

THE BROOKFIELD CONTROVERSY

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## DEFINITION OF TERMS

The Brookfield Controversy: This is a phrase used by the writer to refer to the entire situation including facts, issues, and ramifications. The Brookfield Controversy, as envisioned by the writer, is not a completed issue, and may not be for some time. The term is one which is not used in official Synodical writings, nor is it a term which has become time-tested by church history. It is merely an arbitrary term used by the writer of this paper.

The Brookfield Nine: This phrase is one used often by this writer and by others, even in official literature of our Synod. It refers to the nine people expelled from Christ the Lord Evangelical Lutheran Church in Brookfield on March 17, 1974. The term does not include William Kerner, Jr., who was expelled at a later date.

The question of church-state relationships, and the separation between church and state is a very practical one for our society and our Synod today. With the Catholic Church seeking and acquiring more and more government aid for education to its parochial schools, parochial schools in general are faced with an important decision. If Catholic schools are allowed special aid, what about our schools? Shouldn't we take advantage of the same legislation? It is not unusual with our governmental situation today, that people would expect our federal government to support parochial education. It seems to be the trend for the federal government to provide more and more money to communities and states for their own programs. And as the federal government moves into local government issues, the question of federal aid to education is often involved. It follows very naturally.

One result of this trend for more and more federal aid towards education was the Elementary and Secondary Education Act of 1965. Title II of this act provided grants and aid programs for the acquisition of school library resources, textbooks, and instructional materials for the use of children and teachers in public and private elementary and secondary schools.

At the beginning of 1972, the Wisconsin Lutheran High School board of control voted to go into this program and request materials through this act. Consequently, a \$4,000.00 loan of materials, books, and filmstrips was presented to Wisconsin

Lutheran High School through this federal program. This action caused a few ripples in our synod. Someone I know summed up the problem very well when he said, "I remember Pastor... telling us in adult instruction class that we in the WELS do not accept state aid to run our schools." For many years our synod has very definitely come out in practice against accepting aid from the state in our educational endeavors. For that reason, there were, and still are, many people in our synod who opposed this action of Wisconsin Lutheran High School, not because they felt it was a violation of God's Word, but because it was a matter of poor judgment. Quite frankly, the action of Wisconsin Lutheran High School took many people by surprise.

Unfortunately, there were nine people who belonged to Christ the Lord Lutheran Church in Brookfield who carried their objections to the extreme. They were upset by this action of Wisconsin Lutheran High School and unfortunately they called the action of Wisconsin Lutheran High School a sin. Subsequently, action was taken by the congregation and the synod to expell these people from membership.

In this paper we will be talking about the objections or issues raised by the people of the Brookfield congregation. There are many such issues involved in the entire controversy. Therefore we will discuss the main issues only. Before we begin doing so, we will re-state some of the facts of the case.

Following the receipt of the \$4,000.00 grant of materials to Wisconsin Lutheran High School, Mr. and Mrs. William Kerner of New Berlin, members of our congregation in Brookfield, Wis., became concerned about the matter. On several occassions they met with Wisconsin Lutheran High School officials, but received

no satisfaction in the matter. On October 31, 1973, Mrs. William Kerner wrote a letter to the "Open Forum" of Christian News concerning the situation. The article appeared in the November 12, 1973 issue of Christian News. In this article, Mrs. Kerner accused Wisconsin Lutheran High School and its board of control of becoming political in applying for this aid. She also stated that she was in complete accord with the statement made in 1967 by our church in Colorado Springs which felt that the provisions of the federal aid grant accepted by Wisconsin Lutheran High School are in clear violation of WELS teaching in accordance with Scripture and proclaimed in the WELS publication This We Believe. In other words, Mrs. Kerner very clearly stated in the article that she thought it was a sin that Wisconsin Lutheran High School had accepted the aid in question. Although she claimed that she had never really used the word sin, that belief clearly comes across in this article.

As the objections of Mrs. Kerner became known, a number of people from her home congregation began to actively support her. Eventually the group was to consist of Mr. and Mrs. Vernon Drake, Mr. and Mrs. Thomas Johnson, Mrs. Olson, Mr. and Mrs. Ralph Schmidt, and of course Mr. and Mrs. William Kerner. Although there are some slight differences in the personal beliefs of these individuals, their viewpoints are virtually identical concerning the matter of state aid to Wisconsin Lutheran High School. Mrs. Kerner serves as leader and spokesperson of the group, not by official consent but simply because of her outgoing personality and obvious affinity for controversy. This paper will refer to opinions and statements of Mrs. Kerner which

are shared by the entire group.

Following the appearance of this article in Christian News, Christ the Lord Congregation at Brookfield began to investigate Mrs. Kerner and her beliefs. The board of elders at the congregation and Pastor Liesner had met with Mrs. Kerner on several occasions. The elders also arranged for a special meeting of the congregation in February of 1974 in which President Carl Lawrenz of the Wisconsin Lutheran Seminary, presented an explanation of the paper which he had presented at the 1967 Synodical Convention. This paper, with additions, now forms the official policy of the Wisconsin Synod concerning federal aid to parochial education. In a following meeting in February 1974, Christ the Lord in Brookfield adopted a resolution in which it declared itself to be in complete agreement with the position of the synod. At the same time it very definitely stated that it found no violation of Scriptural principles in the action of Wisconsin Lutheran High School accepting the aid which it had accepted.

Finally, on March 17, 1974, the following resolution was adopted by a simple majority vote at a congregational voters' meeting: "Since ( here nine members were named ) no longer agree with all of the doctrines taught in Christ the Lord Evangelical Lutheran Church and the Wisconsin Evangelical Lutheran Synod, and therefore are no longer in fellowship with us, the council recommends to the congregation that their names be removed from the membership list." Let's take note of this resolution. This is not a resolution to excommunicate these nine people. Rather, it was a dismissal from fellowship. Christ the Lord

congregation did not consider these people to be heathens and publicans, but they understood them to be erring Christians, who simply did not agree with all of the teachings of the WELS and Christ the Lord congregation.

(Special note: Three months after the official dismissal of the Brookfield Nine, on June 16, 1974, the 21 year old son of Mr. and Mrs. Kerner, William Kerner Jr., was also dismissed from membership in Christ the Lord congregation. Although he agrees completely with the views of the Brookfield Nine, he is not generally considered part of the group.)

Following the action of the Brookfield congregation, three of the nine people appealed their case to the Southeastern Wisconsin District of the Wisconsin Evangelical Lutheran Synod. These appellants were Mr. Ralph Schmidt and Mr. and Mrs. William Kerner. They had a decision to make according to the district constitution. They could either have had a committee assigned to their case at the Southeastern Wisconsin District Convention of 1974, and the matter would have then been voted on by the entire district at that convention. However, they chose to have the case reviewed by a special commission, appointed by the district president. The members of our synod who served on this review commission were Professor Gerlach, who served as chairman; the Rev. Kert Schroeder, secretary; Rev. Wayne Mueller; the Rev. Howard Kaiser; and Mr. Gerald Berger. This commission carried out its meetings between July of 1974 and February of 1975, and its report provides a great deal of information on the entire controversy. However, only Mrs. Kerner carried her appeal throughout the commission hearings. Appellant

Ralph Schmidt decided to withdraw his appeal after the initial hearing of the commission. Mr. William Kerner refused to be a part of the commission's hearings unless he was allowed to record the sessions. Since the commission would not allow him to do this, <sup>in effect,</sup> he withdrew his appeal.

The commission carried out two objectives. First, it decided that the aid accepted by Wisconsin Lutheran High School didn't conflict with Scripture or WELS principles. It also found itself in agreement with the action taken by the Brookfield congregation.

As it stands right now, the dust has cleared around the Brookfield controversy. Many people think its all over. But that simply is not true. The Kerners and the Drakes are still working very diligently at attempting to prove the points they tried to make originally. They are doing so through the mass media and through the court system. We will be talking more about the ramifications of the Brookfield Controversy and what the Kerners are doing presently toward the end of this paper, but first let's take a look at the main objections raised by the Brookfield Nine against the aid accepted by Wisconsin Lutheran High School. ~~It is difficult to clearly state their~~ original objections for after the matter progressed for some time, personalities and other issues became involved and clouded the main issues. Let's bring the matter down to its root beginnings and talk about those original, main issues.

First of all the Kerners and the Brookfield Nine object to the aid given to Wisconsin Lutheran High School on the grounds that it is unconstitutional. They believe that the entire Title II program of the Elementary and Secondary Education Act is



contrary to the U. S. Constitution. To go into the legality of this point would require a major thesis on its own. Let us suffice it to say that they may be right. The courts seem to be agreeing with them at this time.

Since the matter of Title II constitutionality is questionable, the Brookfield Nine maintain that it was the responsibility of Wisconsin Lutheran High School board of control to refuse to go into such a program. Upon learning the possibility of it not being constitutional they should have checked laws to make that judgment for themselves. Since they didn't, but willfully entered and remained in this program, this constituted a sin against Rom. 13 which encourages us to be subject unto the higher powers.

This ~~argument~~ is easy to refute. After all, it is not the job or even the right of any school or synod to judge the constitutionality of any law. We must simply trust that our elected officials are carrying out the constitution properly.\* The Kerner's objection stems from a political view which assumes that the "powers that be" in this country is the Constitution of the United States. This of course is not 100% correct. The "powers that be" spoken of in Scripture simply denotes the authority of the land. That applies to the Constitution, to the President, to the Congress, to the state and city officials, and right down to the policeman on the corner. It also includes the official in Madison who made the decision to grant aid to Wisconsin Lutheran High School.

This ties up closely with another objection made by the Brookfield Nine. They feel that the funding was administered

\* We may not believe that they are doing so in a given case, but as long as

unified Christian education, we propose that religion cannot be separated from "secular" subjects. Every subject at Wisconsin Lutheran High School is taught with the guidance of Scripture. With such a unified concept the Kerners insist that this is use of public funds to promote and teach religion. That clearly would be contradictory to the state laws which are set up to govern the Title II program. Title II clearly states that nothing should be construed in the act to authorize the payment of any monies for religious worship or instruction.

At face value it would seem as though the Kerners have a legitimate complaint in that respect. However, the commission executive of the Commission on Higher Education on review reports that they contacted a government administrator who interpreted this matter in the light of what the government calls "preponderance of use." Because the materials are used primarily to teach biology and not the church's doctrine there was no violation of the law as far as this administrator could see. The Kerners still have the opinion that this was against the law, but clearly that is a political belief and is not substantiated by government officials. True, the Kerners do have statements of government officials who agree with them. However, we can at least say that the matter is debatable. Wisconsin Lutheran High School, putting the best construction on things, simply assumed that the government officials carried out the administration of Title II funding in accordance with the law. Therefore, it is impossible to condemn the Wisconsin Lutheran High School for sin, not in reference to violation of the Constitution of the United States or a violation of the Title II funding law itself.

The second main issue at stake is that the Kerners insist

that the High School signed a contract which it had no intention of keeping. For example, they insist that in order for a school to apply for Title II funding it must sign a contract which states that they will coincide with the equal rights amendment. This equal rights amendment means that the school would agree to give teachers equal pay for equal work and will guarantee that there will be no discrimination because of sex as far as equal opportunities are concerned. Very specifically, a school which intends to go into the Title II program would be required to sign a statement showing compliance with Title VI of the Equal Rights Act of 1964. Health, Education, and Welfare form 441C would need to be signed by the school.

We realize that we in the Wisconsin Synod have not always supported the principle of equal pay for equal work. However, that is now changing. But we do recognize the relationship between male and female which the Scriptures establish. Therefore we do not provide equal opportunities for women to advance to the top of our schools. This is a scriptural practice and the state has no right to deny us this practice. However, the Kernerers insist that it was wrong for Wisconsin Lutheran High School to enter into such a contract knowing that they could not live up to the terms of the contract. The Kernerers also insist that having Wisconsin Lutheran College facilities in the same building without adequate precautions to assure that Title II funded materials would not be used by Wisconsin Lutheran College students, also make Wisconsin Lutheran High School ineligible for federal funding.

In answer to these accusations we can simply say that

Wisconsin Lutheran High School assumed that the administration in Madison was well aware of the terms and implications of the contract. Wisconsin Lutheran High School being unaware of these terms simply assumed that the administrators would inform them of the implied terms of the contract.

On this particular basis civil action has been filed by Jane Kerner to show that Wisconsin Lutheran High School was indeed breaking that law by requesting and accepting funding under Title II. It may be interesting to see what the judgment of the court will be on this matter. However, let's keep the facts straight. Even if the courts would decide that Wisconsin Lutheran High School was ineligible for Title II funding and that the funds had not been administered legally, it still could not be stated that Wisconsin Lutheran High School had broken the law to begin with. Wisconsin Lutheran Conference simply accepted the word of the appointed officials and proceeded, with the assumption that they were acting lawfully.

Let's consider another question. If this aid was awarded contrary to law, why, then, has the state not removed the materials? The state still retains complete ownership of the materials. At any time the state has the perfect right to withdraw these materials from the school. Since the grant to Wisconsin Lutheran High School has been questioned, if it were illegal at all, wouldn't it seem logical that the state would remove these materials immediately? Yet Wisconsin Lutheran High School still has these materials and is using them. It should seem as though the people administering Title II funds are completely satisfied with the use of the materials at Wisconsin Lutheran High School.

So, realizing that Wisconsin Lutheran High School acted according to law in that it requested and accepted the aid completely through legal channels, and since Wisconsin Lutheran High School put the best construction on the ability of the Madison officials to administer Title II funds and since Wisconsin Lutheran High School still has the materials, we can conclude that the Wisconsin Lutheran High School did not break the law in requesting and accepting Title II aid, and therefore did not sin.

Both of these previous, main, objections on the part of the Kerners and the Brookfield Nine were on the basis of Rom. 13. They felt that Wisconsin Lutheran High School had broken the law and therefore had sinned. Since we can see that Wisconsin Lutheran High School did act according to legal channels, and since it is not the job of any school or synod to judge the constitutionality of any law, these first two objections are without merit.

Of course the matter does not end here. The Kerners and the Brookfield Nine have found a great deal of support in the Wisconsin Synod. There is no doubt about that fact. However, I think it is fair to say that most people who agree that Wisconsin Lutheran High School should not have accepted Title II funding are unaware that there is a great deal of politics involved in this case. So for that reason let's remember that we have to keep these first two objections in mind when discussing the views of the Brookfield Nine. When people think that they are in agreement with the Brookfield Nine, we need to remind them of the many issues involved in the case. We need

to ask on what grounds they agree with these people. Let's keep the whole issue in mind as we study this controversy further.

The main objection of the Brookfield Nine is to the stand of our Synod concerning federal aid to our schools in general. It is this objection on which we will spend the most time, for the Kerners have a great deal of support in this area. The Kerners object to the 1967 doctrinal paper presented by Professor Lawrenz, President of the Seminary, to the 39th Convention of the Wisconsin Synod, which was then accepted by the Synod, with additions as the official stand of our Synod on government aid to education. They feel that it does not agree with other synodical resolutions and writings of the Wisconsin Synod concerning this matter of government aid to education. This 1967 Convention paper by Lawrenz really comes to the conclusion, simply stated, that government aid to education is a matter of adiaphora, as long as church and state do not confound or confuse their individual realms or purposes.

We can say categorically that there are pastors and lay people within the Wisconsin Synod who are not completely satisfied with this conclusion. They feel as though this paper throws the matter of government aid to education wide open without leaving any safeguards. They feel that this paper has changed our Synod's stand on federal aid. When we compare this 1967 resolution with the resolution of the 1963 Convention to the Wisconsin Synod, we can see that there is a definite difference in direction between the two viewpoints. This 1963 resolution which stems from President Oscar Naumann's "Statement Regarding Federal Aid to Church Related Schools" states very clearly

that we neither want, nor request, the assistance of the state in carrying out our educational endeavors. This resolution states that this kind of assistance invites intrusion of the state into an area which hasn't been assigned to it by God, and that this assistance violates the constitutional principle of separation of church and state for it uses tax money gathered from all citizens for the advancement of a specific religion or faith. This resolution states furthermore that we would thereby be yielding to the state the direction and control in the training of our children.<sup>1</sup>

This resolution was passed as the official position of the Wisconsin Synod in 1963, and according to the strict words of this resolution we would have to agree that the aid accepted by Wisconsin Lutheran High School was against this resolution of 1963. We would also have to agree that there are apparent contradictions between the 1963 resolution and the 1967 resolution.

Let's note something about synodical resolutions. First of all, the 1967 resolution ~~supercedes~~ the 1963 resolution. It is the official position of the Wisconsin Synod over and above previously passed resolutions in this matter. Therefore Wisconsin Lutheran High School did not contradict a synodical resolution by accepting this aid. Let us also remember that Wisconsin Lutheran High School is not under the direct auspices of the synod. Rather it is under the auspices of a federation of WELS congregations. Therefore, it's actions are not officially

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<sup>1</sup>1963 Convention Proceedings of the W.E.L.S., pp.33-35

bound by synodical resolutions in the same way that synodical educational facilities are.

And let's not <sup>forget</sup> something else, which is really the crux of the matter. The two synodical resolutions do not necessarily contradict each other. The 1963 Convention resolution is meant to be a statement of practice, whereas the 1967 resolution is meant to be a statement of principle. In personal interviews it has been ascertained by this writer that our synod was moving in the direction of becoming legalistic in demanding that its schools could not participate in any kind of state or governmental aid. However, as the subject of government aid became more and more involved, the synod found that it needed to set itself straight on the real scriptural principles involved. That was the reason for the writing of the 1967 Convention proposal. Therefore, the 1967 Convention resolution was not a change in the synodical viewpoint toward federal aid, rather it was a clarification of the principles involved. It pointed us, once again, to the root issues of church-state relationships presented in Scripture.

This distinction between principle and practice becomes apparent when we consider that even in official literature of our Synod after 1967, the synod has still warned against government aid to education. The 1967 Convention voted that such aid was lawful according to the Word of God. However, all things lawful are not necessarily expedient, and in writings of practice on state aid, our Synod still maintains the position that we are against this kind of state aid. For that reason it could be said that Wisconsin Lutheran High School went against the overall practice of the Synod concerning state aid. However,



it cannot be said that the seeking or acceptance of state aid was contrary to synodical resolution, or to official synodical principles, or more important, that it was a sinful matter contrary to the will of God. As far as God's Word is concerned, if we can agree in principles with tax exemptions on parochial school property, and with subsidized programs for milk and hot lunch programs then we must agree that Title II funding is not contrary to God's Word.

The state and the church function together in many areas, such as weddings and education. There can be no complete separation between church and state. Yet, for matters of expediency, we sometimes feel that it is best to refuse state aid for fear of becoming bound by the state in our educational endeavors. But a person is unable to say that accepting such aid is against the clear Word of God, for that simply is not true.

When we say that Wisconsin Lutheran High School is separate from the synod in its administration, let us remember that, as a member of the synod, Wisconsin Lutheran High School does support the synod in doctrine and practice. These beliefs are set down in the pamphlet This We Believe. In that pamphlet, article eight paragraph seven states, "we reject any attempt on the part of the church to seek the financial assistance of the state in carrying out its saving purpose."<sup>2</sup>

The Kerners and the Brookfield Nine state that Wisconsin Lutheran High School, in seeking out the assistance of the state under Title II funding, acted contrary to this statement of the

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<sup>2</sup>This We Believe (Milwaukee: Northwestern Publishing House, 1967), p.23

Wisconsin Synod. Let's look a little closer at this statement of the synod. It says that we reject any attempt to seek the financial assistance of the state in carrying out its saving purpose. Just what is meant by saving purpose? These people at Brookfield claim that the saving purpose of Wisconsin Lutheran High School is the entire purpose of the school carried out in all of its educational endeavors. However, Wisconsin Lutheran High School conference believes that its saving purpose is not in the least endangered by accepting aid in the area of biology and other secular subjects.

These are two separate and distinct viewpoints, but who is right? In a situation like this we must again return to the scriptural principles set down for us in the 1967 Convention proceedings, and see that such matters are questions of adiaphora. All of our synodical resolutions and synodical writings very definitely agree in purpose and in scope. We need to look at all of the statements of the synod concerning the subjects at hand and make a judgment from those statements as a whole. The viewpoints of the synod in doctrine and in practice neither deny Scripture or the Lutheran Confessions. Rather they are expositions of Scripture. Consequently we can only settle matters of judgment on the basis of Scripture. Scripture does not state that educational aid from the government is wrong. Therefore, we cannot agree that Wisconsin Lutheran High School has contradicted Scripture, or synodical resolutions. Therefore, Wisconsin Lutheran High School has not sinned in accepting the aid it did.

However, the writer of this paper has come to the opinion that we in the Wisconsin Synod, in our official publications,

in resolutions such as the statement of 1963, and in our public preaching and teaching, have given people the impressions that our synod is scripturally against state aid. By giving people this impression, we have asked for the type of reaction which our people voiced against the aid given to Wisconsin Lutheran High School. This type of aid is not contrary to Scripture, but at times we give that impression by the things we write and say. Let's hope that we have learned something from this controversy. Let's hope that we have learned that we need to always keep the Scriptural principles firmly in front of us as we make decisions on practice in our synod.

These people were dismissed from membership because they did not agree with the Wisconsin Synod doctrine, set down at the 1967 Convention. The Brookfield Nine asserted that when they joined the Wisconsin Synod they agreed to uphold the Sixty-six Canonical books of the Bible and the Lutheran Confessions. They asserted that they did not think they should be conscience bound by a majority resolution of the synod. However, this majority resolution of the synod is an interpretation of the sixty-six Canonical books of the Bible, and therefore it is fitting and proper for the synod to determine membership on the basis of agreement with these decisions.

The Brookfield Controversy still has future ramifications for our church. The Kerners are carrying their case right to the Supreme Court of the United States if necessary. At the present it appears as though the courts may change the government's programs toward parochial schools, especially the Title II program. As these things go through the courts it is possible

that the question of federal aid will become more and more disturbing to our people. Then again, this decision of Wisconsin Lutheran High School to accept Title II materials may need to be reconsidered - not because it is a sin, not because it is illegal, but simply out of concern for the weaker Christians in our midst.

The Brookfield Controversy has many different ramifications. Christian ethics, personalities, and other issues have become involved and clouded the complete controversy. These issues have not been explored and expounded in this paper. It would be impossible to do so for these issues are numerous, involved, and minor. The main thing for us to note is that when we are approached by people concerning the Brookfield Controversy, let's remember Wisconsin Lutheran High School and Christ the Lord Congregation have acted according to God's Word and according to the principles and practices of the Wisconsin Synod.

EDITORIAL NOTE

This paper was not meant to exhaust the subject. To exhaust the main issues with their implications would be a huge task. This paper was merely an overview of the main issues, intended to be on a level acceptable to someone not fully acquainted with the subject.

Unfortunately, no paper on this subject, not even an exhaustive one, could give an accurate picture of Mrs. Kerner and the Brookfield Nine. Mrs. Kerner seems to be a very sincere Christian who feels she is doing God's will by being His herald. This attitude, plus her outgoing, winning personality, has earned her a great deal of support.

But after talking with Mrs. Kerner for quite some time she reveals herself to be a person who is extremely involved in, and concerned with, politics. Unfortunately, she lets her political views influence her synodical and religious views. No one can understand the political motivation behind Mrs. Kerner without meeting with her.

The interviewer also found Mrs. Kerner to be a person who had an incorrect understanding of the positive side of the Eighth Commandment. Her impression of putting the best construction on everything is that we simply must not put the worst construction on things.

In short, the actions of Christ the Lord Congregation in dismissing the Brookfield Nine can only be fully evaluated after personal contact with the people involved.

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Mr. Adolph Fehlhauer, Executive Secretary of the Board for Parish Education, Wisconsin Evangelical Lutheran Synod.

Mrs. William Kerner

Pastor Spaude, teacher Wisconsin Lutheran High School

Pastor M. Volkmann, Grace Evangelical Lutheran Church, Waukesha, Wisconsin.

Professors of the Wisconsin Lutheran Seminary:

Professor Siegbert Becker  
 Professor Edward Fredrich  
 Professor Joel Gerlach  
 Professor David Kuske  
 Professor Armin Schuetze  
 Professor Heinrich J. Vogel

And Others