

## Document A

### **From the beginning, public education in Ohio has been a governmental function delivered through the public common school system**

#### **Early history**

Public education as a governmental function was destined to be woven into the fabric of American life from the beginning of the nation. The “ould Deluder Satan” law of 1647 set up a system of community supported education—a new concept in the history of the world—in Massachusetts Bay Colony. There was no historical precedent for this kind of provision (i.e.) the community providing education for all the children of all the people.

Continental Congress, in the Land Ordinance of 1785, passed May, 20, 1785, specified that the territory Northwest of the Ohio River be divided into townships of six miles square and that the plats of townships be marked by subdivisions into lots of one-mile square or 640 acres each marked by a number from one to thirty six. One was reserved for the maintenance of public schools. “There shall be reserved the lot N 16, of every township, for the maintenance of public schools, within each township.”

The Northwest Ordinance of 1787, enacted by Congress on July 13, 1787, provided for the government of the Territory of the United States northwest of the River Ohio. Section 14, Article 3 stated in part, “Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.”

The Land Ordinance of 1785 and the Northwest Ordinance of 1787 provided a financial incentive and direct encouragement for the establishment of public schools to be operated by the government for the benefit of all youth. Private or privately-operated school entities were not intended.

#### **Education provisions in 1802 Ohio Constitution**

Citizens in the Ohio territory became disenchanted with the rule of Northwest territory Governor St. Clair and were determined to write a constitution and form a state. The constitution was finalized on November 29, 1802. Article VII was entitled “Bill of Rights”. Two sections of that article set forth, at least, a modicum of guidance to public officials regarding education. Section 3 stated in part:

“But religion, morality, and knowledge, being essentially necessary to the good government and happiness of mankind, schools and the means of instruction shall forever be encouraged by legislative provision, not inconsistent with the rights of conscience.”

Section 25 stated:

“That no law shall be passed to prevent the poor in the several counties and townships within this State, from an equal participation in the schools, academies, colleges and universities within this State, which are endowed, in whole or in part, from the revenues arising from the donations made by the United States for the support of schools and colleges; and the doors of the said schools, academies, and universities shall be open for the reception of scholars, students, and teachers of every grade, without any distinction or preference whatever, contrary to the intent for which the said donations were made.”

These provisions in the 1802 Ohio Constitution point to the fundamentality of education and the requirement of the state to provide equality of educational opportunities for rich and poor alike. In particular, section 3

required that education be encouraged “by legislative provision.” Education from the beginning of statehood was a function of government.

These provisions for education in the Ohio Constitution were somewhat idealistic for that era. Children from poor families had little or no opportunities for education. Many people believed that only the upper class needed to be educated and that those who provided the labor needed no formal schooling. But these provisions set the stage for a promise to bring real life to the American dream of a good and just society. The absence of such dream would cause citizens to fall for such evils as Fascism, Nazism or Communism.

### **Campaign for universal free public education**

After the American Revolution, a few people emerged that imagined education for all children regardless of wealth or social status. These ideas were not particularly popular. A society which had not placed the importance on education for the masses was not readily amenable to such revolutionary ideas. But self-government, on a broad scale, had never been tried and advocates for such understood the nexus between self-government and universal education.

The proponents of free universal education were not easily dissuaded from their vision. They viewed education as a benefit to society as well as to the individual. They reasoned that education was essential for democracy to flourish and sustain itself. One of the early and most persuasive advocates for the idea of free, universal common schools was Thomas Jefferson, himself a man of privilege. He did not wish to limit the privilege of education to a few, but desired it for all.

"I think by far the most important bill in our whole code, is that for the diffusion of knowledge among the people. No other sure foundation can be devised for the preservation of freedom and happiness... Preach, my dear Sir, a crusade against ignorance; establish and improve the law for educating the common people." These words were written by Thomas Jefferson to George Wythe from Paris in the summer of 1786. He also wrote, "...it is safer to have the whole people respectably enlightened than a few in a high state of science and the many in ignorance. The last is the most dangerous state in which a nation can be. The nations and governments of Europe are so many proofs of it."

Jefferson indicated that education for all is an absolute necessity as a means of dealing with powers assigned to government. He states, "I know of no safe depository of the ultimate powers of society but the people themselves. If we think them not enlightened enough to exercise their control with wholesome discretion, the remedy is not to take it from them, but to inform their discretion by education."

Jefferson was never dissuaded from his vision.

Jefferson had a vision of every child receiving a basic education in free public schools. He was confident that it was the only way a democracy could survive. That was a difficult challenge in a state where a class society had developed, and where wealthy landowners felt little need to educate the children of the working class, let alone the slaves.

John Adams, U.S. President, weighed in on the idea of free universal education in a letter to John Jebb in 1785: "The whole people must take upon themselves the education of the whole people and be willing to bear the expense of it. There should not be district of one mile square, without a school in it, not founded by a charitable individual, but maintained at the public expense of the people themselves."

Adams and Jefferson considered education to be a public good. They saw the connection between public education and democracy. But the idea of free, universal education--the public common school--took root slowly.

The idea of the "more perfect union" was possibly just an ideal, a dream when that language was penned. In 1789, the differences in geography, heritage and customs were greater than the ties that united them. How could these gaps be bridged? How could the millions of immigrants become Americanized--a creation of unity out of diversity? How could a "government of the people, by the people and for the people" be perfected and sustained?

The only answer for all of the questions above is the governmental provision for a free, universal public education system--the public common school system.

### **Ohio legislature slow to act on free universal education**

Section 3 of the 1802 Ohio Constitution remained a dead letter, however, until Ephraim Cutler, a delegate to the first constitutional convention and a member of the General Assembly, introduced a resolution in December 1819 to require the General Assembly to support and encourage schools and the means of education. But the resolution died aborning.

The Ohio legislature, via land set aside in each township for maintenance of public schools, was entrusted with an enormous asset for the financing of a government school system. Land was cheap in 1803 but there was not much money available. There was no organized advocacy for public education. The legislature was not equipped to efficiently and effectively manage the school lands. There was no state agency assigned to provide consistent oversight to the process.

In the early years, Ohio was a frontier community, settled by self-reliant people, determined to solve their own problems, including education. The tradition of local initiative and local control was inherent in the civic and political fabric of the new state. Ohioans came from various regions including--Kentucky, Maryland, New England, and Virginia and thus had no common education heritage. However, the legislature, in 1821, appointed a schools and school lands committee. The committee proposed a commission, "whose duty it shall be to collect, digest and report to the next General Assembly a system of education for common schools."

The first general school act in 1821 provided for the establishment of school districts within townships and made property subject to taxation for schools.

The next major school act was enacted in 1825, which required townships to be divided into school districts and directors to be elected in each district. Each community was required to levy taxes for the support of the schools.

The 1825 legislation clearly established the framework for a community-managed, statewide system of public education. However, it would be another quarter century before the state constitutionalized the requirement for a thorough and efficient system of common schools.

In 1837, the Ohio legislature employed Samuel Lewis as Superintendent of Common Schools. Lewis' three year stint in Ohio advanced the implementation of the state public common school system of locally-managed school districts.

Lewis' work in Ohio was during Horace Mann's campaign to promote the common school across the nation. Mann, considered the father of the public common school, said it is the greatest discovery made by mankind.

The common school system was established as the system for all the children of all the people supported by taxes.

The Akron Law of 1847 provided for a city-wide system of public schools under the management of an elected board of education in Akron. This became a model for other Ohio cities.

The next push for the universal, free, government-operated system of public schools came from the delegates to the Constitutional Convention of 1850 and 1851.

### **Thorough and efficient clause—1851 Constitution**

The education provision in the Ohio Constitution was original, not copied from other states' constitutions. West Virginia and other states, however, copied Ohio's thorough and efficient clause.[1]

For purposes of this discussion, the dictionary definition of the words "thorough and efficient" is instructive. The 1828 American Dictionary of the English Language published by S. Converse, defined thorough as: "literally, passing through or to the end; hence, complete; perfect." Therefore, thorough, as it relates to the common school system, means that the system shall be complete in all respects and marked by full detail. The system must be exhaustive and provide for full mastery.

The 1828 American Dictionary of the English Language defined efficient as: "causing effects; producing; that causes anything to be what it is. The efficient cause is that which produces; the final cause is that which is produced." Hence, efficient, as it relates to the common school system, means that the system shall be effective in that it produces results. Therefore it is the state's responsibility to determine the educational opportunities that will be available to students and the outcomes that are expected of students and school districts.

It should be noted that the constitutional convention delegates could have crafted a mandate for a mere system; or they, as other states have done, could have mandated just a thorough system or just an efficient system or just a uniform system; but instead they adopted constitutional language that requires an exhaustively complete and effective system.

### **The meaning of "common" in the constitutional provision for education**

The word "common" is defined in the American Heritage Dictionary, Second College edition, 1982, as: "Belonging equally to or shared equally by two or more; joint: common interests." As applied to the system of schools, the delegates to the Constitutional Convention of 1850 and 1851 were contemplating the common good. They did not intend a mere ordinary system. Delegate Archbold said he wanted a system "as perfect as could be devised." [2]

The meaning of the term "common school" was well understood by the constitutional convention delegates. They chose the word "common" to indicate diversity of students that would be attracted to the system. During the convention debates, Delegate Archbold argued that the word "common" should be replaced with the word "useful." He stated "at the present time there is no difficulty in ascertaining what [common schools] means, but

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[1] Pauley v. Kelley, 255 SE 2<sup>nd</sup> 859, 866 (W. Va. 1979)

[2] 2 Debates Page 698

the time might come when retaining its present limit of definition, it might stand in the way of further and necessary improvements in the school system.” Delegate Humphreville responded: “There is little more danger of the word common being perverted than of the word “useful.” Common schools in the future will be common schools--that is to say they will not be uncommon schools. They will be schools that will hold the same relation to the then state of things that the present common schools do to the present state of things.” Delegate Archbold retorted, “Some bigot may arise and give a different construction to the word”, to which Delegate Humphreville replied: “So some bigot may arise and give a different construction to the word useful. Difference of opinion may arise as to what is useful. Many believe that there can be no learning that is not useful. Carried to an extreme this opinion would turn every little log school house into a university.”<sup>[3]</sup>

It is crystal clear that the public education provision of the 1850 and 1851 Constitutional Convention (Article VI, section 2) requires the state to ensure a high quality public common school system available to all. It is also very clear that the current system does not meet the constitutional standard of thorough and efficient. The inequities and inadequacies are conspicuous.

### **The 1912 education amendments**

The delegates to the Constitutional Convention of 1912 crafted an amendment passed by Ohioans that strengthened state responsibility for public education and gave additional powers to city boards of education as stated in Article VI, section 3:

Provision shall be made by law for the organization, administration and control of the public school system of the state supported by public funds: provided, that each school district embraced wholly or in part within any city shall have the power by referendum vote to determine for itself the number of members and the organization of the district board of education, and provision shall be made by law for the exercise of this power by such school districts.

(Adopted September 3, 1912.)

Article VI, section 3 puts the onus on the state to effectively and purposefully structure, superintend and regulate the public common school system. The intent of this amendment was to require the state to further develop and advance the system.

Within 17 months from the adoption of this amendment, the following events transpired:

- The Ohio School Survey Commission was appointed; it debated the issues and issued a report.
- The School Survey Day was conducted on November 14, 1913 in the school buildings across Ohio
- The Education Congress convened in Columbus on December 5 and 6, 1913 resulting in several resolutions drafted for consideration by the legislature

### **Four major public education bills passed in February 1914**

Also in 1912, Ohioans approved a constitutional amendment to establish the position of superintendent of public instruction which replaced the elective position of state commissioner of common schools. By statute, this position was attached to the governor’s office.

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<sup>[3]</sup> 2 Debates at pages 698 and 699

In 1939, there was a failed attempt to establish a state board of education by constitutional amendment. It seems that some Ohioans envisioned a state education agency that was separated from the governor’s office. Then in 1953, Ohioans supported a constitutional amendment to establish a state board of education and superintendent of public instruction to be appointed by the state board. The enabling legislation, commensurate with the intent of the supporters of the 1953 amendment, provided for an independent board—a fourth branch of state government—by virtue of an elected governmental body.

Twenty years after the 1914 public school legislation, the legislature, plagued by a severe fiscal crisis in the public common school system, vigorously debated ideas about how to fix the fiscal crisis. In 1935, the legislature enacted Ohio’s first school foundation program and funded it by enacting Ohio’s first three-cent sales tax.

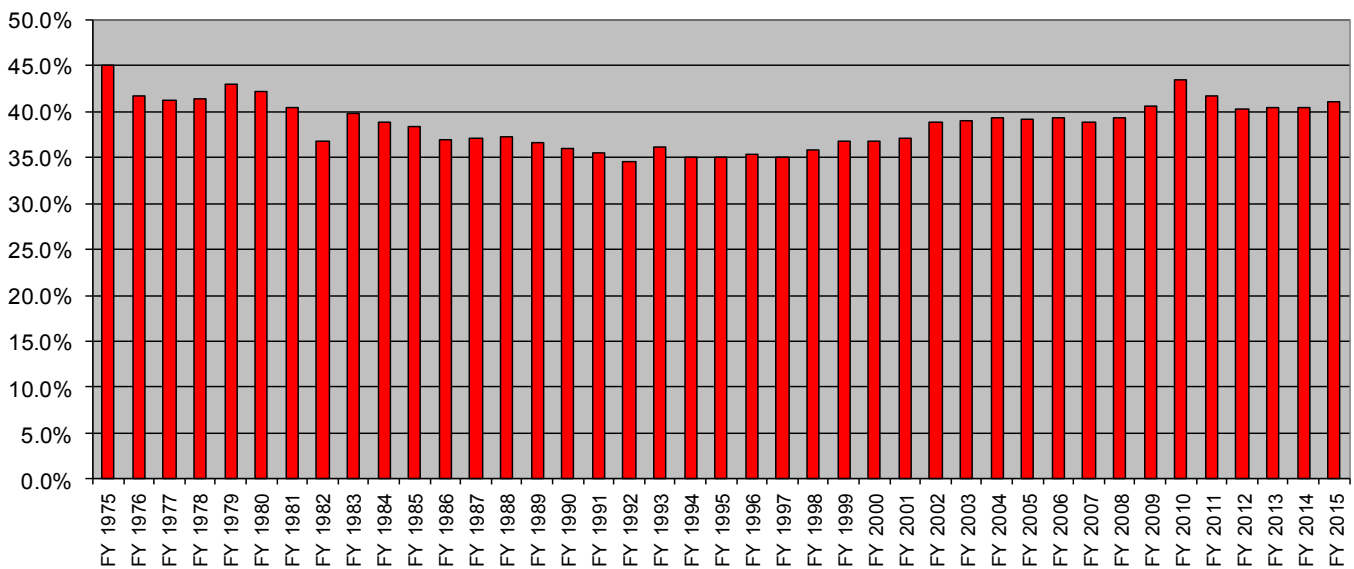
The foundation program raised the percentage of the state’s contribution to school expenditures from four to fifty.

By the 1970s, the state’s percentage had declined to thirty.

The state income tax, enacted in 1972, provided enough revenue to public schools to raise the state’s percentage of contribution to school expenditures to in the range of forty three to forty five. Although the percentage has varied since then, the local contribution to public school expenditures has been fifty percent or more since Ohio statehood, with the exception of a couple years.

Another way to consider state vs. local financial support for public education is in terms of the percentage of the state General Revenue Fund appropriated for public education. Below is a graph that displays that percentage from 1975 to 2015.

**Percentage of the State Budget Allotted to Primary and Secondary Education  
FY 1975-FY 2015**



From at least 1837 until the 1990s, state officials in Ohio, ever so slowly, but incrementally, sought to improve the public common school system. The system has never been perfected in the sense of meeting the constitutional mandate, but at least the focus was on the public common school system.

The legislative focus, solely on the common school system, changed via two watershed legislative thrusts in the 1990s—the initiation of publicly-funded education choice programs and the appointment of state board of education members.

The choice programs are privately-operated entities that separate students and remove governance by communities to private individuals that escape considerable public scrutiny and accountability.

The Constitution requires the state to regulate public education. The state has chosen to deregulate charter schools and allow voucher students to attend private schools. The only thing actually public about choice programs is public tax money.

What do we take away from this history?

The Constitution provides for a system of public common schools—that system must be thorough and efficient which provides high quality educational opportunities for all.

The state is responsible for securing, maintaining, monitoring, administering and regulating the system of public education.

The public common school system should meet the needs of all students. Students should not have to go elsewhere to have their needs met.

The public school system is a governmental entity that is essential for the preservation and maintenance of democracy.