

---

# School Buildings As Public Forums —

*A survey of discrimination against  
unpopular minorities in the use  
of public school buildings*



*Published by the*  
**American Civil Liberties Union**  
100 Fifth Avenue  
New York City

10 Cents



*May, 1934.*

---

Vincennes  
Ind  
1900

## CONTENTS

	PAGE
The Law .....	3
Tests in the Courts .....	5
Extent of Discrimination .....	7
What the Minority Parties Say .....	10
Conclusion .....	10
How to Help .....	11
Laws on the Community Use of School Buildings .....	12
Replies to Questionnaire .....	13
Model provisions .....	14

# School Buildings As Public Forums

---

---

**D**URING the past twenty-five years the use of the schoolhouse for community purposes has been widely extended. Boy Scouts, community choruses, dramatic organizations, and many other groups have been using school property and facilities after regular hours.

In many states schools are used for political meetings, as well as for registration and voting places. In some states the law requires school boards to make school buildings available for political purposes, either with or without a previous vote of the district. Religious meetings are also specifically permitted in school houses in some states.

**But in many communities these facilities for the use of the public schools are not at the disposal of minority political parties nor organizations regarded as radical.** Even where the law specifically provides against discrimination, ways are found to discriminate. The Civil Liberties Union has been frequently appealed to by such groups to aid in overcoming discrimination. The Union itself has been denied the use of school buildings in several communities.

This pamphlet is published for the purpose of stating the facts and of arousing interest in the use of school buildings as public forums, and with no discrimination against unpopular minority organizations. If civil liberty means anything, it means the right of unpopular groups to present their views on precisely the same basis as others. School buildings dedicated to democratic processes should become the true forums of the community where all kinds of political and economic opinions may be freely expressed. Public schools are erected by the taxpayers of the entire community and should therefore be open to use by minority groups who are taxed like the others for their erection and maintenance.

---

## The Law

**A**N examination of the state laws on the community use of public schools shows that in 21 states specific provision is made by which political meetings may be held. In 5 of these 21 states legal safeguards against discrimination by local school boards are provided. In the others, local school boards are given discretionary authority to grant or refuse permits for any type of meeting.

Of the remaining 27 states, 13 have no statutory provision whatever for community use of school buildings. However in the absence of a statutory provision, many school boards as custodians of school property do permit the use of schools by their own regulations. In 14 states

statutory authority is given to school boards for the community use of school buildings, but the language is general and does not contemplate their use for political meetings. A list of the states with their various provisions will be found on page 12.

The 5 states with legal safeguards against discrimination in the use of school buildings are Indiana, Kansas, Michigan, North Dakota and Oregon.

The *Indiana* statute reads: "If the majority of legal voters of any school district desire such use, the trustee shall upon application authorize the director of the school district to permit such use for any such purpose, giving equal rights and privileges to all religious denominations and political parties."

The *Kansas* law makes it "unlawful for the school board to act arbitrarily or partially in the matter of prescribing regulations for the use of the schoolhouse; and any abuse of their powers by the school district board may be corrected by the district court through a mandamus or injunction on the application of the aforementioned societies."

The *Michigan* law provides likewise that the board shall prescribe "such rules and regulations as will secure the fair and impartial use of the same." The laws on this subject in *North Dakota* and *Oregon* also provide for giving equal rights and privileges to all religious denominations and political parties.

---

School boards in making regulations for the use of school buildings in conformity with state laws, have in many cases definitely discriminated against types of organizations regarded as controversial or subversive. Section 3 of the Amended Rules of the Denver, Colo., Board, reads:

"The schools may not be used by any individual, group or society that teaches or preaches any doctrine or theory subversive to the Constitution of laws of the state of Colorado or of the United States, or advocates social or political change by violence or revolution."

Similar discrimination marks the rules of the Erie, Pa., Board. In Washington, D. C. the board has ruled that the use of the schools for meetings of a political nature might take place under "regulations designed to guard the schools from sectarian uses, from uses tending to create unrest and acrimonious discussion in the community, and from teachings contrary to the spirit of American institutions."

While some of these rules may appear to be reasonable on their face, they are ordinarily so administered as to deny the use of the schools to any so-called "radical" organization.

## Tests in the Courts

SEVERAL cases of discrimination by school boards have been taken to the courts with various results.

In *New York City* in 1926 the Board of Education refused a permit for a meeting in a school auditorium under the auspices of a conservative and therefore respectable civic organization at which two well-known citizens, members of the national committee of the American Civil Liberties Union, were to speak, though not as representing the Union. The Board of Education denied the permit on the ground that nobody connected with the American Civil Liberties Union would be allowed to speak in a public school on any program. The Board took this position on the ground that the Union's interpretation of free speech was un-American and objectionable because it advocated freedom of utterance without restriction.

The Union at once contested the Board of Education's ruling by applying for a permit of its own on the subject of "Old-fashioned Free Speech" with distinguished speakers. The Board denied the application, stating that the schools would bar the Union until it repudiated its definition of free speech. Requests for a public hearing were ignored. The Union then appealed the case to the State Commissioner of Education. At the hearing representatives of reactionary professional patriotic societies put in an appearance, backing up the New York City Board of Education. The Union was represented by Samuel Untermyer, Arthur Garfield Hays, and Roger Baldwin. The State Commissioner upheld the Board of Education on the ground that "subjects bound to arouse ill feelings should be barred from the schools."

The Union then appealed to the courts. Mr. Untermyer as its counsel sought a mandamus to compel the Board of Education to open a school building to a meeting under the Union's auspices. The Supreme Court Justice who heard the case denied the writ, but ordered the Board of Education to grant the Union a public hearing in the event of another application. Application was then made to hold a meeting on the subject of "The Growth of New York Since 1900," in order to be completely innocuous and not to raise the objectionable issue of free speech. Speakers scheduled included Congressman Fiorello LaGuardia, Dean Charles Lathrop of the Episcopal Church, and Nelson Spencer, former president of the New York Bar Association. The permit was granted, and the meeting held. The Union then proceeded to apply for another permit to discuss "Old-fashioned Free Speech," in order to test the ruling of Commissioner Graves

barring controversial subjects from the schools. The Board of Education granted a hearing, at which the Union was represented by the distinguished lawyer Louis Marshall. The Board of Education finally granted the permit, and the Union, having won its point, gave up the arranged meeting.

This case is typical as showing the forces fearful of free speech in the public schools. Every reactionary interest in New York City backed the Board of Education in its stand. Only persistent and expensive campaigning won out.

In *Bakersfield*, California, an issue arose during the last year over the use of public schools for meetings of the Socialist Party and of the American Civil Liberties Union. On November 6, 1933, an application was filed with the school board of the City of Bakersfield for the use of a school auditorium for a meeting under the auspices of the American Civil Liberties Union to be addressed by A. L. Wirin, attorney for the Union, who had been representing strikers in court proceedings, and Ellis O. Jones, who had cooperated with Mr. Wirin in investigating alleged denial of civil rights to the strikers. The subject for discussion was the report of the Governor's fact-finding committee on the San Joaquin Valley cotton pickers strike to the effect that the constitutional rights of the strikers had been violated.

Upon protest of the Chamber of Commerce, the Kern County Farm Bureau, and the American Legion, the application was denied, the school board having first demanded that written copies of all proposed speeches be submitted. Thereafter the board cancelled the permit of the Socialist Party to hold meetings in the public schools.

Suits were filed in the Superior Court for an order of mandamus upon the school board to grant application for the use of public school buildings to the American Civil Liberties Union and the Socialist Party. These resulted in judgments in favor of the board. The reason given by the court was that the rule of the board requiring advance copies of addresses was reasonable and had not been complied with. The cases are now on appeal to the Supreme Court of California.

In *Minneapolis* the Board of Education granted a permit for a Communist Party election rally in a high school during the last presidential campaign. This was granted in accordance with the rules of the Board permitting any political party to use a school auditorium for election meetings. But upon protest of the Citizens' Alliance, the American Legion, and the Chamber of Commerce, the Board of Education in a hurried special meeting revoked the permit four days before the scheduled meeting.

In *Berkeley*, California, meetings of the International Labor Defense were refused when the American Federation of Labor and the American Legion protested. At a meeting of the Friends of the Soviet Union in *Los Angeles*, held in a public school building, men wearing American Legion caps created an uproar. The school board denied the next request by the Friends of the Soviet Union for a public school meeting on the ground that it might cause disorder. After considerable agitation the Board of Education reversed its decision and permitted the Friends to meet.

These examples are typical of the difficulties encountered elsewhere.

### Extent of Discrimination

IN order to get a first-hand report of the extent and causes of discrimination in granting permits, the American Civil Liberties Union sent a questionnaire to school boards in the 93 cities of over 100,000. Among the questions asked were:

1. Does the Board permit the use of public school buildings for political meetings?
2. Who decides what permits shall be granted?
3. What discrimination is shown, if any, in granting a permit?
4. What charges are made for the use of school buildings?
5. Are meetings of minority parties as well as of Republican and Democrats permitted?
6. Have any public disorders attended political meetings in the schools sufficient to question the wisdom of the practice?
7. Is public opinion in favor of allowing political meetings in school buildings?

Replies were received from 72 cities in 28 states. A list of all the cities from which replies were received appears on page 13 arranged by states and indicating the character of replies received.

Twenty-one of the 72 cities replying reported that no political meetings whatever are allowed in school buildings.

Four interpreted their state laws as forbidding such use: Missouri, Ohio, Nebraska, and Rhode Island. Canton, Ohio, maintains that under the state law school grounds only can be used. Other Ohio towns permit political meetings in school buildings. Providence, R. I., is governed by a special state law applying to that city alone. The Kansas City, Mo., board points to the state law as forbidding political

and religious meetings, although section 9205 R.S. 1929 of the Missouri laws states that the board of education may allow "free use of the school house for the free discussion of subjects devoted to general public interest, for civic, social, and other meetings which will not interfere with the plan for which the buildings are erected."

Of the 21 school boards which do not permit any political meetings in the schools the following sample reasons are given:

"Political meetings interfere with the boy scouts and municipal chorus—San Francisco;

"The school belongs to all and should not be used for controversies that divide the community"—Birmingham, Ala.;

"No factions—the schools for all the people"—Salt Lake City, Utah;

"To avoid controversial discussions and use and abuse of school property, expenses of and care of buildings, tobacco nuisance, unsupervised crowd, etc."—Seattle, Washington.

The school authorities in 18 cities admitted discrimination against radical and minority groups. Among the reasons given were the following:

- "No permits to Communist Party" .....Bridgeport, Conn.
- "No Red propaganda" .....Evansville, Ind.
- "Won't allow Communists to speak—don't want them to speak where children are taught" .....Minneapolis, Minn.
- "Denied because subject was a disputed matter" .....Youngstown, Ohio
- "No un-American purpose" .....San Diego, Calif.
- "Negroes not allowed in school" .....Peoria, Ill.
- "Failed to abide by segregation law" .....Richmond, Va.
- "Any parties anarchistic are denied use" .....Houston, Tex.
- "Cannot permit Communist meetings if we know it" Grand Rapids, Mich.

The authorities in Atlanta, Georgia, were plainspoken in remarking that "unless we have reason to believe that the meeting will be against established law and authority, we do not discriminate."

The New York City Board of Education has recently agreed not to permit the use of schools "for meetings of organizations advocating the overthrow of the government," according to an item in the press credited to spokesmen for the Allied Patriotic Societies. It is not indicated what organizations do advocate the overthrow of the government.



A notable example of the use of public schools for community forums is furnished by *Des Moines*, Iowa, where under a grant made by the Carnegie Corporation of New York in 1933 a five-year experiment in adult education is conducted. Forums in public school buildings all over the city were started with a discussion of all sorts of public issues, and with speakers representing all points of view. Even well-known Communists have spoken on the programs. The forums are under the direction of the Superintendent of Schools. The response is reported as most enthusiastic. In addition to these forums, radical organizations are permitted to use school auditoriums in *Des Moines* without discrimination and apparently with full community approval.

---

Where political meetings are permitted in the school buildings the replies indicate that permission is ordinarily granted by some officer of the Board of Education, with final authority in the Board to pass on the case if it presents some unusual question. Twenty-two replies stated that the Board of Education itself, not its officers, passed on all applications for the use of the school buildings for community purposes.

The charges made for the use of school buildings for public meetings are important. High costs obviously prevent working-class organizations from using the schools, particularly where it is forbidden to charge admission fees or to take up collections. Many school boards do, however, permit admission fees or collections, when the purposes of the meetings are educational or charitable. The charges usually are based on the estimated expenses of light, heat and janitor service, and range from an average of \$5 to \$20 to as high as \$60 to \$100 for large high school auditoriums. Some school boards make no charge whatever; and others charge purely nominal rates for educational and civic organizations.

Answering the question as to whether disorders have attended political meetings in the schools, 31 school officials replied in the negative. Of the eight who reported some disorder or damage, all admitted it had been slight.

As to the public attitude toward political meetings in school buildings the replies showed an almost equal division among the school authorities in interpreting favorable sentiment.

## What the Minority Parties Say

**I**N order to determine what efforts have been made by minority political parties to use public school buildings for political meetings, questionnaires were sent to the local officials throughout the country of the Communist Party and the Socialist Party, and also to the International Labor Defense, which conducts many public meetings in the interest of working-class prisoners. Thirty-eight replies were received.

They were first asked whether they had applied for the use of public school auditoriums for their meetings. Thirty-three said they had; 5 said they had not. Nineteen of the correspondents said their applications had been refused; 14 did not mention refusal. Of the 19 reporting refusals, 10 said they had contested denials of permit with various results. Most of the correspondents reported discrimination as between Republican and Democratic Parties on one hand and minority parties on the other. Twenty-five reported such discrimination; and 6 said there was none in their communities; 7 did not indicate whether there was or not.

**Examining the towns in which the minority parties reported that they had been refused permits, we found that the major political parties were reported as using the schools in every one except Canton, Ohio. Many replies indicated that the minority parties had given up applying for permits because they regarded it as hopeless.**

In order to check up on these replies from disinterested sources, we circularized American Civil Liberties Union representatives in 21 cities with these results:

Fifteen reported that public school buildings are used by the major political parties for meetings; 4 that they are not. These same correspondents stated that the minor political parties are permitted to use school buildings in only 9 of these cities, and that of these 9, five denied use of public school buildings to the Communist Party while granting it to the Socialist.

Seven specific refusals of the use of school buildings for political meetings of minority parties were reported; two of which, however, barred Republican and Democratic meetings as well.

## Conclusion

**T**HIS survey of law and practice in representative cities all over the country clearly shows discrimination dictated by local prejudice, or by influential reactionary groups. The replies indicate that in those

states where the laws contain a provision against discrimination the protection tends to work out in practice, though necessary in several instances to enforce it through the courts.

The American Civil Liberties Union stands on the principle that the freest possible discussion of public issues should be encouraged in the best available public meeting places in every community—the schoolhouses—and at the lowest possible cost. No discrimination whatever should be shown in granting permits for such community use of the school buildings, except to protect school property and to prevent disorder. No censorship whatever should be exercised over programs or speakers. Ordinarily the majority interests or the influential interests in any community have free access to the use of public school buildings or of court houses as meeting places. The same freedom should be extended to all groups interested in public issues whatever their program or purposes.

We therefore recommend that our friends in all states work for legislation to open school buildings to public meetings and without discrimination. We further recommend that school boards in those states where discretion is granted them adopt regulations guaranteeing in substance what the laws provide in others. We give on pages 74 and 15 the statutory provisions of California and Michigan, with minor clauses from other states. These strike us as satisfactory working models.

### How to Help

1. We urge all those interested in the use of public school buildings for public forums to examine their local laws and regulations with a view to bringing them up to the standards indicated in the working models on pages 14 to 16.

2. Minority parties and organizations should apply for permits, and if refused should test the issue through public hearings before boards of education, and if necessary, by appeals to the courts. Cases of discrimination reported to the American Civil Liberties Union will be promptly aided. Local publicity should be secured at once.

## Laws on the Community Use of School Buildings

The following 21 states provide by law for the use of school buildings as community centers, defining more or less precisely the type of activities which may be conducted in them, including political meetings, but granting to local school boards the power to regulate such use of school buildings:

Alabama	Michigan
Arizona	Missouri
Arkansas	New Jersey
California	New York
Delaware	Oklahoma
Illinois	Oregon
Indiana	Pennsylvania
Kansas	South Dakota
Maryland	Washington
Massachusetts	West Virginia

Wisconsin

The following 14 states have general clauses authorizing local school boards to permit the use of school buildings as community centers, without specific reference to political meetings.

Connecticut	Nevada
Idaho	North Carolina
Kentucky	North Dakota
Minnesota	Ohio
Mississippi	South Dakota
Montana	Utah
Nebraska	Virginia

The following 13 states have no statutory provisions for permitting the use of school buildings:

Colorado	New Mexico
Florida	Rhode Island
Georgia	South Carolina
Louisiana	Tennessee
Maine	Texas
New Hampshire	Vermont

Wyoming

School Boards in the Cities Below Answered Our Questionnaire.

Replies came from 72 of the 93 cities of over 100,000 population.

The 21 marked "None" indicate that no political meetings are allowed in school buildings. The 18 marked "*Dis*" indicate discrimination against minority or radical groups.

ALABAMA	LOUISIANA	OHIO
Birmingham—None	New Orleans—None	Akron— <i>Dis</i>
CALIFORNIA	MASSACHUSETTS	Canton—None
Long Beach	Boston	Cincinnati
Oakland	Cambridge	Cleveland
San Diego— <i>Dis</i>	Fall River	Columbus
San Francisco—None	Lynn	Dayton—None
COLORADO	New Bedford	Toledo—None
Denver— <i>Dis</i>	Somerville	Youngstown— <i>Dis</i>
CONNECTICUT	Springfield— <i>Dis</i>	PENNSYLVANIA
Bridgeport— <i>Dis</i>	Worcester— <i>Dis</i>	Erie— <i>Dis</i>
Hartford—None	MICHIGAN	Philadelphia—None
New Haven	Detroit	Pittsburgh
DELAWARE	Flint	Reading—None
Wilmington	Grand Rapids— <i>Dis</i>	Scranton—None
DISTRICT OF COLUMBIA	MINNESOTA	RHODE ISLAND
Washington— <i>Dis</i>	Minneapolis— <i>Dis</i>	Providence—None
FLORIDA	St. Paul	TENNESSEE
Miami	MISSOURI	Chattanooga
GEORGIA	Kansas City—None	Nashville—None
Atlanta— <i>Dis</i>	St. Louis—None	TEXAS
ILLINOIS	NEBRASKA	El Paso
Chicago	Omaha—None	Houston— <i>Dis</i>
Peoria— <i>Dis</i>	NEW JERSEY	San Antonio— <i>Dis</i>
INDIANA	Camden	UTAH
Evansville— <i>Dis</i>	Elizabeth	Salt Lake City—None
Indianapolis—None	Newark	VIRGINIA
IOWA	Paterson	Norfolk
Des Moines	NEW YORK	Richmond— <i>Dis</i>
KANSAS	Albany—None	WASHINGTON
Wichita	New York City— <i>Dis</i>	Seattle—None
KENTUCKY	Rochester	Spokane
Louisville—None	Syracuse	Tacoma
	Utica—None	
	Yonkers	

## **Proposed Model Provisions for Use of School Buildings for Public Meetings**

*The Civic Center Act of the State School Code of the State of California*

### ARTICLE I.

#### CHAPTER I. *Use of School Buildings and Grounds for Meetings*

Boards of school trustees and city boards of education are hereby authorized to grant the use of school buildings or grounds for public, literary, scientific, recreational or educational meetings, or for the discussion of matters of general or public interest upon such terms and conditions as said board may deem proper, and subject to the limitations, requirements, and restrictions set forth in this chapter.

Said use shall not be inconsistent with the use of said buildings or grounds for school purposes, nor interfere with the regular conduct of school work.

Said use shall not be granted in such a manner as to constitute a monopoly for the benefit of any person or organization.

No privilege of using said buildings or grounds shall be granted for a period exceeding one year, such privilege being renewable and revocable in the discretion of the board at any time.

#### CHAPTER II. *Schoolhouses as Civic Centers*

There is hereby established a civic center at each and every public schoolhouse within the State of California, where the citizens, parent-teachers' association, camp fire girls, boy scout troops, clubs and associations formed for recreational, educational, political, economic, artistic and/or moral activities, of the respective public school districts within the State of California may engage in supervised recreational activities and where they may meet and discuss from time to time, as they desire, any and all subjects and questions which in their judgment may appertain to the educational, political, economic, artistic and moral interests of the citizens of the respective communities in which they may reside.

#### ARTICLE II. *Control of Civic Center*

The provisions of this article vest control in the Board of Education of the school district, authorizing needful regulations.

#### ARTICLE III. *Expenses of Civic Center*

The use of schoolhouses, property, and grounds under the provisions of this Chapter shall be granted free.

In the case of entertainments or meetings where admission fees are charged or contributions are solicited and the net receipts of such admission fees or contributions are not expended for the welfare of the

pupils of the district or for charitable purposes a charge must be made for the use of said schoolhouse, property and grounds.

Lighting, heating, janitor service and the services of a special supervising officer when needed, in connection with the use of public school buildings and grounds as set forth in Article I of this Chapter, shall be provided for out of the country or special school funds of the respective school districts in the same manner and by the same authority as such similar services are now provided for.

NOTE: The California statute is an excellent working model, though experience dictates the wisdom of adding a clause against discrimination, as for instance in the Kansas law which provides:

"It shall be unlawful for the school board to act arbitrarily or partially in the matter of prescribing regulations for the use of the schoolhouse; and any abuse of their powers by the school district board may be corrected by the district court through a mandamus or injunction on the application of the aforementioned societies."

The provision in many state laws requiring a vote of the school district to authorize community use of the school buildings seems to us unnecessary and cumbersome.

The **Michigan Community Centers Law** sets forth a reasonable basis for determining who shall use the schools. The law reads:

"The school board of any school district in this state, upon the written application of any responsible organization located in said school district, or of a group of at least seven citizens of said school district, shall grant the use of all school grounds and schoolhouses as community or recreation centers for the entertainment and education of the people, including the adults and children of school age, and for the discussion of all topics tending to the development of personal character and of civic welfare. Such occupation, however, shall not seriously infringe upon the original and necessary uses of the properties. The school board in charge of such building shall prescribe such rules and regulations for their occupancy and use as herein provided as will secure a fair, reasonable, and impartial use of the same. The organization or group of citizens applying for the use of properties as specified above shall be responsible for any damage done them over and above the ordinary wear, and shall, if required, pay the actual expense incurred for janitor service, light and heat."

While the Michigan, California and a number of other laws do not specifically refer to religious organizations, apparently they too are permitted to use public school buildings. It is desirable that they should be included.

The **Indiana** statute uses language which is desirable, describing the use of school houses for public purposes to require "giving equal rights and privileges to all religious denominations and political parties without any regard whatever to the numerical strength of any religious denomination or political party of such district."

Specific provisions for political meetings are desirable, as in the **Ohio** law which reads:

"Upon the application of a committee representing any candidate for public office or any regularly organized or recognized political party, the board of education having control of any school grounds shall permit the same to be used as a place wherein to hold meetings of electors for the discussion of public questions and issues, provided that no such meeting shall be held during regular school hours. No charge shall be made for such use, but the candidate or committee so holding a meeting shall be responsible for any damage done or expense incurred by reason thereof."

---

**In revising existing law or in adopting regulations by school boards we recommend that the following points be included, whatever the precise language of the statute or regulation.**

1. Use of the school buildings shall be granted to any responsible organization or group of citizens upon written application.

2. No discrimination whatever should be made because of the character of the organization or of the proposed program or speeches. No requirement should be made for submitting names of speakers or copies of speeches in advance.

3. Payment for the use of school buildings should be held in all cases to the minimum of cost; and where the meetings are of general community interest, such as the discussion of public issues and the campaign meetings of political parties, without any payment at all.

4. Organizations should be permitted to charge admission fees or take up collections for educational, charitable or public as distinguished from commercial purposes. In such cases the cost of the use of the buildings may be properly charged. Organizations should not be permitted the use of school buildings free of charge where admission fees or collections are applied solely for the benefit of a religious sect or denomination or a private organization. Where admission fees are charged or collections taken, a financial statement with signed vouchers should be submitted to the school authorities.

Organizations using the schools should be held responsible for payment of any damages.