legislative committee is required to sponsor or introduce an amendment adopted on first consideration by the previous Legislature and no one has precedence to do so. Any legislator who is interested in seeing a particular constitutional amendment proposal introduced for second consideration may instruct the Legislative Reference Bureau to ready a draft for introduction. Regardless of the original sponsor's current attitude toward introduction for second consideration, the proposal may be reintroduced.

Similarly, a citizen may contact the Senator or Assemblyman representing his district and ask him to make certain that the proposal is reintroduced. Remember that no matter how meritorious a proposed constitutional amendment may be, the Legislature cannot act on it unless it is officially placed before it, and the only way to do this is by having it introduced in the Legislature in the proper form.

Although the process of amending the Wisconsin Constitution is admittedly quite difficult, the previous 3 sessions of the Legislature have seen an unusual number of amendments proposed and eventually adopted and ratified. The 1963, 1965 and 1967 Legislatures adopted 23 "first consideration" joint resolutions. Court decisions, duplication and publication error reduced this number to 20. Fifteen of these were adopted on second consideration and ratified by the people of Wisconsin; they presented 20 separate questions, all of which were adopted.

Amendments which are Eligible to Receive Second Consideration by the 1971 Legislature

The 1969 Legislature gave first consideration approval to the following joint resolutions proposing constitutional amendments: 1969 Senate Joint Resolutions 58 and 63; and 1969 Assembly Joint Resolutions 41 and 74.

The 4 joint resolutions relate to 4 different articles and sections of the Wisconsin Constitution. The constitutional amendment proposals will be discussed below in the order of the articles and sections which they propose to amend or create:

Art. I, Sec. 24	1969 AJR 74	(Enrolled JR 38)
Art. IV, Sec. 23	1969 SJR 58	(Enrolled JR 32)
Art. VI, Sec. 4	1969 SJR 63	(Enrolled JR 33)
Art. X, Sec. 3	1969 AJR 41	(Enrolled JR 37)

Art. I, Sec. 24: Proposed Amendment by 1969 AJR 74 (JR 38)

USE OF SCHOOL BUILDINGS

This proposed amendment to the Wisconsin Constitution would permit use of public school buildings by "civic, religious or charitable organizations" upon payment of a reasonable hire for the premises.

The major emphasis here is on use of school premises by religious establishments, for it appears reasonably certain that ordinary "civic" and "charitable" activities may under present law be accorded periodical use of the local schoolhouse, if desired. A schoolhouse now may be made available to "any responsible resident" for public meetings to "aid in disseminating intelligence" under s. 120.13 (17), Wis. Statutes.

Our Supreme Court has said "... it is well-established law in this state that neither tax-supported public school property nor funds so raised for public school purposes can be used for sectarian organized religious purposes." Milwaukee County v. Carter (1950), 258 Wis. 139, 143, 45 N.W. (2d) 90.

The 1969 amendment proposal, introduced in the Assembly by request of state Representatives Weisensel (Rep.), Bradley (Rep.), Shabaz (Rep.), York (Rep.), Mathews (Dem.) and O'Malley (Dem.) would create a new section under Article I. This section would supersede all other portions of the constitution as to the matter of church use of school property. The text of the section is as follows:

(Article I) Section 24. Nothing in this constitution shall prohibit the legislature from authorizing, by law, the use of public school buildings by civic, religious or charitable organizations during nonschool hours upon payment by the organization to the school district of reasonable compensation for such use.

Enrolled Joint Resolution 38, without change enroute to adoption, received favorable votes of 95 to 4 in the Assembly and of 29 to 2 in the state Senate.

In 2 separate opinions, the Attorney General has held that use of public school property for church purposes is illegal at present in Wisconsin.

The first of these, 50 Atty. Gen. 79, addressed to the Assembly in 1961 by then Attorney General John W. Reynolds, was directly in point. It was a response to an inquiry as to the constitutionality of a proposed statutory -- not constitutional -- change to allow school boards to grant schoolhouse space to churches for religious worship and meetings.

Attorney General Reynolds said:

1. That the proposed Wisconsin law would violate the First Amendment to the U.S. Constitution, made applicable to a state by the 14th Amendment. The significant portion of the federal First Amendment reads:

Congress shall make no laws respecting an establish--

ment of religion, or prohibiting the free exercise thereof;...

The Attorney General relied chiefly on McCullum v. Board of Education, 333 U.S. 203, 68 S. Ct. 461 (1948), for its holding that an Illinois use of public schools for "released time" instruction in religion in the public school violated the First Amendment.

Since the proposed Bill 127, A., likewise contemplated religious instruction in the public school, the Attorney General declared:

... it appears that the U.S. supreme court would hold the proposal in Bill No. 127, A., contrary to the First Amendment of the United States Constitution. (p. 82)

2. That the proposed bill would violate Section 18, Article I, prohibiting legal preference for or use of public funds for "religious societies".

Attorney General Reynolds cited State ex rel. Weiss v. District Board, 76 Wis. 177, 44 N.W. 767 (1890), which held reading of the bible in public schools to violate this provision. He also referred to School Dist. v. Arnold, 21 Wis. 657 (1867), which struck down use of a schoolhouse for meetings of an organization called the "Sons of Temperance" (after the meetings had been going on for "several years").

The second Attorney General's opinion which relates to this issue was published in 1964 by Attorney General George Thompson (53 Atty. Gen. 67).

While the direct question was whether a school district could lease its buses to a private operator, the general language of the opinion (which answered the question of State Superintendent Angus B. Rothwell in the negative) has a bearing on today's school building use proposal.

A school district is merely an agency of the state and has existence solely for the purpose of performing those activities necessary for the maintenance and operation of an efficient system of public schools within the particular locality of its jurisdiction. It has only such powers as are expressly given to it or implied as necessary for the performance of the functions and duties which have been assigned to it. The use of funds of a district to acquire or maintain property in order to lease or rent to others for private use certainly does not come within any of the functions of a school district. In effect, a school district would be financing or subsidizing the private party in his private business or operations. Clearly that is no function of a school district. (pp. 69-70)

In the 1948 McCullum v. Board of Education case cited by the Attorney General in his 1961 opinion, the United States Supreme Court held a program of released time to be unconstitutional primarily on the grounds that the religious

instruction was given "in the school building". However, in Zorach v. Clauson, 343 U.S. 306 (1952), the U.S. Supreme Court again dealt with a released time program and this time ruled it constitutional. One of the deciding factors in this decision, in comparison with the McCullum case, is that the religious instruction was not given in the public school building. As a result of this distinction, many people assumed that public schools could not be used for such programs even after school hours. The U.S. Supreme Court, however, has not handed down any decisions since Zorach which might clarify the situation. For a more detailed explanation on released time programs, see the discussion relating to the amendment to Art. X, Sec. 3, which proposes to authorize the release of students during school hours for the purpose of religious instruction.

Art. IV, Sec. 23: Proposed Amendment by 1969 SJR 58 (JR 32)

COUNTY GOVERNMENT UNIFORMITY

Article IV, Section 23 of the Wisconsin Constitution stipulates that "the legislature shall establish but one system of town and county government, which shall be as nearly uniform as practicable..." 1969 SJR 8, adopted on second consideration and ratified by the electors of the state in the April 1969 election, amended Section 23 by adding the provision that the existing requirement for uniformity of county government shall not apply to the administrative means of exercising powers of a local legislative character conferred by the constitution upon county boards. It also stated that the legislature may permit all counties to have a chief executive officer with veto power over county board resolutions or ordinances (formerly only Milwaukee had such a chief executive officer). This was one of many measures requested by the Task Force on Local Government Finance and Organization (Tarr Task Force).

1969 SJR 58 was an offshoot of a Tarr Task Force proposal (1969 Senate Joint Resolution 44) which posed 4 constitutional changes for counties - changes as to boundaries, county seat location, methods of choosing county officers and the change in uniformity which is contemplated here.

Because each element of this proposal was expected to stir controversy, the Senate Judiciary committee determined to substitute 4 separate joint resolutions for the original package resolution. Thus, Senate Joint Resolutions 55, 56 and 57 and 58 were introduced by the committee in lieu of the 4-element original, Senate Joint Resolution 44. All were voted down in the Senate except Senate Joint Resolution 58.

The effort to erase the Wisconsin constitutional requirement in Section 23, Article IV, that town and county government "shall be as nearly uniform as practicable", as seen in Senate Joint Resolution 58, has been singularly long-lived.

It was just 99 years ago that the first version of this venerable proposal was introduced. That was Joint Resolution No. 16, A., introduced on February 7, 1871, by Assemblyman J. J. Swain of Sauk County, resolving:

That article four of the constitution of the state of Wisconsin is hereby amended by striking out section twenty-three,

which reads as follows: 'The legislature shall establish but one system of town and county government, which shall be as nearly uniform as practicable.'

From 1963 to 1967, no less than 9 joint Senate or Assembly resolutions (for first consideration) addressed to the problem of revoking constitutional town-county uniformity in Wisconsin were introduced. All failed.

While often a subject of legislative debate, the proposal to delete the county government uniformity requirement has never yet appeared on the ballot in Wisconsin. This takes nothing away from the tangential changes which have been made in Section 23, Article IV, by way of authorizing a county executive in populous (over 500,000) counties, which was effected in 1962, or to provide that said uniformity "shall not apply to the administrative means of exercising powers of a local legislative character conferred by section 22 upon the boards of supervisors of the several counties", which was ratified in 1969.

The 1969 proposal to erase county government uniformity (1969 Senate Joint Resolution 58) reads as follows:

(Article IV) Section 23. The legislature shall establish but one system of town ~~and county~~ government, which shall be as nearly uniform as practicable, ~~except that the requirement of uniformity shall not apply to the administrative means of exercising powers of a local legislative character conferred by section 22 upon the boards of supervisors of the several counties;~~ but the legislature may provide for the election at large once in every 4 years of a chief executive officer in any county with such powers of an administrative character as they may from time to time prescribe in accordance with this section and shall establish one or more systems of county government.

No amendments to this resolution were offered in either house of the Legislature. It sailed through on a 30 to 0 vote in the Senate, 86 to 5 in the Assembly.

This proposal would:

1. Delete the words "and county" from the uniformity requirement, thus requiring one town government to be tantamount to any other town government while dropping counties out of the uniformity bind.
2. Delete all new language regarding an exception for county administrative "means", which was inserted in 1969. With counties disappearing from the town-county uniformity legislature, it appears superfluous to continue the county exception therefrom.
3. Add a clause at the end of the section stating the positive end of the proposed county diversity by declaring the power of the Legislature "to establish one or more systems of county government".

Art. VI, Sec. 4: Proposed Amendment by 1969 SJR 63 (JR 33)

COUNTY CORONERS

In 1965, the county offices of coroner and surveyor for Milwaukee county were constitutionally abolished, by an amendment to Section 4, Article VI of the Wisconsin Constitution. A peculiar side effect of this amendment is the fact that county surveyors never were mentioned in the state Constitution until the day the legislation wiping them out for Milwaukee county took effect. Until April 1965, surveyors were lumped under "other county officers" in Section 4, Article VI. However, "coroners" are, and always have been, constitutionally specified county officers in Wisconsin, under Section 4, Article VI, and it takes a constitutional amendment to change that.

The new law implementing the 1965 amendment was chapter 217, laws of 1965, effective for most purposes on January 2, 1967. While this was the official dawn of the medical examiner system in Wisconsin, Milwaukee had actually run for several years under a hybrid which allowed for both the constitutional coroner and the statutory medical examiner and his staff.

The proposal now underway in 1969 Senate Joint Resolution 63 does not borrow the flat abolition method of the 1965 change. Instead, it gives counties a choice between an elective coroner or a medical examiner, as follows:

(Article VI) Section 4. Sheriffs, coroners, registers of deeds, district attorneys, and all other county officers except judicial officers and chief executive officers, shall be chosen by the electors of the respective counties once in every two years. The offices of coroner and surveyor in counties having a population of 500,000 or more are abolished ~~at the conclusion of the terms of office during which this amendment is adopted.~~ Counties not having a population of 500,000 shall have the option of retaining the elective office of coroner or instituting a medical examiner system. Two or more counties may institute a joint medical examiner system. Sheriffs shall hold no other office; they may be required by law to renew their security from time to time, and in default of giving such new security their office shall be deemed vacant, but the county shall never be made responsible for the acts of the sheriff. The governor may remove any officer in this section mentioned, giving to such a copy of the charges against him and an opportunity of being heard in his defense. All vacancies shall be filled by appointment, and the person appointed to fill a vacancy shall hold only for the unexpired portion of the term to which he shall be appointed and until his successor shall be elected and qualified.

Introduced by Senator Rasmusen (Rep.), at the request of the State Medical Society of Wisconsin, 1969 Senate Joint Resolution 63 was unchanged when it won passage by a 30 to 1 vote in the state Senate, 86 to 7 in the Assembly.

This proposal would:

1. Delete obsolete language pertaining to the terms of office of the now-defunct posts of Milwaukee county coroner and surveyor.
2. Allow any county, or several counties acting jointly, to adopt a medical examiner system and dispense with the elective office of coroner.

The office of coroner was established in the original state Constitution when it was adopted in 1848. Wisconsin counties, with the exception of Milwaukee county, still elect their coroners along with other county officers. There are no apparent professional qualifications necessary in seeking and obtaining the post of county coroner in Wisconsin. The current trend among many states is to abolish the elective coroner system and adopt an appointive medical examiner system. The State Medical Society of Wisconsin has gone on record as supporting attempts to establish a medical examiner system in Wisconsin.

New to Wisconsin, state medical examiner systems -- with examiners required to be physicians -- have been in effect for years in other states, such as Maryland, Virginia and Massachusetts. The Maryland law, for example, called the "state Post-Mortem Examiners Law" dates back to 1939.

Wisconsin's medical examiner is not expressly required by statute to be a physician. The primary functions of both coroners and medical examiners are set forth under s. 59.34 (1), Wis. Statutes, as follows:

59.34 CORONER; MEDICAL EXAMINER; DUTIES. The coroner shall: (1) Take inquest of the dead when required by law, except that in counties having a population of 500,000 or more such duty and the powers incident thereto shall be vested exclusively in the office of the medical examiner hereby created. Appointment to such office shall be made by the county board of supervisors under ss. 63.01 to 63.17. Such office may be occupied on a full or part-time basis and shall be paid such compensation as the county board of supervisors of such county may by ordinance provide. The medical examiner may appoint such assistants as the county board shall authorize. Whenever requested by the court or district attorney, the medical examiner shall testify to facts and conclusions disclosed by autopsies performed by him, at his direction, or in his presence; shall make physical examinations and tests incident to any matter of a criminal nature up for consideration before either court or district attorney when requested so to do; shall testify as an expert for either such court or the state in all matters where such examinations or tests have been made, and perform such other duties of a pathological or medicolegal nature as may be required; and without fees or compensation other than the salary provided.

Art. X, Sec. 3: Proposed Amendment by 1969 AJR 41 (JR 37)

RELEASED TIME FOR RELIGIOUS INSTRUCTION

This constitutional amendment, proposed on first consideration, would allow the Legislature to authorize the release of students during regular school hours for the purpose of religious instruction. 1969 Assembly Joint Resolution 41 was introduced by state Representative Harold V. Froehlich (Rep.). It passed the Assembly 95 to 4, and the Senate concurred 28 to 4. The proposed amendment reads as follows:

(Article X) Section 3. The legislature shall provide by law for the establishment of district schools, which shall be as nearly uniform as practicable; and such schools shall be free and without charge for tuition to all children between the ages of ~~four~~ 4 and ~~twenty~~ 20 years; and no sectarian instruction shall be allowed therein; but the legislature by law may, for the purpose of religious instruction outside the district schools, authorize the release of students during regular school hours.

This effort follows closely the initial change, made in 1967 in the recital of church-state relations in the Wisconsin Constitution, when Section 23, Article I, was amended authorizing the Legislature to furnish school transportation to parochial students.

While the issue of "released time" has never been voted on as a constitutional amendment, it has been discussed in legislative halls for more than 40 years.

In 1926, Attorney General Herman L. Ekern declared (15 Atty. Gen. 483) that a released time program which then had been operated for 2 years by the City of Waukesha school board was violative of both Section 18, Article I, and Section 3, Article X of the Wisconsin Constitution.

The Waukesha schools had been excusing children for one hour each week to attend their respective churches for religious education.

In response to an inquiry submitted by John Callahan, then State Superintendent of Public Instruction, the Attorney General on December 23, 1926, cited Section 18, Article I for its recitals that no "preference be given by law to any religious establishments or modes of worship" and its prohibitory language stating "Nor shall any money be drawn from the treasury for the benefit of religious societies...".

Commented Attorney General Ekern:

... The framers of our constitution carefully provided that the schools should be free from religious influence or control ... This section prohibits in express terms the payment of any money from the state treasury for the benefit of religious organizations. (p. 485)

As for Section 3, Article X, the same portion of the Constitution which is the object of the proposed 1969 amendment, Attorney General Ekern cited State ex rel. Weiss v. District Board, 76 Wis. 177, 220, 44 N.W. 767 (1890), for a famous pronouncement which has been repeatedly quoted:

No state constitution ever existed that so completely excludes the possibility of religious strife in the civil affairs of the state, and yet so fully protects all alike in the enjoyment of their own religion. All sects and denominations may teach the people their own doctrines in all proper places. Our constitution protects all, and favors none. But they must keep out of the common schools and civil affairs.

In 1949 (38 Atty. Gen. 281), in response to a question submitted to him by the state Senate, Attorney General Thomas E. Fairchild issued an exhaustive 8-page opinion on "released time" proposals in general.

The question asked was:

Whether or not local school boards may release students during school hours for attendance at religious instruction conducted by religious groups outside the school.

The response of the Attorney General was one which raises many questions but furnishes no pat answers. He said (pp. 287-288):

The only conclusion that can be expressed with any degree of certainty on the basis of the present state of authorities is that any released time plan that utilizes the tax-established and tax-supported public school system to aid religious groups to spread their faith is in violation of the first amendment of the United States constitution made applicable to the states by the fourteenth amendment... There is grave question as to the validity of any plan that makes use of a pupil's school time, whether off or on the school property, and makes use of school regulations to facilitate attendance for religious instruction... There is also doubt as to the validity of any plan where school authorities cooperate to the extent of releasing the children for religious instruction, the children remaining under the technical jurisdiction of the public school...

There is an additional type of plan, frequently referred to as "dismissed time." ... As I understand it, under such a plan students are dismissed from school at an earlier hour than would normally be the case. Religious instruction classes are scheduled by religious groups for the same hour, but students are free to attend them or not attend as they see fit. The probabilities are that such a plan would be valid, assuming of course that the facilities and compulsion of the public school system are not used.

In 1959, Assembly Bill 281 was introduced to authorize a system of "released time" in the school without constitutional amendment.

It proposed an exception to compulsory school attendance laws which reads as follows:

40.77 (1) (a) and (c) of the statutes are amended to read:

40.77 (1) (a) Any person having under his control a child between the ages of 7 and 16 years shall cause such child to attend some school regularly to the end of the school term, quarter, semester, or other division of the school year in which he is 16 years of age, unless the child has a legal excuse, during the full period and hours, religious holidays excepted, that the public or private school in which such child should be enrolled is in session except as provided in par. (c).

(c) Instruction during the required period elsewhere than at school may be substitute for school attendance. Such instruction must be approved by the state superintendent as substantially equivalent to instruction given to children of like ages in the public or private schools where such children reside. The local board may permit pupils with written permission of parent or guardian to be absent from school not to exceed 60 minutes per week to obtain religious instruction outside the school during the required school period under a qualified instructor without approval of the state superintendent. The supervisor of such religious instruction shall report monthly to the principal of the school regularly attended, the names of the pupils who attended such weekly religious instruction. The release hour shall be fixed by the school board. The board may deny this privilege to pupils who absent themselves from such instruction after requesting the privilege.

In an opinion 16 pages long (48 Atty. Gen. 121), Attorney General John W. Reynolds raised numerous constitutional objections to the proposal. He maintained:

1. That the bill contemplates use of "the police power of the state, that is, the school truant officer ... to apprehend the child who absented himself from religious instruction and was running the streets" (p. 131). Attorney General Reynolds viewed this as a violation of the "right to worship" portion of Section 18, Article I, Wisconsin Constitution.

2. That the bill would "unquestionably favor those children whose parents belong to organized religions over those children who come from homes whose parents do not belong to an organized religion" (p. 133). The Attorney General saw this as trending toward state "control of ... or any preference" to any religion, as barred by Section 18, Article I, Wisconsin Constitution.

3. That the bill, which contemplated use of public school personnel and record keeping, "would be a use of time and property for which public school

funds were expended." The Attorney General viewed this as objectionable under the language in Section 18, Article I, Wisconsin Constitution which bans use of state funds "for the benefit of religious societies..." (p. 135).

This opinion was received by the Wisconsin Assembly on June 30, 1959. The next day, July 1, the Assembly indefinitely postponed (defeated) 281, A., by a vote of 50 to 44.

The "released time" controversy has twice been the subject of U.S. Supreme Court decisions.

In 1948, in McCullum v. Board of Education 333 U.S. 203, 68 S.Ct. 461, the high court held a system of released time use of an Illinois public school building unconstitutional as in violation of the First Amendment to the United States Constitution: "Congress shall make no laws respecting an establishment of religion, or prohibiting the free exercise thereof."

In 1952, in Zorach v. Clauson, 343 U.S. 306, 72 S.Ct. 678, the U.S. Supreme Court held that a New York City program allowing public school students by parental request to be "released" for one hour of religious instruction per week did not violate the First Amendment.

The difference between these 2 viewpoints was the use of public school property in McCullum and the lack of use of such property in Zorach.

In a 1965 publication of the Institute for Church-State Law, Georgetown University a summary of guidelines to measure the constitutionality of a particular released time program was presented as follows:

It would seem, then, that released or dismissed time programs in the abstract are constitutionally permissible. When the public schools, teachers in the public schools, or the expenditure of public funds are involved, the constitutionality of these practices is in some doubt. If the role of the teacher, or the community, is essential to the program and/or involves the expenditure of public funds, the plan has usually been unconstitutional. The distinction would seem to be between merely permitting programs whereby public schools release children for attendance at religious instructions elsewhere, and, on the other hand, fostering or financing such plans. (RELIGION UNDER THE STATE CONSTITUTIONS, Central Book Company, Inc., Brooklyn, N.Y., 1965, p. 45.)