

STATE OF WISCONSIN  
**Senate Journal**  
**Eighty-Third Regular Session**

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THURSDAY, February 10, 1977.

10:00 A.M.

The senate met.

The senate was called to order by the president of the senate.

The senate stood for the prayer which was offered by Pastor James A. Knuth, Calvary Lutheran Chapel, Missouri Synod, Madison.

The senate remained standing and Senator Krueger led the senate in the pledge of allegiance to the flag of the United States of America.

The roll was called and the following senators answered to their names:

Senators Adelman, Bablitch, Berger, Bidwell, Braun, Chilsen, Cullen, Dorman, Flynn, Frank, Goyke, Harnisch, Kepler, Kleczka, Krueger, Lorge, McCallum, McKenna, Maurer, Morrison, Murphy, Offner, Parys, Peloquin, Petri, Radosevich, Risser, Sensenbrenner, Swan, Theno, Thompson and Van Sistine -- 32.

Absent -- None.

Absent with leave -- None.

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INTRODUCTION OF RESOLUTIONS

**Senate Joint Resolution 23**

Directing the legislative council to study the effectiveness of regulation of nonsupport and illegitimacy under child abuse laws where children are recipients of public assistance.

By Senator Sensenbrenner.

Read and referred to joint committee on Finance.

By request of Senator Bablitch, with unanimous consent, **Senate Joint Resolutions 17, 18, and 19** were withdrawn from the

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committee on Senate Organization and referred to committee on Judiciary and Consumer Affairs.

By request of Senator Bablitch, with unanimous consent, **Senate Bill 127** was withdrawn from the committee on Senate Organization and referred to committee on Education and Revenue.

By request of Senator Bablitch, with unanimous consent, **Senate Joint Resolution 23** was withdrawn from the joint committee on Finance and referred to committee on Human Services.

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BILLS INTRODUCED

Read first time and referred:

**Senate Bill 151**

Relating to requiring the use of a hearing officer in hearings concerning children with exceptional educational needs.

By Senator Dorman; cosponsored by Representatives Ferrall and Dandeneau, by request of Jack Byrd.

To committee on Education and Revenue.

**Senate Bill 152**

Relating to requiring authorization of nonschool-related persons to be on school property and providing a penalty.

By Senator Dorman; cosponsored by Representatives Porter, Rooney, Ferrall, Schmidt and Dandeneau.

To committee on Education and Revenue.

**Senate Bill 153**

Relating to measurement of loss for property insurance.

By Senator Sensenbrenner.

To committee on Commerce.

**Senate Bill 154**

Relating to creating a new judicial circuit consisting of Ozaukee County.

By Senators Sensenbrenner, Petri and McCallum; cosponsored by Representatives Merkt, Lewis, Opitz and Luckhardt.

To committee on Judiciary and Consumer Affairs.

COMMITTEE REPORTS

The committee on Judiciary and Consumer Affairs reports and recommends:

**Senate Bill 14**

Relating to revision of the criminal code.

Passage; Ayes, 4; Noes, 0.

**Assembly Joint Resolution 18**

Relating to directing the legislative council to study the state's eminent domain laws.

Concurrence; Ayes, 4; Noes, 0.

JAMES T. FLYNN

Chairman

The committee on Senate Organization reports and recommends:

**Senate Bill 133**

An act to increase the attorney positions in the legislative reference bureau, and increasing an appropriation.

Passage; Ayes, 5; Noes, 0.

Emergency statement recommended; Ayes, 5; Noes, 0.

**Assembly Joint Resolution 21**

Granting the use of the legislative chambers on Saturday, February 26, 1977, for the 1977 Model Legislative Session of the Wisconsin Junior Chamber of Commerce.

Concurrence; Ayes, 5; Noes, 0.

FRED A. RISSER

Chairman

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PETITIONS AND COMMUNICATIONS

State of Wisconsin  
Department of Justice  
Madison

February 3, 1977.

The Honorable Fred A. Risser, Chairman  
Senate Organization Committee  
235 South, State Capitol  
Madison, Wisconsin 53702

Dear Senator Risser:

You have asked my opinion on the following question:

Is the St. Coletta School of Jefferson, Wisconsin, a qualified private special education service, legally able to receive public funds in view of the provisions of sec. 115.85 (2) (d), Stats.?

Section 115.85(2) (d), Stats., provides:

“To provide a special education program which is appropriate to the child’s needs, the school board may, upon approval of the state superintendent and if no equivalent public program is locally available, contract with a private special education service whose governing board, faculty, student body and teachings are not chosen or determined by any religious organization or for any sectarian purpose.”

I conclude on the basis of the documents and materials submitted to me that St. Coletta School cannot legally receive public funds under sec. 115.85(2) (d), Stats., because its governing board is chosen by a religious organization and because its teachings are chosen in part for a sectarian purpose.

It should be emphasized initially that the question you pose requires statutory rather than constitutional analysis. The constitutionality of sec. 115.85(2)(d), Stats., on its face, was upheld previously in *State ex rel. Warren v. Nusbaum*, 64 Wis.2d 314, 219 N.W.2d 577 (1974). The precise statutory issue before me is whether St. Coletta School is “a private special education service whose governing board, faculty, student body and teachings are not chosen or determined by any religious organization or for

any sectarian purpose," within the meaning of sec. 115.85(2)(d), Stats.

St. Coletta School is an institution which provides specialized education and/or habilitation services primarily to mentally retarded children. It is owned by the Sisters of St. Francis of Assisi, a religious community having its community house in St. Francis, Wisconsin (*Amended By-Laws*, Art. I). Neither its student body nor its faculty are selected on the basis of individual religious preference.

St. Coletta School's "governing board" is its board of directors (*Restated Articles of Incorporation*, Art. VII; *Amended By-Laws*, Art. III). The board of directors are "chosen" (elected and re-elected) by corporation members (*Amended By-Laws*, Art. II, sec. 3; Art. III, sec. 1.E.), all of whom must be permanently professed members of the "religious community" of the Sisters of St. Francis of Assisi (*Amended By-Laws*, Art. II, sec. 1). Since the governing board of St. Coletta School thus is chosen by a religious organization, it is my opinion that St. Coletta School is ineligible to receive public funds under sec. 115.85(2)(d), Stats.

Further, sec. 115.85(2)(d), Stats., prohibits contracting with any private special education service whose teachings are chosen for any "sectarian purpose." The word "sectarian" does not have a statutory definition and therefore it must be given its meaning in common usage. Sec. 990.01, Stats. *Webster's New International Dictionary* (3rd ed., 1961), p. 2052, defines sectarian in part:

"... 2: of, relating to, or having the characteristics of one or more sects esp. of a religious character ... 3a: confined to the limits of one religious group ...."

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In *State ex rel. Warren v. Nusbaum, supra*, in discussing sec. 115.85(2)(d), Stats., the court emphasized:

“... [T]he legislature has gone to great lengths to insure that the inculcation of religious tenets shall not take place. ...” 64 Wis.2d at 325.

\* \* \*

“Sec. 115.85 (2) (d), Stats., carefully safeguards against religiously indoctrinated programs being taught. ...” 64 Wis.2d at 327.

Information submitted to me by St. Coletta School reveals that teaching of religion is an integral part of the curriculum. Among the subjects studied in the last two years were the Eucharist Cycle, the Mass from beginning through Offertory, the season of Advent and the Advent Wreath, the Penance Cycle, the Stations of the Cross, the rosary, Epiphany, Ash Wednesday, Ascension Thursday and Pentecost. Since such subjects are peculiar to a particular Christian sect or sects, it is my opinion that the teachings at St. Coletta School are chosen in part for a sectarian purpose, and that this constitutes a separate and independent reason why St. Coletta School may not receive public funds under sec. 115.85(2)(d), Stats.

I am personally unhappy with this result since I believe that there may be very real advantages to handicapped children and participating school districts in being able to take advantage of facilities such as those offered by St. Colletta's. Under the statutory scheme set forth in sec. 115.85(2), facilities such as those at St. Colletta's may be resorted to only if no equivalent public program is locally available and the proposed private program receives the approval of the state superintendent. The student who, but for the last clause of sec. 118.85(2)(d) could take advantage of St. Colletta's programs where no equivalent public program is available may be disadvantaged along with the local school district which may have to provide such program at additional expense.

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There is reason to believe that the provisions of the last clause of sec. 115.85(2)(d) go beyond the restrictions imposed by the United States and Wisconsin Constitutions. Suppose that the last clause of sec. 115.85(2)(d) did not exist and that St. Colletta entered into a contract with a local school district to provide specialized training for student X, that the contract provides that no religious instruction will be involved and that the content of the training or class will be determined and the instructors involved selected by a board which is not directly controlled by the Sisters of St. Francis. Would such an arrangement violate the state or federal constitutions? I think that a strong case can be made that it would not. I point this out because the Legislature may have thought that the last clause in sec. 115.85(2)(d) is declarative of the restrictions contained in Wis. Const. art. I, sec. 18. Section 115.85(2)(d) goes further than art. I, sec. 18, which alone would not preclude all contractual relationships between institutions like St. Colletta and a local school district calling for specialized training programs. I assume that such contract could be carefully drawn to incorporate the standards established by the cases construing art. I, sec. 18.

Sincerely yours,  
**BRONSON C. LA FOLLETTE**  
Attorney General

**CAPTION:**

St. Coletta School cannot legally receive public funds under sec. 115.85(2)(d), Stats., because its governing board is chosen by a religious organization and because its teachings are chosen in part for a sectarian purpose.

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**EXECUTIVE COMMUNICATIONS**

State of Wisconsin  
Office of the Governor  
Madison, Wisconsin

February 3, 1977.

To the Honorable, the Senate:

Pursuant to the provisions of the statutes governing, I have nominated and with the advise and consent of the senate do appoint

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**Dr. Joan Arnoldi, of Wausau, as a member of the Veterinary Examining Board, to serve for the term ending July 1, 1981.**

**Sincerely,  
PATRICK J. LUCEY  
Governor**

**Read and referred to committee on Agriculture, Aging and Labor.**

**State of Wisconsin  
Office of the Governor  
Madison, Wisconsin**

**February 3, 1977.**

**To the Honorable, the Senate:**

**Pursuant to the provisions of the statutes governing, I have nominated and with the advise and consent of the senate do appoint Dr. Robert H. Steinkraus, of Wauwatosa, as a member of the Veterinary Examining Board, to serve for the term ending July 1, 1980.**

**Sincerely,  
PATRICK J. LUCEY  
Governor**

**Read and referred to committee on Agriculture, Aging and Labor.**

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**MESSAGE FROM THE ASSEMBLY**

**By Everett E. Bolle, chief clerk.**

**Mr. President:**

**I am directed to inform you that the assembly has passed and asks concurrence in:**

**Assembly Bill 210  
Assembly Bill 227**

**Adopted and asks concurrence in:**

**Motions Under Joint Rule 26:**

**A Joint Certificate of Commendation by Representative Johnston; cosponsored by Senator Sensenbrenner for CHESTER F. KRIZEK for his community service.**



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**A Joint Certificate of Commendation by Representative Plewa; cosponsored by Senator Frank for REGINA DOMBROWSKA OSTRENGA on her 50th birthday.**

**A Joint Certificate of Congratulations by Representatives Roberts and Medinger; cosponsored by Senator Offner for JEAN GITZ on being named "Boss of the Year".**

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**MESSAGE FROM THE ASSEMBLY CONSIDERED**

**Assembly Bill 210**

**Relating to exempting certain employer retirement plan distributions from the state income tax.**

**By Representatives Schneider, Roberts, Johnson, Wahner, Donoghue, Travis, Engeleiter, Otte, Kincaid, Jackamonis, Schmidt and Porter, cosponsored by Senators Kleczka, Chilsen, McKenna, Dorman and Berger.**

**Read first time and referred to committee on Senate Organization.**

**Assembly Bill 227**

**Relating to space assignments in the capitol.**

**By Representatives Jackamonis, Wahner and Ferrall.**

**Read first time and referred to committee on Senate Organization.**

**Motion Under Joint Rule 26:**

**A Joint Certificate of Commendation by Representative Johnston; cosponsored by Senator Sensenbrenner for CHESTER F. KRIZEK for his community service.**

**A Joint Certificate of Commendation by Representative Plewa; cosponsored by Senator Frank for REGINA DOMBROWSKA OSTRENGA on her 50th birthday.**

**A Joint Certificate of Congratulations by Representatives Roberts and Medinger; cosponsored by Senator Offner for JEAN GITZ ON BEING named "Boss of the Year".**

**The above motions under joint rule 26 were read and concurred in enmasse.**

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MOTIONS UNDER SENATE RULE 97

A certificate of commendation by Senator Braun for KEITH BREWSTER on the occasion of his receiving the Eagle Scout award.

A certificate of congratulations by Senator Maurer for ESTEBAN KUMORKIEWICZ on the occasion of his becoming a United States citizen.

The above motions under senate rule 97 were read and adopted enmasse.

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CALENDAR OF FEBRUARY 10

**Senate Bill, 14**

Relating to revision of the criminal code.

Read a second time.

Senate amendment 1 to Senate Bill 14 offered by Senator McCallum.

Senate amendment 1 adopted.

Senate amendment 2 to Senate Bill 14 offered by Senators Sensenbrenner, McCallum and Frank.

The question was: Adoption?

The ayes and noes were demanded and the vote was: ayes, 10; noes, 21; absent or not voting, 1; as follows:

Ayes -- Senators Bidwell, Chilsen, Frank, Keppler, Kleczka, Krueger, McCallum, Petri, Sensenbrenner and Theno -- 10.

Noes -- Senators Adelman, Bablitch, Berger, Braun, Cullen, Dorman, Goyke, Harnisch, Lorge, McKenna, Maurer, Morrison, Murphy, Offner, Parys, Peloquin, Radosevich, Risser, Swan, Thompson and Van Sistine -- 21.

Absent or not voting -- Senator Flynn -- 1.

So the amendment was not adopted.

Senate amendment 3 to Senate Bill 14 offered by Senator Berger.

Senator Murphy moved rejection.

The motion did not prevail.

Senate amendment 3 adopted.

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Senate amendment 4 to Senate Bill 14 offered by Senator Bablitch.

Senate amendment 1 to Senate amendment 4 to Senate Bill 14 offered by Senator Parys.

Senator Chilsen moved rejection.  
The motion did not prevail.

The question was: Adoption of senate amendment 1 to senate amendment 4?

The ayes and noes were demanded and the vote was: ayes, 21; noes, 10; absent or not voting, 1; as follows:

Ayes -- Senators Adelman, Bablitch, Berger, Braun, Cullen, Dorman, Frank, Goyke, Harnisch, Kleczka, McKenna, Maurer, Morrison, Offner, Parys, Peloquin, Radosevich, Risser, Swan, Thompson and Van Sistine -- 21.

Noes -- Senators Bidwell, Chilsen, Keppler, Krueger, Lorge, McCallum, Murphy, Petri, Sensenbrenner and Theno -- 10.

Absent or not voting -- Senator Flynn -- 1.  
So the amendment was adopted.

The question was: Adoption of senate amendment 4?

The ayes and noes were demanded and the vote was: ayes, 18; noes, 13; absent or not voting, 1; as follows:

Ayes -- Senators Adelman, Bablitch, Berger, Cullen, Dorman, Frank, Goyke, Lorge, McKenna, Maurer, Morrison, Offner, Parys, Peloquin, Radosevich, Risser, Swan and Thompson -- 18.

Noes -- Senators Bidwell, Braun, Chilsen, Harnisch, Keppler, Kleczka, Krueger, McCallum, Murphy, Petri, Sensenbrenner, Theno and Van Sistine -- 13.

Absent or not voting -- Senator Flynn -- 1.  
So the amendment was adopted.

Ordered to a third reading.

By request of Senator Bablitch, with unanimous consent, the bill was considered for final action at this time.

**Senate Bill 14**

Read a third time.

The ayes and noes were demanded and the vote was: ayes, 25; noes, 7; absent or not voting, 0; as follows:

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Ayes -- Senators Adelman, Bablitch, Berger, Bidwell, Braun, Cullen, Dorman, Flynn, Frank, Goyke, Harnisch, Kleczka, Lorge, McCallum, McKenna, Maurer, Morrison, Murphy, Offner, Parys, Peloquin, Radosevich, Risser, Thompson and Van Sistine -- 25.

Noes -- Senators Chilsen, Keppler, Krueger, Petri, Sensenbrenner, Swan and Theno -- 7.

Absent or not voting -- None.

So the bill passed.

**Senate Bill 133**

An act to increase the attorney positions in the legislative reference bureau, and increasing an appropriation.

Read a second time.

Senator Parys asked unanimous consent, that **Senate Bill 133** be referred to committee on Judiciary and Consumer Affairs.

Senator Risser objected.

Senator Parys moved that **Senate Bill 133** be referred to the committee on Judiciary and Consumer Affairs.

Senator Bablitch asked unanimous consent, that **Senate Bill 133** be referred to the joint committee on Finance.

Senator Lorge objected.

By request of Senator Parys, with unanimous consent, his motion to refer **Senate Bill 133** to Judiciary and Consumer Affairs was withdrawn.

By request of Senator Parys, with unanimous consent, **Senate Bill 133** was referred to the joint committee on Finance.

By request of Senator Parys, with unanimous consent, the senate recessed until 12:30 P.M.

11:52 A.M.

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RECESS

12:30 P.M.

The senate reconvened.

President pro tempore of the senate in the chair.

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### **Assembly Joint Resolution 18**

Relating to directing the legislative council to study the state's eminent domain laws.

Read and concurred in.

### **Assembly Joint Resolution 21**

Granting the use of the legislative chambers on Saturday, February 26, 1977, for the 1977 Model Legislative Session of the Wisconsin Junior Chamber of Commerce.

Read and concurred in.

By request of Senator Bablitch, with unanimous consent, all actions were ordered immediated messaged.

By request of Senator Bablitch, with unanimous consent, the Senate returned to the fourth and seventh orders of business.

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## COMMITTEE REPORTS

The joint committee on Finance reports and recommends:

### **Senate Bill 134**

Relating to energy, drought and natural disaster assistance and making appropriations.

Introduction and adoption of senate amendments 1 and 2; Ayes, 14; Noes, 0.

Emergency statement recommended; Ayes, 14; Noes, 0.

Passage with emergency statement; Ayes, 14; Noes, 0.

HENRY DORMAN

Senate Chairman

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## MESSAGE FROM THE ASSEMBLY

By Everett E. Bolle, chief clerk.

Mr. President:

I am directed to inform you that the assembly has passed and asks concurrence in:

**Assembly Bill 53**

**Assembly Bill 61**

**Assembly Bill 95**

**Assembly Bill 147**

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MESSAGE FROM THE ASSEMBLY CONSIDERED

**Assembly Bill 53**

Relating to issuance of summons by a city or village attorney in proceedings to enforce city or village regulations.

By Representatives Lallensack, Hasenohrl, Day, Potter, Vanderperren, Mohn, Wood, Litscher, Lato and Fischer.

Read first time and referred to committee on Governmental and Veterans' Affairs.

**Assembly Bill 61**

Relating to exempting from levy limits sewage treatment service charges assessed by a separate taxing unit of government.

By Representatives Klicka, Lewis and DeLong.

Read first time and referred to committee on Governmental and Veterans' Affairs.

**Assembly Bill 95**

Relating to allowing counties to establish jail extensions for temporary confinement purposes.

By Representatives Rooney, Hanson and Dandeneau.

Read first time and referred to committee on Judiciary and Consumer Affairs.

**Assembly Bill 147**

Relating to allowing the unloading of petroleum shipments prior to inspection.

By Representative Miller, cosponsored by Senator Parys, by request of DILHR.

Read first time and referred to committee on Commerce.

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AMENDMENTS OFFERED

Senate substitute amendment 1 to Senate Bill 24 by Senator Cullen.

Upon motion of Senator Bablitch the senate adjourned until 10:00 A.M. Tuesday, February 15.

12:40 P.M.

**CHIEF CLERK'S CORRECTION**

**Suggested by Legislative Reference Bureau**

**Relating to: 1977 Senate Bill 100.**

**On page 20, line 4, substitute "247.32" for "247.24".**