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August 10, 1970

MEMORANDUM TO SENATOR STENNIS

From: Lester Fant

re: Mississippi Constitution and Code provisions establishing a dual system of schools

In a memorandum dated August 7, 1970, you asked me to prepare a brief on the Mississippi laws establishing a dual school system.

The basis for the dual system of schools in Mississippi has historically been Article 8, Section 207 of the Mississippi Constitution, which provides:

"Separate schools shall be maintained for children of the white and colored races."

Interestingly enough, all statutes, prior to 1950, which had to do with a dual school were more or less technical in nature, and instead of prohibiting integration set up a structure in which integration would not take place.

Section 6276 of the Code, which directs county board of educations to establish districts for schools provides:

"Separate districts shall be made for the schools of the white and colored races, and the districts for each race shall embrace the whole territory of the county outside the seperate school districts"

In addition to this section, there were specialized sections covering specialized schools. Section 6454 of the Mississippi Code provides for the creation of agriculturla high schools:

"The county school board in each county in the state is authorized and empowered to establish not more than two agricultural high schools in the county, and determine their location, one for white youth exclusively, and one for colored youth exclusively..."

Likewise, in providing for the situation where in a county no school district established a high school, the legislature provided, in section 5453-01 of the Mississippi Code:

Whenever the county board of any county in the state shall find that no four year high school is located, maintained, operated and taught in such county for either the white or the colored race, by any of the school districts located within such county other than a separate school district, such county school board shall have the power and authority with the approval of the board of supervisors of such county, to establish a county high school district exclusively for the children of the race for which a high school is not maintained or operated by a school district of such county other than a separate school district.

It is interesting that while many people assume that the word "seperate" which appears in the title of many Mississippi school districts refers to segregation, the fact is that this word refers to being a district seperate from the county at large in terms of the operation of schools. Provision is made for seperate districts in municipalities, and for special separate rural school districts.

Subsequent to 1954, there was a flood of new legislation concerning school segregation. The most basic provision is section 6220.5 of the Mississippi Code which provides:

It shall be unlawful for any member of the white or caucasian race to attend any school of the high school level or below wholly or partially supported by the funds of the State of Mississippi which is also attended by a member or members of the colored or Negro race"

Interestingly enough, this section imposes a penalty on white children, but not on black children.

In addition to the section dealing with schools directly, there were several statutes passed which dealt indirectly with schools. For example, Section 4064.3 of the Mississippi Code requires every member of the executive branch of the government of the state, municipalities, and counties to give effect to the "Resolution of Interposition", Senate concurrent Resolution Number 125, Adopted by the Legislature February 29, 1956. This same section likewise prohibits prohibits these same officials from giving effect to the "Desegregation Decisions".

Section 2056(7) of the Mississippi Code provides that a misdemeanor is committed :

"If two or more persons conspire to overthrow or violate the segregation laws of this state through force, violence, threats, intimidation or otherwise"

In 1958 another legislative scheme was passed to deal with the school problem, and this is found in section 6232.21 et seq of the Mississippi Code. This scheme of legislation abolished the mandantory attendance laws, and authorizes the governor to close the schools of the stae if he finds it to be in the best interest of the majority of the educable children.

As a footnoe, the legislature in 1953 adopted a body of laws aimed at equalizing the school facilities of each race. For example. section 6328.03 of the Mississippi code provides"

Each school district reorganized or reconstituted under provisions of this act shall embrace the educable children of all races living within the district. A satisfactory plan of equalization of facilities between the races shall be submitted and approved as a prerequisite to the re-organization or reconstitution of such district.

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The provisions quoted above encompass the legislative activity in regard to the establishment of a dual system of schools in Mississippi. I read a few court cases on the subject, dealing with such matters as when a child is white and when a child is colored, and I will be glad to supply you with information on these cases if you like.

As always, it is immensely rewarding for me to do things which might be useful to you.

LGF