

**BOROUGH OF NEWTOWN  
NEWTOWN, CONNECTICUT**

Minutes of the regular meeting of the Borough of Newtown Board of Burgesses on **Tuesday, April 9, 2024** in the Lower Meeting Room at Edmond Town Hall, Newtown, CT. Warden Maher called the meeting to order at 7:31 p.m.

**Present:** Warden Joseph Maher, Burgess James Gaston, Burgess John Madzula II, Burgess Sarah Phillips, Burgess Maureen Crick Owen, Tax Collector Jodie Enriquez, Treasurer Paula Brinkman and Clerk Ann Scaia

**Absent:** Senior Burgess Chris Gardner, Burgess Jared Modzelewski, Tree Warden Rob McCulloch and Zoning Enforcement Officer Joe Chapman

**Also Present:** There were 8 members of the public.

**Burgess Crick Owen made a motion to accept the March 12, 2024 regular meeting minutes,**  
seconded by Burgess Phillips and unanimously approved.

**Budget:** Warden Maher presented the proposed budget for 2024-2025. Line items were discussed individually. Senior Burgess Gardner secured a lower electric rate for street lights allowing the street lights line item to be reduced by \$1,500.00. The Proposed Mill Rate for 2024-2025 is set at 0.66%.

**Burgess Gaston made a motion to present the proposed budget for approval at the May 14, 2024 meeting of property owners and/or electors,**  
seconded by Burgess Crick Owen and  
unanimously approved.

**Warden's Report:** Warden Maher introduced Dr. Gjoka, the principal of St. Rose of Lima. Dr. Gjoka made a presentation requesting ARPA funds to assist in the purchase of three projects (see attached). Burgess Gaston inquired if the school playground, outlined in the presentation, is accessible to the public. Dr. Gjoka explained it is only accessible to St. Rose students, their families and those children that attend religious education. Burgess Gaston expressed his opinion, the playground and boiler for the preschool are not in line with parameters of ARPA funding. He did however say the security system appropriately falls within potential use of ARPA funds and is supported legally (see attached Snyder vs. Newtown). Burgess Madzula II concurred with Burgess Gaston's sentiments. Due to the absence of Burgess Modzelewski and Senior Burgess Gardner, the Board of Burgesses agreed to postpone further discussion until next month's Borough meeting.

**Burgess Crick Owen made a motion to table further conversations for possible ARPA funding for St. Rose of Lima School until the May Borough meeting,** seconded by Burgess Gaston and unanimously approved.

**Burgess Gaston made a motion to add American Legion Post 202 presenter Donna Monteleone, to the agenda for purposes of discussion and action as to funding luminaries at the Soldiers and Sailors monument,** seconded by Burgess Crick Owen and unanimously approved.

Post Commander Monteleone presented the various activities occurring during the Memorial Day weekend at the Soldiers and Sailors monument. She also mentioned the sale of luminaries that will be lit at the monument during the holiday weekend. She stated the proceeds will benefit their scholarship fund and assist veterans. She requested the Board of Burgesses consider donating again to the cost of luminaries and for permission to use the Soldiers and Sailors monument during the Memorial Day weekend.

**Burgess Gaston made a motion to appropriate, from the Soldiers and Sailors line item, \$300.00 for the luminaries and to allow the American Legion Post 202 to use the Soldiers and Sailors monument for their event during the Memorial Day weekend,** seconded by Burgess Madzula II and unanimously approved.

Warden Maher reported Borough Counsel confirmed with the Secretary of State the pending change in election regulations for the state of Connecticut requiring early voting days leading up to an election day does not apply to the Borough.

Warden Maher announced the resignation of Borough Conservation Director Robert Sibley effective April 12, 2024. The Board of Burgesses will make inquiries with various individuals regarding the filling of the position.

Warden Maher offered an update to the status of Deep Brook Farm. He received an email from Jody Eldredge reporting the Conservation Commission rated the opportunity and voted to endorse the campaign. Land Use will continue to shepherd the campaign through the town process. Warden Maher will continue to update of any progress on this situation.

**Tree Warden's Report:** Due to the Tree Warden McCulloch absence, Warden Maher reported the intention of replacing a tree at 22 Main Street.

**Tax Collector's Report:** Tax Collector Enriquez reported that for the April 2024: Taxes Collectable \$226,668.21; Current Taxes: \$223,320.34; Back Taxes: \$324.85; Interest: \$933.28; Liens & Fees: \$48.00. Total Submitted to Treasurer to Date: \$222,700.00. Current Taxes Collected: \$222,350.33 representing 98.10%. Please review attached for March 2024.

**Burgess Gaston made a motion to accept the Tax Collector's Report for April 2024,** seconded by Burgess Madzula II and unanimously approved.

**Treasurer's Report:** The April 2024 report presents: No deposits were made from the Borough Zoning Office. A deposit of \$2,700.00 was made from Tax Collector, Jodie Enriquez. A transfer of \$15,622.63 was made to cover last month's invoicing and payroll. There was a transfer of \$2,700.00 made into the ISC Account from the Borough Operating Account. A transfer of \$15,622.63 was transferred from the ISC Account to the Borough Operating Account. Interest on the 13 mo. CD was \$258.77 making a total of \$70,413.95. Please review the attached report for April 2024.

**Burgess Madzula II made a motion to accept the Treasurer's Report for April 2024,**  
seconded by Burgess Crick Owen and unanimously approved.

Treasurer Brinkman reported the CD is due for renewal in this month. She presented the best rates for renewal as 6 month @ 4.5% APY or 9 month @ 5.0% APY. The Burgesses discussed these options and agreed upon the 9-month rate.

**Burgess Gaston made a motion to renew the CD in the amount of \$70,413.95 for a 9-month term at 5.0% APY,** seconded by Burgess Madzula II.

**Zoning Enforcement Officer's (ZOE) Report:** Due to Zoning Enforcement Officer Joe Chapman absence, he submitted the following report:

1. Main St #11, issue with exterior renovations without any permits in the Historic District. Cease and Desist issued immediately, owner responded promptly here at the office. Work stopped, Historic District Certificate of Appropriateness application delivered by owner to HD chair as required. Waiting for decision from HD Commission before any sign offs by Building Department or Zoning.
2. Church Hill Rd #11, (previous non permitted apartments issue, recent re-inspection) owner has submitted an application for a text amendment to allow apartments below professional use. Text amendment hearing underway.
3. Castle Hill Rd #20, we have received four complete copies of the application for P&Z. One set is available for public review at the office. Additional public appointments will be available at the office to receive written questions for the Commission or to review the submittals.
4. Church Hill Rd #13, handicap ramp building application signed, direct replacement.
5. Hanover Rd #27, small amount of yard regrading proposed, no impact, approved.  
Held over from prior reports:
  1. Mt. Pleasant Rd #53, water issue complaint about drainage onto #53 driveway from the Enclave. In discussion with John Curtis (Town Engineer) about this.
  2. Church Hill Rd #27, interior work underway, no final inspection (CO) has been requested yet. Anticipate end of May 2024 for CO.
  3. Juniper Rd #9, complaint received about two trailers parked in driveway, abutter attempting to speak to neighbor first before filing formal complaint. No further information or complaint received yet.
  4. Request received to determine feasibility to split #64 Main St into two lots and #6 Schoolhouse Rd into two lots. Recommended owner talk to surveyor and attorney to confirm what appears to be a possibility based on GIS & Assessors card review.

**Historic District:** Burgess Phillips reported the Bicentennial Gala “Save the Date” cards have been mailed and the website to purchase tickets to attend the May 16<sup>th</sup> event is up and running.

Warden Maher reported a public hearing will be held on April 18, at 7:00pm in the Lower Meeting Room in Edmond Town Hall to discuss the property at 11 Main Street.

**Sidewalks:** Warden Maher reported the mandatory pre-bid walk through occurred on Friday, April 5, at 10:00am with two bidders in attendance. Bids are to be submitted by Wednesday, April 17 by 11:00am followed by the bids being open for public review.

**Streets & Parks:** Nothing new to report.

**New Business:** None

**Old Business:** Warden Maher reported the Borough vault contents have been successfully moved from upstairs to its new location downstairs in the Edmond Town Hall.

**Public Participation:** Owen Tanzer, reporter from the Newtown Bee, asked what the deadlines are for the Borough using the ARPA funds. Warden Maher stated ARPA funds are to fully allocated by December 31, 2024, and fully spent within 2 years of December 31, 2024.

Charlie Copp, of 6 Wendover Road, inquired about ongoing zoning issues with the property at 11 Church Hill Road. Warden Maher suggested Mr. Copp attend the upcoming Borough Zoning meeting being held on Wednesday, April 17, at 7:00pm in the Lower Meeting Room in the Edmond Town Hall to express his concerns.

**A meeting of the property owners and/or electors of the Borough of Newtown will be held on May 14, 2024 at 7:30 p.m. in the Gymnasium at Edmond Town Hall for the purpose of voting on the proposed budget for the fiscal year 2024-2025. The regular meeting of the Board of Burgesses will be held immediately following the meeting of the property owners in the Lower Meeting Room in Edmond Town Hall, Newtown, CT.**

**There being no further business, Burgess Gaston made a motion to adjourn the meeting at 8:34 p.m.,** seconded by Burgess Crick Owen and unanimously approved.

Respectfully submitted,

Ann Scaia  
Borough Clerk

# NEWTOWN BOROUGH TAX

MONTHLY REPORT THROUGH: MARCH 2024

TOTAL TAXES DUE FOR GRAND LIST 2022:	\$226,830.85
LAWFUL CORRECTIONS:	INCREASE \$2.07
	DECREASE -\$164.71
TAXES COLLECTABLE:	\$226,668.21

## AMOUNTS COLLECTED TO DATE:

CURRENT TAX:	\$223,320.34
BACK TAX	\$324.85
INTEREST:	\$933.28
LIENS & FEES:	\$48.00
TOTAL COLLECTED TO DATE:	\$224,626.47

TOTAL SUBMITTED TO TREASURER TO DATE:	\$222,700.00
REFUND GIVEN FROM CURRENT YR TAX	\$0.00
REFUNDS FROM PRIOR YEARS	(\$123.58)
BOUNCED CHECKS	\$0.00
	\$222,576.42

## TAX COLLECTION SUMMARY:

GL 2022	TAXES COLLECTED	\$223,320.34	
	TAXES SUSPENDED	\$0.00	
	TRANSFERS	\$0.00	
	BOUNCED CHECKS	\$0.00	
	REFUNDS	-\$970.01	
	TOTAL CURRENT TAX COLLECTED	\$222,350.33	98.10%
	UNCOLLECTED TAXES	\$4,317.88	1.90%
	OVERPAYMENTS	-\$64.77	

## NOTE:

BACK TAXES OUTSTANDING FOR LIST 2020 AND PRIOR:	
UNCOLLECTED TAXES	\$1,302.11
OVERPAYMENTS FROM PRIOR YEARS	-\$100.71
	\$1,201.40

ADJUSTMENTS	\$0.39
TRANSFER (TO CURRENT YEAR)	\$0.00
BOUNCED CHECK FROM BT PAID	\$0.00
REFUND FR PRIOR YEAR	-\$123.58

DATE:

9-Apr-24

SIGN: *Jodie Enriquez*  
BOROUGH TAX COLLECTOR

<b>BOROUGH OF NEWTOWN</b>							
<b>Treasurer's Report</b>							
<b>Month Ending March 31, 2024</b>							
		<b>ACCOUNT 673</b>	<b>ACCOUNT 2470-D</b>	<b>ACCOUNT 873</b>	<b>TOTAL</b>		
		Operating Account	Insured Cash Sweep	American Rescue Plan			
<b>BEGIN 3/1/2024</b>		\$250,099.06	\$244,588.50	\$143,459.92	\$638,147.48		
<b>Interest Transfer</b>		-\$99.06	\$99.06		\$0.00		
<b>Transfer to Clerk's Account</b>							
Check #361		-\$4,422.63			-\$4,422.63		
Check #362		-\$11,200.00			-\$11,200.00		
<b>Transfer in from ICS Account</b>		\$15,622.63	-\$15,622.63		\$0.00		
<b>Deposit from Tax Collector</b>							
YTD: \$222,700		\$2,700.00	\$0.00		\$2,700.00		
<b>Deposit Bldg/Zoning/Misc</b>		\$0.00			\$0.00		
<b>Transfer out to ICS Acct.</b>		-\$2,700.00	\$2,700.00		\$0.00		
<b>Interest Earned 3/31/24</b>		\$99.06	\$1,095.91	\$39.79	\$1,234.76		
<b>ENDING BALANCE 3/31/24</b>		\$250,099.06	\$232,860.84	\$143,499.71	\$626,459.61		

		<b>CD ACCOUNT 814</b>	
		matures 4/16/24	
<b>BEGIN 2/1/2024</b>		\$70,155.18	
<b>Interest earned 3/31/2024</b>			
4.75% APY		\$258.77	
<b>ENDING BALANCE 3/31/2024</b>		\$70,413.95	
Respectfully submitted 4/9/2024			

**BOROUGH OF NEWTOWN  
NEWTOWN, CONNECTICUT**

Notice is hereby given that the Borough Meeting of the property owners and/or electors of the Borough of Newtown will be held at 7:30pm on May 14, 2024, in the Gym at the Edmond Town Hall for the purpose of voting on the proposed budget for the fiscal year 2024-25. Estimated Budget recommended by the Board of Burgesses of the Borough of Newtown is hereby set below in accordance with the General Statutes of the State of Connecticut.

	<u>Expenditure 2022-2023</u>	<u>Estimated Budget 2023-2024</u>	<u>Proposed Budget 2024-2025</u>
ADVERTISING	1,624	2,000	2,000
AUDIT	7,800	7,500	7,800
AUXILIARY HELP	1,660	2,500	2,500
BONDS & INSURANCE	120	200	200
CULTURAL ARTS	0	0	0
CONSULTING	464	1,500	1,500
CONTINGENCY	3,000	3,000	3,000
DATA PROCESSING	2,055	4,000	4,500
ELECTION	2,613	0	2,500
FIRE HYDRANT	95,817	90,000	90,000
FIRE DEPARTMENT	6,500	6,500	6,500
HEALTH DISTRICT	10	10	10
HISTORIC DISTRICT	9,124	100	100
LEGAL FEES	2,002	11,000	11,000
SIDEWALKS	83,279	10,000	10,000
STREET LIGHTS	28,516	27,000	25,500
OFFICE MAIN. & SUPPLIES	3,009	3,000	3,000
TREES & MAINTENANCE	31,262	1,500	1,500
SOLDIERS & SAILORS	300	500	500
STREETS & PARKS	11,529	13,000	13,000
FLAGPOLE	100	100	100
SOCIAL WORK	10	10	10
ASSESSOR	4,000	4,200	4,410
CLERK	7,000	7,350	7,718
TAX COLLECTOR	8,500	8,925	9,371
TREASURER	5,500	5,725	6,011
WARDEN	2,500	2,500	2,500
BUILDING OFFICIALS	4,000	4,000	4,000
CONSERVATION DIRECTOR	1,000	1,000	1,000

	Estimated Budget 2022-2023	Proposed Budget 2023-2024	Proposed Budget 2024-2025
ENGINEER	1,362	1,800	1,800
BUILDING CLERK	4,313	4,500	4,500
ZONING OFFICER	9,563	13,500	13,500
TREE WARDEN	2,500	2,500	2,500
PAYROLL TAXES	3,000	3,000	3,000
EDMOND TOWN HALL	4,000	4,000	4,000
RAM PASTURE HOLIDAY	1,000	1,000	1,000
BICENTENNIAL FUND	0	2,500	0

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<b>GRAND TOTALS</b>	<b>\$</b>	<b>349,032</b>	<b>249,920</b>	<b>250,530</b>
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Revenue Anticipated from Prior Year \$12,000

Building Revenue Anticipated \$1,000

Interest \$15,000

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Total Revenues Anticipated \$28,000

Money to be raised from taxes  $\$250,530 - \$28,000 = \$222,530$

99% Tax Collection Rate

$1.01 \times \$222,530 = \$224,755$

$\$224,755$  divided by  $\$340,992,486$  (1000's Grand List - Mill) = 0.66

2024-2025 Proposed Mill Rate = 0.66

Note: Pre-Revaluation

2016-2017 MILL RATE - 0.86

2017-2018 MILL RATE - 0.85

2018-2019 MILL RATE - 0.95

2019-2020 MILL RATE - 0.67



**2020-2021 MILL RATE - 0.66**

**2021-2022 MILL RATE - 0.64**

**2022-2023 MILL RATE - 0.76**

**2023-2024 MIL RATE - 0.67**

**Joseph M. Maher III**

**Warden, Borough of Newtown**

**BOARD OF BURGESSES**

**Christopher Gardner, Senior Burgess**

**Sarah J. Phillips, Burgess**

**Maureen Crick Owen, Burgess**

**James O. Gaston, Burgess**

**Jared Modzelewski, Burgess**

**John Mazula II, Burgess**

From: Dr. Bardhyl Gjoka <principal@srles.com>  
To: "jaymaher1@yahoo.com" <jaymaher1@yahoo.com>  
Sent: Thursday, March 14, 2024 at 02:52:41 PM EDT  
Subject: St Rose School Projects – Request for Consideration

Dear Mr. Maher,

I hope you are doing well.

My name is Bardhyl Gjoka (Dr. G.), and I am the principal of St. Rose School in Newtown.

I am writing to ask you and your team to consider helping St. Rose with projects that need funding. One of the school's greatest needs is to upgrade the school security system, which will cost approximately 25k.

The other two projects that our school needs help with are:

The preschool boiler will cost approximately 35k.

Playground upgrade with a cost of approximately 18k.

I would like to attend your next meeting on April 9 at 7:30 PM. Please let me know if I can attend.

Kind regards,

Bardhyl (Dr. G.)

Dr. Bardhyl Gjoka  
Principal  
St. Rose of Lima School  
40 Church Hill Road  
Newtown, CT 06470  
stroseschool.com

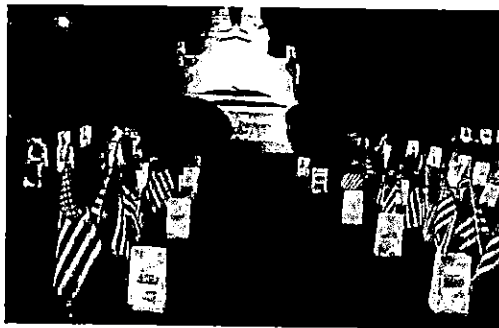
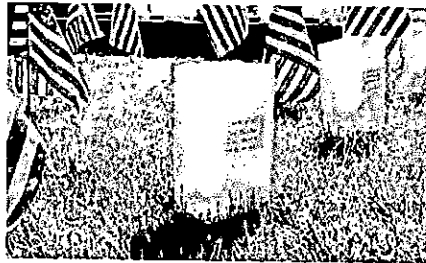
**Ceremony of Remembrance**  
**Memorial Day Weekend**  
**Saturday, May 25<sup>th</sup>, 5pm**  
**at Soldiers & Sailors Monument 2024**

across from Edmond Town Hall, Main Street, Newtown  
Parking behind Edmond Town Hall or on the street available

**American Legion Post 202**

*serving Newtown and Brookfield*

Music performed by Newtown HS Tri-M Club



Luminaries to be lit Saturday, Sunday, and Monday evenings

Luminary sponsorship is available.

Reach out to [AmericanLegionNewtown@gmail.com](mailto:AmericanLegionNewtown@gmail.com) or call (203) 577-9568

3 Primrose Street  
Newtown, CT 06470  
203-270-4351  
Fax: 203-270-4278  
rob.sibley@newtown-ct.gov

# Borough of Newtown

**Date:** March 28, 2024

**To:** Jay Maher, Burgess, Borough of Newtown

**From:** Rob Sibley, Town of Newtown, Land Use & Planning Director

**RE:** Borough Conservation Director Resignation

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Good Afternoon Jay,

I will be stepping down as Borough Conservation Director, effective April 12<sup>th</sup> 2024.

I have truly appreciated the opportunity to serve in this capacity for the last 19 1/2 years.

# Snyder v. Newtown

**147 Conn. 374 (1960)**

FRANCIS H. SNYDER ET AL. v. TOWN OF NEWTOWN ET AL.

**Supreme Court of Connecticut.**

Argued February 2, 1960.

Decided May 31, 1960.

BALDWIN, C. J., KING, MURPHY, MELLITZ and SHEA, Js.

\*375 Philip Reich, with whom was George Baiter, for the plaintiffs.

James J. O'Connell, with whom were Thomas J. Dolan and, on the brief, Albert L. Coles, for the defendants John M. Ross et al.

Henry F. Cooney appeared for the defendants Sarah J. Holian et al.

BALDWIN, C. J.

This action for a declaratory judgment and injunctive relief was brought in September \*376 1958, and was reserved upon stipulated facts for the advice of this court. The plaintiffs challenge the constitutionality of what is now General Statutes § 10-281, concerning transportation for pupils in nonprofit private schools.[1] The statute, so far as the facts here are concerned, purports, in subsection \*377 (a) to empower a municipality to provide transportation for pupils attending a nonprofit private school as well as for those attending public school, if the majority of the children attending the private school are from the municipality. Any municipality which was providing such transportation on October 1, 1957, the date the act went into effect, may continue to do so until a vote taken pursuant to subsection (b) of the act determines otherwise. Subsection (b) provides that upon the petition of at least 5 per cent of the electors on the last completed registry list of the municipality, the

question whether transportation shall be furnished to private school pupils shall be submitted to a special meeting of the electors and, if a majority approves, the transportation shall be furnished as of the beginning of the next fiscal period of the municipality.

The stipulation and the admitted allegations of the complaint disclose the following facts: The plaintiffs are electors, citizens and resident taxpayers of the town of Newtown, which in September, 1958, had a population of approximately 9500 people and an area of approximately sixty square miles. Its fiscal year begins on October 1. Its total revenue for the year ending September 30, 1958, was approximately \$750,000. There were, on October 1, 1958, 1487 pupils in the public schools, including the high school. St. Rose's Roman Catholic Elementary School, a private parochial school, is not conducted for profit. It is under the control and supervision of the ministry of the Roman Catholic Church, and the pupils are instructed in Roman Catholic tenets and doctrines. The canons of the Roman Catholic Church provide, in substance, that Roman Catholic children shall be taught nothing contrary to the Catholic faith and good morals and that religious \*378 and moral training shall occupy the principal place in the school curriculum. In the elementary schools, the children must, in

accordance with their age, be instructed in Christian doctrine, and the young people who attend the higher schools must receive a fuller religious training by priests conspicuous for their zeal and learning. Roman Catholic children are not allowed to attend nonCatholic schools except under circumstances and safeguards determined by the bishop of the diocese. St. Rose's School first opened on September 3, 1958, with 217 pupils, all from Newtown. As of June, 1959, there were four grades. The pupils are instructed by nuns. The school is accredited under the rules and regulations of the state board of education. See General Statutes §§ 10-4, 10-184, 10-188. Attendance at St. Rose's School satisfies the requirements of General Statutes § 10-184, which allows a child to attend a school other than a public school if he receives "equivalent instruction in the studies taught in the public schools," and § 10-188, which requires the teachers of private schools to keep registers of attendance and to make reports and returns similar to those received from the public schools. There is no other nonprofit private school in Newtown in which the majority of the children come from Newtown.

On October 1, 1958, 1413 pupils were being transported to the public schools in Newtown and 217 to St. Rose's School. The busses used were privately owned and were operated



under a contract with the town board of education. The superintendent of schools established the routes. The regulations concerning transportation by school bus took into consideration the age of the pupils and the distance between their homes and the schools they attended. The regulations obviously sought to avoid the hazards \*379 of highway traffic to pedestrians and to assist the children in getting to school in inclement weather. The routes proceed along heavily traveled state highways and state-aid and town roads where there are few sidewalks. They traverse sparsely settled rural areas as well as residential areas and business districts. The pupils attending the public schools and St. Rose's School share the same busses and have the same hours for school and the same school days. The cost of the transportation is paid from the general fund of the town, which includes moneys derived from property taxes, the school fund, and fees, licenses and permits. The furnishing of transportation to the pupils of St. Rose's School causes some additional expense to the town. The electors of Newtown had, on August 16, 1958, approved the supplying of this transportation, and it began on October 1, 1958.

In *Everson v. Board of Education*, 330 U.S. 1, 67 S. Ct. 504, 91 L. Ed. 711, the Supreme Court of the United States had

before it a New Jersey statute which authorized district boards of education to make rules and contracts for the transportation of children to and from schools other than private schools operated for a profit. The boards provided reimbursement to parents for the fares paid to public carriers for transportation of children attending public and parochial schools. A divided court decided that the expenditure of tax-raised funds thus authorized was for a public purpose; that the statute did not violate the first amendment to the federal constitution, which prohibits any "law respecting an establishment of religion" and is made applicable to the states by the fourteenth amendment; and that the statute did not violate the due process and equal protection clauses of the fourteenth amendment.

\*380 Whether the exclusion of children attending private schools operated for profit denied them the equal protection of the laws was not discussed, since the question was not raised and the record failed to show that there were any children in the district who attended, or would have attended but for the cost of transportation, any school other than public schools and Catholic schools. *Id.*, p. 4 n.2. The decision upheld a decision of the New Jersey Court of Errors and Appeals on the federal questions involved. *Everson v. Board of Education*, 133 N.J.L. 350, 44 A.2d 333.

The decisions of the Supreme Court of the United States on questions concerning the federal constitution are binding on the state courts. *Hempstead v. Reed*, 6 Conn. 480, 488; *Trustees of Bishop's Fund v. Rider*, 13 Conn. 87, 93; *State v. Palko*, 122 Conn. 529, 539, 191 A. 320; *Wojculewicz v. Cummings*, 143 Conn. 624, 629, 124 A.2d 886. Its decision in the *Everson* case, *supra*, disposes of the plaintiffs' claims under the federal constitution except in one respect, that is, that § 10-281, because it provides for the furnishing of transportation for children attending nonprofit private schools but not for children attending private schools conducted for profit, denies the latter the equal protection of the laws and discriminates against them. U.S. Const. Amend. XIV § 1. Whether § 10-281 is unconstitutional in that respect we are not now called upon to decide. It does not appear that any of the plaintiffs are persons who are being denied transportation because they are attending, or propose to attend, a private school conducted for profit. Since the plaintiffs are not members of the class which is claimed to be discriminated against, they cannot challenge the constitutionality of the statute on the ground in question. *McAdams \*381 v. Barbieri*, 143 Conn. 405, 411, 123 A.2d 182; *Carroll v. Socony-Vacuum Oil Co.*, 136 Conn. 49, 59, 68 A.2d 299; 11 Am. Jur. 759, § 114.

The plaintiffs claim that § 10-281 violates article first, §§ 1 and 12, of the Connecticut constitution in that § 10-281 discriminates against those attending private schools conducted for profit and provides for the use of public funds for a private purpose. The equal protection and due process clauses of the federal constitution and the corresponding provisions of §§ 1 and 12 of article first of our state constitution have substantially the same meaning. *Karen v. East Haddam*, 146 Conn. 720, 726, 155 A.2d 921; *New Haven Metal & Heating Supply Co. v. Danaher*, 128 Conn. 213, 219, 21 A.2d 383; *State ex rel. Brush v. Sixth Taxing District*, 104 Conn. 192, 195, 132 A. 561. The plaintiffs are in no better position to raise the claim of discrimination under the state constitution than they are to raise it under the federal constitution. As regards their second point, it is true that a tax may not be imposed to provide funds to carry out a private, as distinguished from a public, purpose. *Beach v. Bradstreet*, 85 Conn. 344, 348, 82 A. 1030; *Lyman v. Adorno*, 133 Conn. 511, 515, 52 A.2d 702. But "[i]t is much too late to argue that legislation intended to facilitate the opportunity of children to get a secular education serves no public purpose." *Everson v. Board of Education*, 330 U.S. 1, 7, 67 S. Ct. 504, 91 L. Ed. 711; *Cochran v. Louisiana Board of Education*, 281 U.S. 370, 50 S. Ct. 335, 74 L. Ed. 913; *Interstate Consolidated Street Ry.*

Co. v. Massachusetts, 207 U.S. 79, 87, 28 S. Ct. 26, 52 L. Ed. Ill; Forman Schools, Inc. v. Litchfield, 134 Conn. 1, 9, 54 A.2d 710; see Baker v. West Hartford, 89 Conn. 394, 399, 94 A. 283; notes, 63 A.L.R. 413, 118 A.L.R. 806.

\*382 The "little red schoolhouse" maintained by a school district will ever have, for those who remember it, many happy associations. The present concept, however, is to bring pupils from far and near to a modern school building capable of housing all the grades necessary for a complete elementary or high school program. Distance, the frequent inclemency of the weather, and the hazards of automobile traffic make transportation of school children indispensable. It cannot be said that their transportation does not serve the purpose of education, and "[e]ducation in itself serves a public purpose." Forman Schools, Inc. v. Litchfield, *supra*, 9. It is clear, therefore, that the transportation of school children serves a public purpose, and the plaintiffs' argument on this point is untenable. A statute which serves a public purpose is not unconstitutional merely because it incidentally benefits a limited number of persons. Amsel v. Brooks, 141 Conn. 288, 297, 106 A.2d 152; Barnes v. New Haven, 140 Conn. 8, 14, 98 A.2d 523; Warner v. Gabb, 139 Conn. 310, 313, 93 A.2d 487; State ex rel. Higgins v. Civil Service Commission, 139

Conn. 102, 106, 90 A.2d 862; Lyman v. Adorno, 133 Conn. 511, 516, 52 A.2d 702.

The plaintiffs place their main reliance for constitutional invalidity upon article seventh, § 1, of the constitution of Connecticut.[2] The question is whether Newtown, by providing transportation for pupils of

\*383 St. Rose's School, is compelling the plaintiffs, as well as other taxpayers in the town who are situated as the plaintiffs are, to support a parochial school and, by doing so, to support the Roman Catholic Church.

A very brief resume of the history behind article seventh, § 1, of our constitution, which was adopted in 1818, is helpful to an understanding of the meaning and intent of the language used. The preamble to the Fundamental Orders, Connecticut's, and the world's, first written constitution creating a government, states, after reciting the need for "an orderly and decent Government established according to God," that the founders, that is, the inhabitants of Windsor, Hartford and Wethersfield, do "associate and conjoin ... to be as one Public State or Commonwealth; and do ... enter into Combination and Confederation together, to maintain and preserve the liberty and purity of the Gospel of our Lord Jesus which we now profess, as also the discipline of

the Churches, which according to the truth of the said Gospel is now practiced amongst us; as also in our civil affairs to be guided and governed according to such Laws ... as shall be ... decreed" in the manner provided in the subsequent orders. The founders were a homogeneous people belonging, for the most part, to what was to them the one and only church. Guardianship of that church was a basic \*384 policy with them, and they regarded the state as the secular arm of the church. See 1 Col. Rec. 2, 21, 524, 525; Cobb, *The Rise of Religious Liberty in America*, p. 242; Coons, *The Achievement of Religious Liberty in Connecticut*, p. 3 (Conn. Tercentenary Commn., Com. on Hist. Pub., Pamph. No. 60). While the church and state were bound closely together, the privilege of a freeman was never conditioned upon church membership. Cobb, *op. cit.*, p. 245. Ecclesiastical societies, however, were organized by the general court, that is, the legislative body; churches were erected at public expense; the minister was called by a town meeting; and the regular support of the church was raised by a tax on all. *Id.*, 246; Greene, *The Development of Religious Liberty in Connecticut*, p. 58.

In 1669, the general court gave to dissenters from the approved Congregational churches "allowance of their perswasion and profession in church wayes or assemblies

without disturbance"; 2 Col. Rec. 109; but they were still taxed to support the approved churches. Coons, op. cit., p. 11; Cobb, op. cit., pp. 255, 264. Connecticut witnessed no such persecutions as occurred in other colonies. As tolerance gradually increased, further concessions were made to dissenters; these had the effect of enabling dissenters to pay for the support of the churches of their choice rather than the approved churches. Acts & Laws, 1769, pp. 169-171 (acts of May 11, 1727; May 8, 1729; Oct. 9, 1729); Statutes, 1784, pp. 21, 22; Cobb, op. cit., p. 501; Coons, op. cit., p. 22. Down to the time of the adoption of article seventh of the constitution of 1818, however, there was still a very large measure of authority in the general court over church affairs, with power to compel support of the church and attendance at services. The purpose of article \*385 seventh, and it finds its counterpart in the federal constitution and other state constitutions, was, in the words of Jefferson, to erect "a wall of separation between Church and State." 16 Writings of Thomas Jefferson 282; see *Everson v. Board of Education*, 330 U.S. 1, 16, 67 S. Ct. 504, 91 L. Ed. Ill; *Reynolds v. United States*, 98 U.S. 145, 164, 25 L. Ed. 244; *Jewett v. Thames Bank*, 16 Conn. 511, 516; *Second Ecclesiastical Society v. First Ecclesiastical Society*, 23 Conn. 255, 274; Cobb, op. cit., pp. 248, 270, 501, 512, 513.



Let us turn now to the history of tax exemption in this state, because it throws light upon the meaning and intent of article seventh. Lands granted for the ministry of the gospel were exempted as early as 1684. 3 Col. Rec. 158; Statutes, 1702, p. 64. The exemption of church property continued during the following century and was in effect when the constitution was adopted by a convention in September, 1818, and ratified by the people in October, 1818. Statutes, 1784, p. Ill; id., 1796, p. 252; id., 1808, p. 433. At the session of the General Assembly the following May, another law was passed exempting church property from taxation. Public Acts 1819, c. 2, § 14. The Revision of 1821 listed property which was subject to taxation; it did not specifically list church property nor specifically exempt it. Statutes, 1821, p. 444. It did, however, exempt ministers of the gospel from the poll tax, and their houses, lands or other taxable property to the amount of \$2500 from the property tax. Statutes, 1821, pp. 448, 449. In 1822, the General Assembly repaired the omission in the Revision of 1821 and specifically exempted buildings occupied as "colleges, academies, school houses, churches or infirmaries." Public Acts 1822, c. 29. This provision appears in the compilation of \*386 1835. Statutes, 1835, p. 528; see *Masonic Building Assn. v. Stamford*, 119 Conn. 53, 57, 174 A. 301; *Yale University v. New Haven*, 71 Conn. 316, 333, 42

A. 87. Exemption of church property has been continued by the legislature in every compilation or revision of the general statutes since then to the present time. Statutes, 1838, p. 602; *id.*, 1849, p. 603, § 11; *id.*, 1854, p. 838, § 6; Rev. 1866, p. 707, § 6; Rev. 1875, p. 154, § 12; Rev. 1888, § 3820; Rev. 1902, § 2315; Rev. 1918, § 1160; Rev. 1930, § 1163; Rev. 1949, § 1761; Rev. 1958, § 12-81. A practical construction placed upon a constitutional provision immediately after its adoption and consistently and repeatedly followed by the legislature for over a century thereafter is most persuasive. *Cahill v. Leopold*, 141 Conn. 1, 14, 103 A.2d 818; *Water Commissioners v. Curtis*, 87 Conn. 506, 511, 89 A. 189. The continued legislative exemption of church property from taxation is strong evidence of the meaning of the constitutional prohibition against compulsory support of a church.

Exemption from taxation is the equivalent of an appropriation of public funds, because the burden of the tax is lifted from the back of the potential taxpayer who is exempted and shifted to the backs of others. *Lyman v. Adorno*, 133 Conn. 511, 516, 52 A.2d 702. The owners of tax-exempt property in the community derive the same benefits from government as other property owners but pay no property taxes for those benefits. This is true whether the

relief from taxation be considered an exemption, as the legislature has described it, or results from a policy of considering church property not ratable for tax purposes. We conclude that the word "support" in article seventh was never intended to be employed in so narrow a sense as to prevent every sort of incidental \*387 public assistance to, and encouragement of, religious activity.

With this background, we consider whether the use of tax-derived public funds to provide transportation for children to a school maintained by a church constitutes support of that church. To place the problem in proper focus, it is well to take note of the historic position of the state toward education. Our system of public schools had an early origin. Statutes, 1672, p. 62; 2 Col. Rec. 176. The purpose of the early as well as the later legislation was to provide at public expense schools for all, and particularly for those who could not otherwise obtain schooling. See General Statutes § 10-15. Education in this state was made compulsory long ago. Statutes, 1672, p. 13; General Statutes § 10-184. Parents or those who have charge of a child of school age are under a duty, enforceable by law, to send that child to public school unless he "is elsewhere receiving equivalent instruction ... in the studies taught in the public schools." General Statutes § 10-184; see Public Acts 1842, c. 28; Public Acts

1872, c. 77, §§ 1, 2. The state can compel school attendance, but it cannot compel public school attendance for those who choose to seek, and can find, the equivalent elsewhere.

*Pierce v. Society of Sisters*, 268 U.S. 510, 534, 45 S. Ct. 571, 69 L. Ed. 1070; *Judd v. Board of Education*, 278 N.Y. 200, 211, 15 N.E.2d 576.

The constitutionality of legislation authorizing transportation, at public expense, for children attending parochial schools has been upheld in states where the constitutional provisions invoked in opposition are couched in language stronger and more precise than that contained in article seventh. *Bowker v. Baker*, 73 Cal. App. 2d 653, 658, 167 P.2d 256; \*388 *Nichols v. Henry*, 301 Ky. 434, 438, 191 S.W.2d 930; *Board of Education v. Wheat*, 174 Md. 314, 323, 199 A. 628; *Adams v. County Commissioners*, 180 Md. 550, 556, 26 A.2d 377; see *Chance v. Mississippi Textbook Rating & Purchasing Board*, 190 Miss. 453, 468, 200 So. 706; *Cochran v. Louisiana Board of Education*, 281 U.S. 370, 375, 50 S. Ct. 335, 74 L. Ed. 913. The reasoning in these cases is substantially that advanced in *Everson v. Board of Education*, 330 U.S. 1, 67 S. Ct. 504, 91 L. Ed. 711, that is, that public transportation to private schools aids the parents, who are under the compulsion of law to send their children to school; that it is a measure to promote the safety

of the children; and that therefore it helps the parents and the children and not the school. A passage in *Chance v. Mississippi Textbook Rating & Purchasing Board*, *supra*, 467, which concerns free schoolbooks for pupils in all elementary schools, states the argument in this fashion: "The religion to which children of school age adhere is not subject to control by the state; but the children themselves are subject to its control. If the pupil may fulfil its duty to the state by attending a parochial school it is difficult to see why the state may not fulfil its duty to the pupil by encouraging it 'by all suitable means.' The state is under duty to ignore the child's creed, but not its need. It cannot control what one child may think, but it can and must do all it can to teach the child how to think. The state which allows the pupil to subscribe to any religious creed should not, because of his exercise of this right, proscribe him from benefits common to all." The plaintiffs have cited cases from other states which hold that legislation providing for the transportation of children to parochial schools at public expense is unconstitutional; most of them are distinguishable \*389 on the peculiar language of the constitutional provision concerned or on their facts.

Section 10-281 gives a broad discretion to the town. It accords to the people of the town the power to decide

whether to furnish transportation for pupils attending nonprofit private schools and to the board of education the duty of implementing any decision to provide such transportation. The people of the town can revoke their decision if they find the burden too great or the operation improperly handled. The statute is a legislative exercise of the police power of the state. Police power generally means the power to govern and belongs to every sovereignty. *Allyn's Appeal*, 81 Conn. 534, 538, 71 A. 794; *State v. Coleman*, 96 Conn. 190, 192, 113 A. 385; see *State v. Gordon*, 143 Conn. 698, 702, 125 A.2d 477; 2 *Cooley, Constitutional Limitations* (8th Ed.) p. 1223. It can be lawfully exercised only in the public interest.. Constitutions do not describe it. They circumscribe it so that it cannot be used in contravention of private rights guaranteed by the constitution. Collisions between the exercise of the police power and constitutional limitations or prohibitions are frequent. They occur when government in the furtherance of a claimed public purpose meets the individual citizen asserting an alleged constitutional right. And so in this case, the legislature, thinking to serve the welfare of parents and school children as well as that of the public, made provision for transportation to school at public expense. Private citizens claim, as they have the right to do, a violation of article seventh of the state constitution, proscribing any law

to compel a person "to join or support" any church or religious association.

"The limit of the exercise of the police power is: necessarily flexible, because it has to be considered \*390 in the light of the times and the prevailing conditions." *State v. Gordon*, supra, 703; *State v. Hillman*, 110 Conn. 92, 105, 147 A. 294. When a question of constitutionality is raised, courts must approach it with caution, examine it with care, and sustain the legislation unless its invalidity is clear. *Edwards v. Hartford*, 145 Conn. 141, 145, 139 A.2d 599; *Schwartz v. Kelly*, 140 Conn. 176, 179, 99 A.2d 89; *State v. Muolo*, 119 Conn. 323, 325, 176 A. 401; 1 *Cooley*, op. cit., p. 371; 11 *Am. Jur.* 776, § 128. "It is not enough that a statute goes to the verge of constitutional power. We must be able to see clearly that it goes beyond that power. In case of real doubt a law must be sustained." Holmes, J., in *Interstate Consolidated Street Ry. Co. v. Massachusetts*, 207 U.S. 79, 88, 28 S. Ct. 26, 52 L. Ed. 111.

Article seventh, like the establishment of religion clause in the first amendment to the federal constitution, inter alia means that " [n] either a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over

another. Neither can force nor influence a person to go to or remain away from church against his will or force him to profess a belief or disbelief in any religion. No person can be punished for entertaining or professing religious beliefs or disbeliefs, for church attendance or non-attendance. No tax in any amount, large or small, can be levied to support any religious activities or institutions, whatever they may be called, or whatever form they may adopt to teach or practice religion. Neither a state nor the Federal Government can, openly or secretly, participate in the affairs of any religious organizations or groups and vice versa." *Everson v. Board of Education*, 330 U.S. 1, 15, 67 S. Ct. 504, 91 L. Ed. 711; *Illinois ex rel. McCollum v. Board of Education*, 333 U.S. 203, 210, 68 S. Ct. 461, 92 L. Ed. 649; see General Statutes § 10-34. The statute challenged in the case at bar does none of these things. It aids the parents in sending their children to a school of their choice, as is their right. It protects the children from the dangers of modern traffic and reduces the hazard of contracting illness in bad weather. It is consistent with the present-day policy of gathering children into modern schools for better educational opportunities. It primarily serves the public health, safety and welfare and fosters education. In the light of our history and policy, it cannot be said to compel support of any church. It therefore does not come within



the proscription of article seventh. It comes up to, but does not breach, the "wall of separation" between church and state.

The plaintiffs claim, also, that § 10-281 violates § 2 of article eighth of the Connecticut constitution.[3] This article provides that the "school fund" shall remain a perpetual fund and that the interest from it shall be "inviolably appropriated to the support and encouragement of the public, or common schools throughout the state, and for the equal benefit of all the people thereof." The fund, originally \$1,200,000, derived from the sale of lands in the western reserve claimed by Connecticut. Statutes, \*392 1821, p. 397 n. A statute enacted in 1795 imposed limitations on the use of the interest from the fund. Acts & Laws, 1795 (May Sess.); Statutes, 1796, p. 31; id., 1808, p. 43. The language of article eighth, § 2, of the 1818 constitution is sufficiently similar to that contained in the statute to show that the framers of the constitution were familiar with the statute.

In 1836, a surplus in the federal treasury was apportioned to the states. 5 Stat. 55, § 13. Connecticut's share, \$763,661.38, was parceled out by the General Assembly to the towns in the state on condition that at least one-half of the interest from it be appropriated "for the promotion of

education in the common schools." Public Acts 1836, c. 71, § 4; Statutes, 1838, p. 472, § 4; *id.*, 1854, p. 688, § 9; Conn. Bd. of Educ. Rep., pp. 134, 136 (1888). In 1855, a change was made whereby all the interest from this fund, known as the town deposit fund, was to be appropriated for the support of common schools. Public Acts 1855, c. 84, p. 105; see Rev. 1866, p. 347, § 117; Public Acts 1872, c. 77, § 108; Rev. 1875, p. 89, § 3; General Statutes § 7-353.

The moneys from the school fund and the town deposit fund can be used only for common or public schools because of, as to the school fund, article eighth, § 2, of the constitution and, as to the town deposit fund, the legislative mandate. General Statutes §§ 7-350, 7-353, 10-257. By specific legislative direction, the town deposit fund must be kept and accounted for as a separate fund. General Statutes, c. 107. It has nothing to do with the school fund and is not governed by article eighth, § 2, of the constitution. So far as § 10-281 purports to make available, for the transportation of pupils attending nonprofit private schools, the moneys derived from the school fund, the statute is unconstitutional. As to \*393 the moneys derived from the town deposit fund, the statute is inoperative by virtue of other legislation.

We were asked whether § 10-281 was unconstitutional for any of the reasons set forth in the complaint. To the question propounded, we answer "No, except as to moneys derived from the school fund; as to these, Yes, because of the provisions of article eighth, § 2, of the state constitution."

No costs will be taxed in this court in favor of any party.

In this opinion KING, MURPHY and SHEA, Js., concurred.

MELLITZ, J. (dissenting in part). I concur in the portion of the opinion which discusses the school fund and answers the question propounded "Yes." I disagree to the extent that the opinion answers the question "No," and with the reasoning which leads to that conclusion.

The single issue involved in this aspect of the case is whether Newtown, in paying from public funds other than the school fund for transportation for children attending St. Rose's School, is acting in contravention of article seventh, § 1, of the constitution of this state. The pertinent portion of the constitutional provision is that "no person shall by law be compelled to join or support, nor be classed with, or associated to, any congregation, church or religious association." The issue is one solely of interpretation of this

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and to build and repair houses for public worship, by a tax on the members of any such society only, to be laid by a major vote of the legal voters assembled at any society meeting, warned and held according to law, or in any other manner."

[3] "[Conn. Const. Art. VIII] Sec. 2. The fund, called the SCHOOL FUND, shall remain a perpetual fund, the interest of which shall be inviolably appropriated to the support and encouragement of the public, or common schools throughout the state, and for the equal benefit of all the people thereof. The value and amount of said fund shall, as soon as practicable, be ascertained in such manner as the general assembly may prescribe, published, and recorded in the comptroller's office; and no law shall ever be made, authorizing said fund to be diverted to any other use than the encouragement and support of public, or common schools, among the several school societies, as justice and equity shall require."

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for children attending private schools, YES' and `For transportation for children attending private schools, NO' and such ballot label shall be provided for use in accordance with the provisions of section 9-250. If, upon the official determination of the result of such vote, it appears that the majority of all the votes so cast are in approval of such question, the provisions of subsection (a) shall take effect at the beginning of the next fiscal period of such municipality."

[2] "[Conn. Const. Art. VII] Sec. 1. It being the duty of all men to worship the Supreme Being, the great Creator and Preserver of the Universe, and their right to render that worship, in the mode most consistent with the dictates of their consciences; no person shall by law be compelled to join or support, nor be classed with, or associated to, any congregation, church or religious association. But every person now belonging to such congregation, church, or religious association shall remain a member thereof until he shall have separated himself therefrom, in the manner hereinafter provided. And each and every society or denomination of Christians in this state, shall have and enjoy the same and equal powers, rights and privileges; and shall have power and authority to support and maintain the ministers or teachers of their respective denominations,

any such municipality shall, upon petition of at least five per cent of the electors as determined by the last-completed registry list, submit the question of determining whether the services specified in subsection (a) may be so provided to a vote of the electors of such municipality at a special meeting called for such purpose within twenty-one days after the receipt of such petition. Such petition shall contain the street addresses of the signers and shall be submitted to the municipal clerk, who shall certify thereon the number of names of electors on such petition, which names are on the last-completed registry list. Each page of such petition shall contain a statement, signed under the penalties of perjury, by the person who circulated the same, that each person whose name appears on such page signed the same in person and that the circulator either knows each such signer or that the signer satisfactorily identified himself to the circulator. The warning for such meeting shall state that the purpose of such meeting is to vote on determining whether the services may be provided. Such vote shall be taken and the results thereof canvassed and declared in the same manner as is provided for the election of officers of such municipality, except that absentee voting shall not be permitted. The vote on such determination shall be taken by voting machine and the designation of the question on the voting machine ballot label shall be `For transportation

and is not the same thing as compelling contribution to churches to the extent of the exemption. Cobb, *The Rise of Religious Liberty in America*, p. 523. As was said in *Trustees of Griswold College v. State*, 46 Iowa 275, 282, a constitutional prohibition against the levying of taxes or other rates for church purposes does not embrace a prohibition against exempting church property from taxation. See 2 Cooley, *Constitutional Limitations* (8th Ed.) p. 1089, n.2.

It is my view that the answer to the question propounded in the stipulation for reservation should be "Yes."

## NOTES

[1] "Sec. 10-281. TRANSPORTATION FOR PUPILS IN NONPROFIT PRIVATE SCHOOLS. (a) Any town, city, borough or school district may provide, for its children attending private schools therein, not conducted for profit, when a majority of the children attending such school are from such municipality, any transportation services provided for its children attending public schools. Any such municipality which on October 1, 1957, was providing such services may continue to furnish the same until an official determination to the contrary is voted under the provisions of subsection (b) hereof. (b) The chief executive authority of



children which others receive, because in conscience they or their parents for them desire a different kind of training others do not demand."

The discussion in the majority opinion of the exemption of the property of religious organizations \*397 from taxation is, in my view, not relevant to the question before us. In recognition of the importance of religion to the public welfare, it has been the firmly settled policy of the state since colonial days to leave such property, as property sequestered to public uses, untaxed. We have consistently recognized that the statutes do not grant an exemption in the technical sense but merely state a rule of nontaxability. *Arnold College v. Milford*, 144 Conn. 206, 210, 128 A.2d 537; *Brunswick School v. Greenwich*, 88 Conn. 241, 243, 245, 90 A. 801; *St. Bridget Convent Corporation v. Milford*, 87 Conn. 474, 478, 88 A. 881. This policy has been in pursuance of the "principle that property necessary for the operation of State and municipal governments, and buildings occupied for those essential supports of government, public education and public worship, ought not to be the subject of taxation, [a principle which] has been with us accepted as axiomatic." *Yale University v. New Haven*, 71 Conn. 316, 332, 42 A. 87. The exemption takes nothing from the funds which have been raised by taxation

constitution empowering the legislature to provide for the transportation of children to and from any school. N.Y. Const. Art. XI § 4. In New Jersey, a constitution was adopted in 1947 containing a similar provision. N.J. Const. Art. VIII § 4 (3).

The question we have is purely one of interpretation of a provision written into our constitution and of upholding it as it is written. The law leaves to every man the right to entertain such religious views as appeal to his individual conscience and to provide for the religious instruction and training of his own children to the extent and in the manner he deems essential or desirable. When he chooses to seek for them educational facilities which combine secular and religious instruction, he is faced with the necessity of assuming the financial burden which that choice entails. The observation of Justice Rutledge in his dissent in *Everson v. Board of Education*, 330 U.S. 1, 58, 67 S. Ct. 504, 91 L. Ed. 711, is apposite in this connection: "No one conscious of religious values can be unsympathetic toward the burden which our constitutional separation puts on parents who desire religious instruction mixed with secular for their children. They pay taxes for others' children's education, at the same time the added cost of instruction for their own. Nor can one happily see benefits denied to

distinction between a form of support which is proscribed and a form which is constitutionally permissible. In my view all compulsory support is proscribed, and the only questions to be resolved are whether the expenditure involved constitutes "support" and, if it does, whether the beneficiary of the support is a "congregation, church or religious association" within the meaning of article seventh, § 1, of the constitution. Here, the existence of both elements is established.

The opinion refers to a number of decisions in state courts where the constitutional validity of legislation such as that which is under consideration has been sustained. In most of the state courts where the question has been presented, the legislation has been held to violate state constitutional restrictions. *State ex rel. Traub v. Brown*, 36 Del. 181, 187, 172 A. 835; *Judd v. Board of Education*, 278 N.Y. 200, 211, 15 N.E.2d 576; *Mitchell v. Consolidated School District*, 17 Wash. 2d 61, 65, 135 P.2d 79; *Gurney v. Ferguson*, 190 Okla. 254, 255, 122 P.2d 1002, cert. denied, 317 U.S. 588, 63 S. Ct. 34, 87 L. Ed. 481, rehearing denied, 317 U.S. 707, 63 S. Ct. 153, 87 L. Ed. 564; *Visser v. Nooksack Valley School \*396 District*, 33 Wash. 2d 699, 708, 207 P.2d 198; *McVey v. Hawkins*, 364 Mo. 44, 55, 258 S.W.2d 927. The New York ruling was followed in 1938 by an amendment to the state

organizations' (State ex rel. Traub v. Brown, 36 Del. 181, 187 ...). Without pupils there could be no school. It is illogical to say that the furnishing of transportation is not an aid to the institution while the employment of teachers and furnishing of books, accommodations and other facilities are such an aid.... If the cardinal rule that written constitutions are to receive uniform and unvarying interpretation and practical construction is to be followed, ... it cannot successfully be maintained that the furnishing of transportation to the private or parochial school out of public money is not in aid or support of the school."

The position of the majority is that the transportation is in furtherance of the state's compulsory education policy and that § 10-281 represents \*395 the legislative concern for the welfare and safety of children who must use the highways in attending school in accordance with the requirements of the law. The view is that since the expenditure serves to further the public welfare, it is a form of support which does not offend the proscription of the constitutional provision. The majority opinion does not question that where transportation is required to enable a child to attend school, it is an integral part of the operation of the school, and that payment of the expense of transportation is an expenditure in support of the school. The opinion professes to draw a

specific constitutional provision. The majority opinion recites the stipulated facts. St. Rose's School is under the control and supervision of the ministry of the Roman Catholic Church. The school opened on September 3, 1958, with 217 pupils, all from Newtown. All of these pupils were transported to and \*394 from the school in busses operated at town expense.

The question of the constitutionality of the statute resolves itself to this: Does the payment by the town for the transportation of pupils to or from St. Rose's School constitute support of the school within the proscription of article seventh, § 17 The following from Judd v. Board of Education, 278 N.Y. 200, 211, 212, 15 N.E.2d 576, is typical of the statements found in cases which have had occasion to discuss the subject: "The argument is advanced that furnishing transportation to the pupils of private or parochial schools is not in aid or support of the schools within the spirit or meaning of our organic law but, rather, is in aid of their pupils. That argument is utterly without substance.... Free transportation of pupils induces attendance at the school. The purpose of the transportation is to promote the interests of the private school or religious or sectarian institution that controls and directs it. 'It helps build up, strengthen and make successful the schools as