WV A&H West Virginia Archives and History

ON THIS DAY IN WEST VIRGINIA HISTORY
March 13

Capitol Annex Building, used as the
Charleston Public Library

On March 13, 1928, three African American residents of Kanawha County were refused admittance to the Charleston Public Library.

CSO: SS.8.24, ELA.8.1, ELA.8.4, ELA.8.21

Investigate the Document: (*Report of Cases determined by the Supreme Court of Appeals of West Virginia from September 11, 1928, to February 19, 1929*. Vol. 106. Charleston: Jarrett Printing Company, 1929)

1. What was the circuit court's rationale for not allowing African Americans to use the Charleston Public Library?

2. Which passage best reflects the argument made by the Supreme Court in overturning the circuit court?

3. Did you find any other examples of Jim Crow laws mentioned in the court documents? If so, what?

4. All races were welcomed into the Charleston Public Library per the Supreme Court ruling so long as….

Think Critically: (Essay 250-300 words) Write an essay on Jim Crow laws by answering the following questions: What are Jim Crow Laws? In what ways were blacks and whites separated in society? Do you feel discrimination exists today? In what ways?

The circuit court in its ruling adopted the contention of the respondents that the Charleston Public Library established and maintained in the Capitol Annex Building is a part of the public schoo, system of the Charleston Independent School District, and as such may be limited in its use to he "White school children and white citizens." In view of section 62, Chapter 45 of the Code, providing for the establishment and maintanance of school libraries by the Boards of Education of every district and independent districts , it cannot be said that the Legislature intended to establish a school library in the passage of the several special acts providing for the establishment and maintenance of a public library. The mere designation of a Board of Education as the agency to establish, maintain amd control a public library does not convert it into a school library or make it a part of te public school system. As an illustration, a ministerial act does not become a judicial act when performed by a judicial officer.

A public library is a library to which the general public has free access, 32 Cyc., 1248. It is said, however, that the maintanance of a public library for the joint use of white and colored citizens would be inconsistent with the public policy of the state, established by its laws, institutions, customs, practices and traditions, of separating the races; and that in keeping with this policy, the legislative acts, under consideration, should be construed so as to uphold the action of the board in denying to Negroes the use of the Charleston Public Library. In other words, it is contended that the Legislature meant to provide for the establishment of a school library, which should be under the control of the board of education as a part of the public school system, and not a

public library as the statutes declare. This argument is answered by chapter 64, Acts 1915, authorizing any municipality to establish a public library on approval of a majority vote of its citizens by levying a tax of not more than one and one half cents on each one hundred dollars' valuation of the taxable property therein. Section 5, of the Act declare that each library established thereunder "shall be free for the use of the inhabitants of the municipality where located, subject to such reasonable rules and regualtions as the library board may adopt and publish, in order to fender the use of said library any and all persons who shall wilfully violate such rules. The fact that this statute has not been adopted by the citizens of Charleston has no bearing upon the Legislative intent shown in the en-actment of a general law authorizing the establishment and maintenance of public libraries which "shall be free for the use of the inhabitants of the municipality where located, subject (only) to such reasonable rules and regulations as the library board may adppt and publish, in order to render the use of said library of greatest benefit to the greatest number." But we would not be justified, on account of public policy, in plain language imports. Section 81, chapter 51, Acts 1925, provides that "it shall be the duty of the board of education in any district which does not maintain a high school, or assist in the maintenance of the county high school, to pay the tuition fees of all pupils in its district who have completed the course of study in the elementary school and who attend public high schools in other districts or counties, or other

schools of high school grade within the state." Applying this statute, it was held in Gissy v. Board of Education, _____ W.Va._____, 143 S.E. III, that the board of education in a district which did not maintain a high school or assist in the maintenance of the county high school should pay the tuition fees of certain pupils in its district (who had completed the course of study in the elementary schools) while attending a parochial high school in another district. The board of education is resisting payment of the fees in question contended that becuse of the policy of the state to foster public school education, the statute should not be so construed as to encourage the establishment of church schools whose pupils are eligible for public school training. Responding to this question Judge Lively, speaking for the court, said:

> "It was further suggested in argument and conference that to allow pupils to attend 'other' schools of high school grade, when a public high school was equally available, would bring about undue activity and solicitation from denominational schools of such grade for the enlistment of such pipils in their schools, to the detriment of the free schools, and we should interpolate into the plain words of the statute the choise of dictation by the board paying the tuition as to whether the pupil should attend a public high school or other school of like grade, in order to prevent that suggested imaginary evil. It may be observed that the tuition fees are limited in the Code of 1923 to $5 per month for each pupil, with a minimum of $2,50. Whether this sum would induce hurtful activity and competitive solicitations from the various denominational schools is rather a vague assumption. But, whether that result may ensue or not, the courts have nothing to do with the wisdom of Legislative acts. The Legislature has unlimited power, except where it is not restricted by the Constitution of the State or United States.
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> Even if the courts are convinced that some particular act is unwise or vicious, they will not declare the act invalid, if not in conflict with the paramount law of the land. To do so would be usurpation of Legislative powers, and violate the fundajudicial, and executive branches. State v.Peel Splint Coal Co.,36 W.Va.802, 15 S.E.1000, 17 L.R.A. 385;State v.Workman, 35 W.Va.367, 14 S.E. 9, 14 L.R.A.600; Slack v.Jacob, 8 W.Va.612; Osburn v.Staley,5 W.Va.85, 13 Am.Rep.640."

It is sought to justify the action of the Board of Education also on the ground that the governing body of the public library may in the excercise of the police power of the State limit its use to "White school children and white citizens." The principle relies on has been applied by the courts in approving rules and regulations by railroad companys providing separate coaches for white and colored passengers, and in other cases.

Granting that the Board of Education may provide separate departments for white and colored persons in the library building, we do not think it is vested with such regulatory powers either under the statute or under the police power of the state as would justify it in excluding colored persons therefrom.

The petitions, in our opinion, states a case for relief. The ruling of the circuit court is therefore reversed and the case remanded.

Reversed and Remanded.