Report on Fair Educational Practices Legislation

The Committee on the Bill of Rights submits this report in support of the annexed resolution favoring the enactment of state legislation designed to eliminate discrimination in admissions to educational institutions at the post-secondary school level because of race, religion, color or national origin.

In the current session of the New York State Legislature, as in the 1947 session, various bills have been introduced for that purpose. At the time of adopting this report, the Committee on the Bill of Rights was informed that a bipartisan bill having the support of the Governor would shortly be introduced embodying the principles outlined in the annexed resolution. The Committee feels that the Association should go on record as favoring such legislation in principle, without attempting to pass upon all the possible variations in matters of detail.

The first question to be considered is whether discrimination in education is properly a subject for state legislation of any kind. The view is held in some quarters that so-called "private" colleges and universities, even though tax exempt, should be free to discriminate. The Committee feels, however, that an institution receiving tax exemption is to that extent a public institution, and that its standards for admission, however strict they may be in terms of scholarship, character, etc., should not include consideration of race, religion, color, or national origin. Moreover, that principle is already embodied in the laws of this State.
Section 44, subdivision 6, of the Tax Law provides:

"No education corporation or association that holds itself out to the public to be non-sectarian and exempt from taxation pursuant to the provisions of this section shall deny the use of its facilities to any person otherwise qualified, by reason of his race, color or religion."

Section 440 of the Civil Rights Law provides:

"All persons within the jurisdiction of this state shall be entitled to the full and equal accommodations, advantages, facilities and privileges of any place of public accommodations, resort or amusement, subject only to the conditions and limitations established by law and applicable alike to all persons. No person . . . shall directly or indirectly refuse, withhold from or deny to any person any of the accommodations, advantages, facilities or privileges . . . of any such place . . . on account of race, creed, color or national origin . . . A place of public accommodation, resort or amusement within the meaning of this article, shall be deemed to include . . . public libraries, kindergartens, primary and secondary schools, high schools, academies, colleges and universities, extension courses, and all educational institutions under the supervision of the Regents of the State of New York . . ."

Section 441 of the Civil Rights Law provides penalties for violations of Section 440, including possible imprisonment up to 90 days for a person violating Section 440 on behalf of any agency, bureau, corporation or association.

Accordingly, it is the declared legislative policy of this State that public or semi-public educational institutions may not discriminate in admissions on the basis of race, religion, color or national origin. In the view of the Committee, any other policy is inconsistent with the fundamental American doctrine of equality of opportunity.

The only questions then remaining are whether the proposed additional legislation is needed to accomplish the desired end of non-discrimination, and if so
whether it offers an appropriate and effective method of achieving that end.

In the matter of need, there is little room for argument. It is common knowledge that the provisions of the Tax Law and of the Civil Rights Law quoted above have been widely ignored and that many "private" educational institutions either do not admit certain groups at all or follow a "quota system" with respect to their admissions. The quota system means in effect that different standards of selection are applied to different racial or religious groups. Moreover, the situation especially in the professional schools has deteriorated greatly in the last twenty-five years. For example, a recent survey conducted by the American Jewish Congress produced the following figures with respect to the enrollment of Jewish and Italian-American students in the medical schools in New York City between 1921 and 1945:

<table>
<thead>
<tr>
<th>Period</th>
<th>Total</th>
<th>Jewish</th>
<th>Percent</th>
<th>Italian</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>1921-1925</td>
<td>2,439</td>
<td>1,095</td>
<td>44.9</td>
<td>281</td>
<td>11.5</td>
</tr>
<tr>
<td>1926-1930</td>
<td>2,637</td>
<td>1,042</td>
<td>39.5</td>
<td>381</td>
<td>14.6</td>
</tr>
<tr>
<td>1931-1935</td>
<td>2,595</td>
<td>818</td>
<td>32.7</td>
<td>267</td>
<td>10.3</td>
</tr>
<tr>
<td>1936-1940</td>
<td>2,501</td>
<td>603</td>
<td>24.1</td>
<td>220</td>
<td>8.8</td>
</tr>
<tr>
<td>1941-1945</td>
<td>3,551</td>
<td>800</td>
<td>23.9</td>
<td>231</td>
<td>6.9</td>
</tr>
</tbody>
</table>

The survey conducted by the American Jewish Congress disclosed no evidence of any relative decline in the number of qualified applicants from the Jewish and Italian groups. The figures speak for themselves. It may be noted here that discrimination at the post-graduate educational level is particularly intolerable since it often results in barring the affected individuals from professional careers.

The establishment of permanent machinery within the State Government for the purpose of securing compliance with the State's anti-discrimination policy in edu-
cation seems to offer the best approach to the problem. On the one hand, it seems clear that an agency is called for which will have no other responsibilities and will have adequate investigatory powers and some powers of enforcement. Otherwise widespread evasion of the present laws by various means will continue as it has in the past. On the other hand, it must be recognized that the problem is not one which can be solved over night by the application of severe sanctions. The agency to be established would be expected to exhaust all possibilities of securing compliance through consultation and other informal methods before resorting to compulsive measures.

In many respects, the agency would function in a manner similar to the State Commission Against Discrimination in Employment (SCAD), established under the Ives-Quinn Law. To date that Commission has not justified the fears of those who opposed the enactment of the Law, but has followed an extremely cautious policy giving almost exclusive emphasis to educational and conciliatory methods. The chief criticism of the Commission has come from those who favor a more vigorous enforcement policy.

The proposed legislation is in essential accord with recent recommendations of The President's Committee on Civil Rights (Charles E. Wilson, Chairman), the President's Commission on Higher Education (George F. Zook, Chairman), and the New York State University Commission (Owen D. Young, Chairman).

Based upon the foregoing, the Committee recommends that the Association adopt the following resolution:

RESOLVED that this Association favors the enactment in New York State of a fair educational practices law providing for the establishment within the Education
Department of machinery for (1) investigation of discrimination in admissions to educational institutions at the post-secondary school level because of race, religion, color or national origin; (2) use of educational, conciliatory and other informal methods looking toward the elimination of such discrimination, and (3) issuance by the Board of Regents after public hearings of cease and desist orders, enforceable in the courts, such law to provide exemption to sectarian institutions in so far as distinctions based on religion are concerned and to exempt completely institutions not receiving public funds or tax exemption.

NOTE: Unanimous Report of the Committee on the Bill of Rights to be presented to the Association of the Bar of the City of New York at a stated meeting on March 9, 1948 for approval.