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The Rt Hon Douglas Hurd MP
Secretary of State for
The Home Department
50 Queen Anne's Gate
LONDON SW1H 9AT

Prime Minister

Do you wish to
comment?

Does the Church
want to approve 14 January 1988

PRCG
14/1

Mr Douglas

of this particular
charge? not

I have been considering what minor additions I would like to make to the Education Reform Bill. Amongst these I have been considering the inclusion of a provision to clarify the interpretation of Section 2 of the Education Act 1973. This has been under consideration at official level with the Charity Commissioners.

Section 2 enables the holder of my office to make new provision for the use of endowments relating to the premises of voluntary schools which have closed, or are about to close. Its purpose is to allow the religious denomination concerned to participate more fully in the public sector of education. In practice, the section is of concern mainly to the Church of England, which relies heavily on the endowments released by the section for its contribution to the voluntary aided sector.

An Order may be made under section 2 where it has been shown that the endowments in question are or have been "held" for the provision of religious education in accordance with the tenets of a particular denomination. Difficulties have been caused because the Department has always interpreted "held" as meaning that the endowments had to be so held under express or implied provisions in the relevant trusts. Evidence of the use of endowments has not been accepted if the trusts are otherwise complete and unambiguous. This view is judged to be sound and is broadly shared by the Charity Commission.

The effect of this interpretation has been that in some cases endowments used for denominational education have not been eligible for inclusion in Orders under section 2. They have instead been included in Schemes made by the Charity Commission under which they are applied for education and religious education purposes for the benefit of the local community but in ways not provided by the local education service. The Church puts a wider interpretation on section 2 and, in the absence of any agreement to it by the

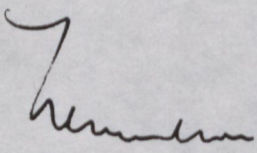
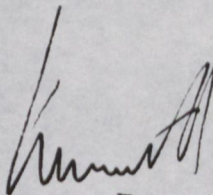
Department, has threatened to seek a judicial review of the problem.

The Charity Commission's preference would be to leave matters to take their course and allow the interpretation of the existing provision to be clarified in the courts. This however carries some risk of a resolution which would either be unduly restrictive from the Church's point of view or, conversely, would extend the scope of section 2 more broadly than we would consider warranted.

What I should like to do would be to make provision in the Bill to extend section 2 to cases where religious instruction in accordance with the tenets of a particular denomination had been given at a school provided that it had been given consistently with the terms of the trust. The Charity Commissioners have however made it clear that they are uneasy about the alteration in the balance between local and diocesan interests that would result from this change.

In my view such an extension of section 2 is the best compromise available. It does not give the Church everything they seek, but it will resolve a number of cases which are at present contentious and give rise to considerable administrative difficulties both for the diocesan authorities and for my Department. I hope therefore that you will see no objection to my proceeding in this way.

I am copying this letter to the Prime Minister, to other members of E(EP) and to Sir Robin Butler.



QUEEN ANNE'S GATE LONDON SW1H 9AT

5 February 1988

qba

Dear Kenneth,

NBPM

REC

SL

file with

not any hope I think!

REC SL

Thank you for your letter of 14 January.

I agree that your proposed extension of section 2 of the Education Act 1973 may well serve to resolve some difficult problems. However, I share the Charity Commission's unease that too ready an extension of section 2 might result in money left in trust being applied for the purpose of religious education over a wide area, when the intention of the donor was to endow a local education service whether or not it was explicitly religious.

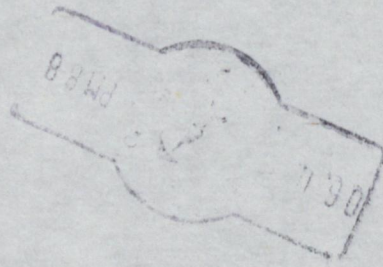
In order to ensure that the bill does not establish an unacceptable precedent for the handling of such trusts, I would, therefore, like our officials to be in touch over the precise wording of the new clause you are proposing.

Copies of this letter go to the recipients of yours.

Lover,
Doggin.

The Rt Hon Kenneth Baker, MP

EDUCATION: General Policy
M 17





10 DOWNING STREET
LONDON SW1A 2AA

FILE
DA

cc LPO SO
HMT WO
DIM LPO
DOE CST
DTT CO

From the Private Secretary

22 January 1988

Dear Chris,

SECTION 2 OF THE EDUCATION ACT 1973

The Prime Minister has seen your Secretary of State's letter to the Home Secretary of 14 January concerning the proposed provision in the Education Reform Bill to extend Section 2 of the 1973 Act. You mentioned to me when we spoke that the proposed provision would attract the support of the Church of England. On that basis, and subject to comments from colleagues, the Prime Minister is content to proceed as your Secretary of State proposes.

I am sending copies of this letter to the Private Secretaries to members of E(EP) and to Trevor Woolley (Cabinet Office).

*Yours,
Paul*

(PAUL GRAY)

Chris de Grouchy, Esq.,
Department of Education and Science.

dg

Ed - Policy