

Lecture at School Desegregation Training and Research Institute
University of Oregon July 22, 1966

"The Federal Government and Desegregation in Education"

ARTHUR S. FLEMING

Before 1958 a great many efforts had been made to persuade the Congress that the Federal Government should become more heavily involved in the field of education on all levels. Until 1958, however, these efforts had not been particularly successful.

With the Sputnik incident in 1958, Americans became fearful that Russia might be considerably ahead of us in the Space Race. All over the country people began talking about the fact that we as a nation were not doing the job in the field of science and engineering that we should be doing. Many people attributed this to the fact that we were not producing in our educational institutions an adequate supply of trained personnel in these areas. So the executive branch decided to propose to the Congress the National Defense Education Act, which was passed by the Congress. For the first time in many years in 1958, the Federal Government moved forward and became more heavily involved in education on the elementary and secondary levels, but particularly in higher education.

Since then, of course, we have had a number of major developments in the field of educational legislation. In many respects probably the most significant has been the passage of the Elementary and Secondary Education Act. This act is a real milestone

as far as the growth and development of our nation is concerned.

The Higher Education Facilities Act was not quite as revolutionary an action on the part of the Congress as was the Elementary and Secondary Act. Over the years Congress had shown more of a willingness to make funds available for higher education than it has for elementary and secondary education. Nevertheless, the act was a significant piece of legislation because it broadened the Federal Government's participation in the field of higher education.

Extension of both of these acts is under consideration by Congress at the present time. I am confident that both of them will be extended. Apparently the only debate is over the figure that should be inserted as far as authorized appropriations are concerned.

All the time this country was debating the question of heavier involvement on the part of the Federal Government in education at all levels, citizens were raising the question of whether involvement would lead to control of educational programs. As I had the opportunity of ^{discussing} debating this issue from time to time with citizens in various parts of the country, I indicated that I was not concerned or worried about this aspect of the matter, provided as a nation we were willing to utilize to the fullest possible extent our system of checks and balances.

First of all, I pointed out that in the field of higher education the Federal Government had been making funds available to our land-grant institutions for a hundred years. As far as I had been able to ascertain, no land-grant institution had ever alleged that the Federal Government was using the grants to attempt to impair their academic freedom. Also, I pointed to the rather rapid development since World War II of the Federal Government's support of medical research. This support has involved many colleges and universities of the country. I pointed out that the Department of Health, Education, and Welfare had tried to surround the administration of the medical research funds with safeguards designed to insure that the government would not be interfering with the academic freedom of the institutions on

the receiving end of funds. I pointed out, for example, that under the procedures that had been adopted, when an application for a grant was received, it was referred first of all to a study committee made up of experts in the subject matter in question. If the application received a favorable report from that committee, it was referred to a council made up of experts and laymen. Then if this council made a favorable report, it went to the Surgeon General. The Surgeon General had no authority to grant any money to any individual or to any institution unless he had a favorable report from the study committee and the council. He could veto a report, but he could not initiate any grants himself. I indicated that during the period that I served as Secretary of Health, Education, and Welfare (1958-1961), I had never received any complaint from a President or a Dean of a college or university that we were attempting to use that power for the purpose of impairing the freedom of the institution.

Going to the field of elementary and secondary education, I referred to the legislation dealing with federally-impacted areas. By this is meant those areas where there were many children of federal employees; where, as a result of the presence of children of federal employees, the Federal Government from 1950 to the present, has been making contributions to the operating budgets and the capital improvements of the school districts concerned. In this connection, I had not been aware of a single letter from a single school district complaining about any effort on the part of the Federal Government to impair the freedom of that school district to deal with academic issues.

Now, of course, some persons might very well say, "Well, maybe the record was pretty clear up to that particular point, but it isn't as clear now." Of course, they would be referring to those provisions of law which in turn are in harmony with Supreme Court decisions and which make it clear that federal funds are not going to be made available to educational institutions that operate in a manner that is in conflict with the decision of the Supreme Court.

Those who are opposed to desegregation resist the application of these provisions

of the law on the grounds that they interfere with the freedom of school districts and institutions of higher learning to work out their own solutions to problems such as desegregation. It seems to me that the Federal Government has no right to use any of its resources to strengthen any institution that is operating in conflict with the Constitution of the United States. Anyone that would expect the Federal Government to permit itself to be put in a position where this might happen would certainly be very unrealistic.

Let me give you one case history that I was confronted with when I was Secretary of Health, Education, and Welfare. The Board of Supervisors of Prince Edwards County in Virginia decided to close the public schools rather than adhere to the decision of the Federal courts that they had to desegregate their school system. About 30 to 60 days after that action had taken place, the legislature of the State of Virginia passed a law which made it possible for citizens in Prince Edwards County to obtain state funds which they in turn could use to pay tuition for their children to attend segregated schools. As a result of this, the so-called private white schools came into existence in Prince Edwards county. One afternoon a member of my staff called to my attention that one of these schools had applied for surplus property from the Federal Government in order to help facilitate its program. He said ^{that} as far as we ^{he} can see, under the rules and the regulations ^{we} they were entitled to it. We had a staff meeting, and I raised this issue with the general counsel there. He told me that he did not see how we could turn down the request. My response was there must be some way under which the Federal Government can legally refuse to support an institution that is being operated in defiance of a court order. We finally did come up with a solution. We ^{amended} the regulation to provide that no surplus property would be made available to any county or school district that was not operating a public school system. This decision came under some attack; some people alleged that it was not legally sound, but they were not able to establish ^{how} that point ^{there}. They were not able to establish it, because again the Federal Government

cannot put itself in a position where it is lending aid or support to institutions that are operating in a manner that is in direct conflict with some of the basic concepts guaranteed by the Constitution.

Other people say that the Federal Government will move from this point to another point and still another point and ultimately be in the position of dictating the educational programs to be followed in the local school district or in an institution of higher learning. The extent of the Federal Government's involvement in education now, when looked at from a fiscal point of view, is so great that there is certainly the danger of the Federal Government using the power that goes with large sums of money to curb academic freedom. I would be the first to accept this fact. But I also believe that if it happens it will happen simply because people in the field of education are asleep at the switch and are failing to utilize our system of checks and balances in an appropriate way.

Let me give you an illustration. I refer to the passage of the Elementary and Secondary Education Act. Certain amendments were ^{included in order} ordered to deal with the church-state issue. In recent months there has been a growing feeling that some of the regulations that were proposed by the Office of Education were in conflict with those ^{the} amendments and with ^{back of the amendments} legislative history. Some people became very concerned about it and decided to make a major issue in connection with the proposed extension of the Elementary and Secondary Education Act. I was approached on the question of whether I would be willing to testify along these lines. I said, yes, I would be perfectly willing to testify, provided we had exhausted our remedies within the executive branch. I asked, "How far have you gone ^{Executive Branch?} within the Office of Education?" I discovered that they had not gone very far. When the legislation was under consideration, there was a member of the President's staff who was very much interested in working out these ^{in order} amendments to remove the church-state issue. "Had they talked to him?" "No." They did, and he called the Under-Secretary of Health, Education, and Welfare and arranged for a conference immediately that brought the whole matter up to the Secretary's level. It was looked at there in the light of the amendments and

the legislative history, and adjustments were made. It was not necessary to call ^{and} the matter to the ~~attention of the Congressional committee.~~ ^{for the sake of the committee} Everyone understood that we were perfectly willing to call it to the ~~attention of the Congressional committee,~~ ^{attention of the committee} and if it were called to their attention, it could lead to a vigorous debate and might impair the progress of the legislation through the Congress. The executive branch was willing to move in to correct the situation. This is our system of checks and balances operating. ^{do work, if we give it a chance.}

The trouble as we deal with the Federal Government is that we are inclined to ^{complain} accept and fuss about rules and regulations but not do anything to get them changed. The individual can bring about changes.

Within the area of desegregation there is something less than 100 per cent satisfaction with some of the rules and regulations that have been issued by the Office of Education and by other units of the Federal Government designed to implement the laws that have already been passed. There will be some who will say, well that's the Federal Government, there isn't much that you can do about it. My contention is that there is a great deal that can be done about it if the position is a sound one in relation to the law as it stands at the present time. Individuals can do something about it. Groups of individuals can do something about it within the executive branch and the legislative branch, and ultimately in the courts. If the regulations appear to be consistent with the law but do not go as far as we feel they should to be consistent with the basic concepts of the Constitution, then we have the obligation to work for a change in the law.

After 18 years of experience in the Federal service, I have emerged with a genuine respect for what can be accomplished provided individual citizens and groups of citizens are willing to take full advantage of the existence of the system of checks and balances. I have no doubt in my mind that the Federal Government's involvement in education is going to increase, literally by leaps and bounds over the next five to ten years. I have no doubt that the Federal Government as it becomes

involved must make sure that it is not involved in the strengthening and expanding of institutions that are operating in defiance of the basic concepts of our Constitution. And I have no doubt that the Federal Government's heavy involvement in the field of education at all levels can accelerate the desegregation process.

#