Title VI - Schools
Betty - File in Title VI — This is an important legal question re employee right of action

UNITED STATES GOVERNMENT

Memorandum

DEPARTMENT OF JUSTICE

TO : Stephen Pollak
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DATE: JUL 22 1965

FROM : Harold H. Greene, Chief
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Civil Rights Division

JD:JMF:bs 17-014-4A
169-33-1

SUBJECT: Lemon v. Bossier Parish School Board

STATEMENT

Several Negro children residing at Barksdale Air Force Base in Bossier Parish, Louisiana brought a school desegregation suit in the District Court for the Western District of Louisiana. The United States intervened under Title IX of the Civil Rights Act of 1964.

Defendants filed a motion to dismiss. Plaintiffs and the United States moved the court for a preliminary injunction and summary judgment. The court entered its order denying defendants' motion to dismiss and granting plaintiffs' motion for summary judgment and a preliminary injunction. Defendants appealed from this order.

Defendants contend that Negro plaintiffs have no right to a free public education in Bossier Parish schools because they reside at Barksdale Air Force Base which, although located within the parish, is subject only to the jurisdiction of the United States. From this they argue that plaintiffs have no legal right to attend Bossier Parish schools and, consequently, no standing to sue.

The district court rejected this contention holding that Bossier Parish was obligated pursuant to assurances given under 20 U.S.C. 636, to provide school facilities for Negro plaintiffs in return for receiving federal funds for school construction. The court also found that defendant school board

received monies under 20 U.S.C. 236, at et seq. for operation and maintenance of their schools since the passage of the Civil Rights Act of 1964. Relying on section 601 of that Act, the court held that plaintiffs had a private cause of action for appropriate relief.

Our brief is due in the court of appeals August 2, 1965. A decision must be made whether we will support the district court's holding that section 601 of the Civil Rights Act of 1964 may be judicially enforced by private parties.

DISCUSSION

Title IV prohibits racial discrimination in the administration of any program or activity receiving federal financial assistance. Enforcement of the title is committed to the various federal departments and agencies empowered to extend federal financial assistance. The title does not provide a remedy by which the victims of racial discrimination may seek relief. Under such circumstances, the rule appears to be that unless the legislative history and purpose of the statute indicate the contrary, conduct in violation of the statute gives rise to an implied cause of action in those persons for whose benefit the statute was enacted.

Legislative history: There is some legislative history to the effect that Title VI was not meant to confer judicially enforceable rights on private persons. In the House, Congressman Meader of Michigan introduced an amendment which would prohibit discrimination in the administration of programs receiving federal financial assistance but it would authorize suits on the agreement between the United States and the recipient of federal funds as a means of effecting compliance. This amendment was defeated. Congressman Lindsey in opposition to the amendment stated (110 Cong. Rec. 2494):

> This amendment would throw the whole problem into the context of contract law. The amendment raises the point

> of whether parties other than those who were parties to the contract may cause the cutoff of funds. . . ."

The Senate refused to adopt an amendment offered by Senator Ervin which permitted any taxpayer to bring a suit against any federal agency extending assistance inconsistent with any provision of the Constitution. 110 Cong. Rec. 13,876.

Senator Keating, referring to suggested revisions, some of which were adopted stated (110 Cong. Rec. 7065):

> While we favored the inclusion of the right to sue on the part of the agency, state or the facility which was deprived of federal funds, we also favored the inclusion of a provision granting the right to sue to the person suffering from discrimination. This was not included in the bill. . . . [We] are grateful that our other suggestions were adopted by the Justice Department.

Other than this there seems to be little discussion on the point.

Case law: On the other hand, there is a body of law which holds that where the statute confers rights by prohibiting specified conduct for the benefit of certain persons but does not provide a remedy by which such persons may secure the rights conferred, there exists by implication a civil cause of action which is cognizable by the courts. Under this doctrine section 10(b) of the Securities and Exchange Act of 1934, 15 U.S.C. 78j, which prohibits certain practices in the sale of securities may be

invoked by a private party in a civil action for damages, although no such remedy is provided by statute. Fischman v. Raytheon, 188 F. 2d 783, 787 (C.A. 2, 1951). Similarly, the Communications Act of 1934, section 605, 47 U.S.C. 605 which imposes criminal liabilities on anyone who publishes a telephone message, may be invoked by private persons to recover civil damages. Reitmeister v. Reitmeister, 162 F. 2d 691 (C.A. 2, 1947); see Newfield v. Ryan, 91 F. 2d 700, 703 (C.A. 5, 1937) cert. denied 302 U.S. 729, in which the court said that an injunction may issue to prevent the unauthorized publication and disclosure of telegraph messages; see also Fitzgerald v. Pan American World Airways, 229 F. 2d 499 (C.A. 2, 1956) for a similar holding under the Civil Aeroautics Act.

The Railway Labor Act, although it contains no express prohibition against racial discrimination, has been held to prohibit statutory representatives from discriminating on the basis of race or color against employees whom they represent. The Supreme Court has held that, because the Railway Labor Act provides no administrative remedies to vindicate the rights of those employees who are the victims of racial discrimination, the court may fashion appropriate relief. Steele v. Louisville and Nashville Railway Company, 323 U.S. 192.

CONCLUSION

Accordingly, an argument may be fashioned to support either view: (1) that section 601 confers rights on private parties cognizable by the courts or (2) on the other hand, that the administrative remedies set out in section 602 were intended by Congress to be the exclusive means of effecting compliance with section 601. Since the district court ruled directly on this point in favor of plaintiffs, the United States, as intervenors, will have to take a position in the court of appeals.