opinion signed by two of the judges and the concurring opinion of the third. This we think equivalent for that purpose to an announcement in open court, three judges sitting. See *Cumberland Telephone & Telegraph Co.* v. *Louisiana Public Service Commission,* 260 U. S. 212, 218.

We have considered, but do not discuss, other contentions of appellant of less moment.

Affirmed.

COCHRAN ET AL. *v.* LOUISIANA STATE BOARD OF EDUCATION ET AL.

APPEAL FROM THE SUPREME COURT OF LOUISIANA.

No. 468. Argued April 15, 1930.—Decided April 28, 1930.

Appropriation by the State of money derived from taxation to the supplying of school books free for children in private as well as public schools is not objectionable under the Fourteenth Amendment as a taking of private property for private purposes where the books furnished for private schools are not granted to the schools themselves but only to or for the use of the children, and are the same as those furnished for public schools and are not religious or sectarian in character. P. 374.

168 La. 1030, affirmed.

APPEAL from a decree of the Supreme Court of Louisiana affirming the refusal of a trial court to issue an injunction to restrain the State Board of Education and certain officials, appellees herein, from expending tax funds for the purchase of free school books.

Mr. Challen B. Ellis, with whom *Messrs. Wade H. Ellis, Daniel C. Roper, W. D. Jamieson, Herbert S. Ward, James U. Galloway,* and *Nash Johnson* were on the brief, for appellants.

Taxes levied by a State must be for a public purpose. *Parkersburg* v. *Brown,* 106 U. S. 487; *Cole* v. *LaGrange,*

113 U. S. 1; *Dodge* v. *Mission Township,* 107 Fed. 827; *Beach* v. *Bradstreet,* 85 Conn. 344.

The test to be applied is whether the public has a common and equal right to the use and benefit. *Cole* v. *La-Grange, supra; Missouri Pac. R. Co.* v. *Nebraska,* 164 U. S. 403; *Connecticut College* v. *Calvert,* 87 Conn. 421; *Jenkins* v. *Andover,* 103 Mass. 94; *Curtis* v. *Whipple,* 24 Wis. 350; *Savings & Loan Ass'n* v. *Topeka,* 20 Wall. 655; *Opinion of the Justices,* 211 Mass. 624.

Private schools do not come under the category of public use. Cases *supra; Atchison, T. & S. F. R. Co.* v. *Atchison,* 47 Kan. 712; *Opinion of the Justices,* 214 Mass. 599; *Lowell* v. *Boston,* 111 Mass. 454.

The principle derived from these cases is that a use which is denominated a "public use," as justifying the taking of private property under either the taxing power or the power of eminent domain, requires a right secured to the public to enjoy the objects for which the tax is levied upon such terms as the public itself may lay down, and the control of which the public has reserved even after the aid has passed to the object to which it is granted.

A private school may limit its patrons in any manner that it chooses. It may limit them to persons of the Ethiopian race; or to persons of Japanese extraction; or to persons in a certain district; or to persons of a certain degree of birth; or to persons of a certain sect; or to a limited number of persons such as ten or five; and the State cannot restrain such action. The right of control by the State over private schools is greatly restricted (*Meyer* v. *Nebraska,* 262 U. S. 390); the State has little or no control or supervision over the instruction or instructors in private schools—an essential element in *Jenkins* v. *Andover,* 103 Mass. 94.

The furnishing of text-books free by the State to school children attending private schools which charge tuition

and require the children to furnish their school books, is an aid to such private institutions by furnishing a part of their equipment. If the legislature may not levy a tax for the aid of private schools, it may not indirectly do the same thing. *Underwood* v. *Wood,* 93 Ky. 177; *Smith* v. *Donahue,* 195 N. Y. S. 202, 202 App. Div. 656; *Dakota Synod* v. *State,* 2 S. D. 366; *Williams* v. *Stanton School District,* 173 Ky. 708.

If the furnishing of text-books free to children attending private schools is not considered an aid to such private schools, but as incidental to the state educational system, then it logically follows that the tuition of the children attending such schools could be paid; their transportation to and from such schools could be provided; the salaries of the instructors could be paid in part or in whole; and finally, the buildings themselves could be erected,—with state funds; all of which, under the reasoning evinced in the statutes of Louisiana, might be justified on the ground that it is the interest of the State to see that its youth are educated.

If the furnishing of school books to children attending private schools is not to be considered an aid to such private schools but an aid only to the children attending such schools, then the tax levied for such purpose is equally obnoxious to the Federal Constitution because it constitutes a diversion of public property to private individuals without distinction as to need for charity and without any special obligation of the State, charitable or otherwise, to such persons. *Savings & Loan Ass'n* v. *Topeka,* 20 Wall. 655; *State* v. *Switzler,* 143 Mo. 287; *Beach* v. *Bradstreet,* 85 Conn. 344.

If the principle upon which there is allowed a diversion of the public school funds for the benefit of private individuals, is sanctioned, then the division of the public schools funds may be permitted, so that ultimately those whose children attend private schools, under the simula-

tion of bearing the burden of taxation for the public schools, are paying for the maintenance only of their own private schools. This finally means, in effect, depriving the State of its power to tax (for the support of the public schools) those who support only their private schools—and practically the destruction of one of the free institutions under our republican form of government.

The distinction between the case here and those affirming the constitutional authority of the State to aid railroads or to engage in private enterprises serving the public (*Green* v. *Frazier,* 253 U. S. 233) is that in the latter cases there is secured to the public both public control and common and equal right of use. *Savings & Loan Ass'n* v. *Topeka,* 20 Wall. 655; *Green* v. *Frazier,* 253 U. S. 233; *Connecticut College* v. *Calvert,* 87 Conn. 421; *Curtis* v. *Whipple,* 24 Wis. 350; *Jenkins* v. *Andover,* 103 Mass. 94.

Messrs. Percy Saint, Attorney General of Louisiana, *Peyton R. Sandoz,* Assistant Attorney General, *H. H. White* and *Walter J. Burke* were on the brief for appellees.

Mr. Chief Justice Hughes delivered the opinion of the Court.

The appellants, as citizens and taxpayers of the State of Louisiana, brought this suit to restrain the State Board of Education and other state officials from expending any part of the severance tax fund in purchasing school books and in supplying them free of cost to the school children of the State, under Acts No. 100 and No. 143 of 1928, upon the ground that the legislation violated specified provisions of the constitution of the State and also section 4 of Article IV and the Fourteenth Amendment of the Federal Constitution. The Supreme Court of the State affirmed the judgment of the trial court, which refused to issue an injunction. 168 La. 1030.

Act No. 100 of 1928 provided that the severance tax fund of the State, after allowing funds and appropriations as required by the state constitution, should be devoted "first, to supplying school books to the school children of the State." The Board of Education was directed to provide "school books for school children free of cost to such children." Act No. 143 of 1928 made appropriations in accordance with the above provisions.

The Supreme Court of the State, following its decision in *Borden* v. *Louisiana State Board of Education,* 168 La. 1005, held that these acts were not repugnant to either the state or the Federal Constitution.

No substantial Federal question is presented under section 4 of Article IV of the Federal Constitution guaranteeing to every State a republican form of government, as questions arising under this provision are political, not judicial, in character. *State of Ohio ex rel. Bryant* v. *Akron Metropolitan Park District, ante,* p. 74, and cases there cited.

The contention of the appellant under the Fourteenth Amendment is that taxation for the purchase of school books constituted a taking of private property for a private purpose. *Loan Association* v. *Topeka,* 20 Wall. 655. The purpose is said to be to aid private, religious, sectarian, and other schools not embraced in the public educational system of the State by furnishing text-books free to the children attending such private schools. The operation and effect of the legislation in question were described by the Supreme Court of the State as follows (168 La., p. 1020):

"One may scan the acts in vain to ascertain where any money is appropriated for the purchase of school books for the use of any church, private, sectarian or even public school. The appropriations were made for the specific purpose of purchasing school books for the use of the school children of the state, free of cost to them. It was

for their benefit and the resulting benefit to the state that the appropriations were made. True, these children attend some school, public or private, the latter, sectarian or non-sectarian, and that the books are to be furnished them for their use, free of cost, whichever they attend. The schools, however, are not the beneficiaries of these appropriations. They obtain nothing from them, nor are they relieved of a single obligation, because of them. The school children and the state alone are the beneficiaries. It is also true that the sectarian schools, which some of the children attend, instruct their pupils in religion, and books are used for that purpose, but one may search diligently the acts, though without result, in an effort to find anything to the effect that it is the purpose of the state to furnish religious books for the use of such children. . . . What the statutes contemplate is that the same books that are furnished children attending public schools shall be furnished children attending private schools. This is the only practical way of interpreting and executing the statutes, and this is what the state board of education is doing. Among these books, naturally, none is to be expected, adapted to religious instruction."

The Court also stated, although the point is not of importance in relation to the Federal question, that it was "only the use of the books that is granted to the children, or, in other words, the books are lent to them."

Viewing the statute as having the effect thus attributed to it, we can not doubt that the taxing power of the State is exerted for a public purpose. The legislation does not segregate private schools, or their pupils, as its beneficiaries or attempt to interfere with any matters of exclusively private concern. Its interest is education, broadly; its method, comprehensive. Individual interests are aided only as the common interest is safeguarded.

Judgment affirmed.