

## **THE HISTORY OF THE COMMON SCHOOL MANDATES THAT THE STATE OF OHIO MUST GIVE THE HIGHEST PRIORITY TO THE COMMON SCHOOL SYSTEM.**

In this era of hostility toward the public sector, particularly toward the public common school, it is important for the public, especially public school advocates, to realize that (1) the hostility toward the public sector now seems global in scope and (2) that there has always been tension between public and private ownership.

The great American Common School System—the system of the people, by the people, and for the people is being attacked on several fronts. Why? There are several explanations.

Some profit seekers realize that the largely unregulated charter industry provides an opportunity to tap into a guaranteed stream of tax revenue appropriated for education. It is strictly business; thus, they mount an attack on the common school to attract customers to their business. Their pursuit of profits trumps education opportunities for the students they “serve.”

Some faith-based groups are seeking public funds to advance their system of beliefs and thus, may not openly attack the common system, but recruit students from the system with enticing appeals of delivering students from the forsaken land to the promised land. They perpetuate the myth that private education is inherently superior to public education. Research studies conclude that when demographics are accounted for, public schools outperform private schools.

And then there is the group that caters to the philosophy that “government is the problem”—that common schools are democratically-operated, which is in their eyes problematic. Their rhetoric is that the common school is a government school monopoly; thus, it has no incentive to improve, and thereby is inferior.

Another group that dismisses the common school is a collection of those who do not wish to mix with the regular folks. They don’t necessarily attack the common system; they just don’t want to be involved with it.

Politicians who are unsympathetic or averse to the public or common sector tend to work aggressively for the private sector in policy matters and in the allocation of resources, while neglecting the public sector. The National Park system, now with 400 national parks, for example, has a backlog of billions in deferred maintenance. Public lands are being privatized at an alarming rate. The neglect of the public or common sector, while the private sector is being emboldened by political decisions is illustrated by what is happening in the area of recreational pursuits.

Although private groups, particularly religious sects, established schools early-on in America, the common school eventually won the hearts and minds of citizens. Pertinent constitutional provisions require priority be given to the common school system that is available to all, at no cost to the individual. A historical context is important to an understanding of why privatization of the public system is wrongheaded.

The Land Ordinance of 1785 specified that the Northwest Territory was to be divided into townships of 6 miles square, and each township be subdivided into sections of 1 mile square, numbered 1-36. The 16th section of each township was dedicated to the support of education. These specifications signaled that schools would be provided within geographic boundaries and would be supported by the public.

Two years later, Congress issued the Northwest Ordinance of 1787, a document governing the Northwest Territory. This ordinance had a provision which addressed education. Article III in pertinent part states: “Religion, morality and knowledge hence necessary to good government and the happiness of mankind,

schools and the means of education shall forever be encouraged.” This provision mandated governmental responsibility for education.

The 1802 Ohio Constitution included a version of the Northwest Ordinance provision regarding education. In pertinent part Article VIII, section 3 Bill of Rights stated: “But religion morality, and knowledge being essentially necessary to good government and the happiness of mankind, schools and the means of instructions shall forever be encouraged by legislative provisions not inconsistent with the rights of conscience.” The 1851 Ohio Constitution version of this provision states: “Religion, morality, and knowledge, however, being essential to good government, it shall be the duty of the General Assembly to pass suitable laws to protect every religious denomination in peaceable enjoyment of its own mode of public worship and to encourage schools and means of instruction.” (Article I, section 7).

The 1802 Constitution’s Bill of Rights, Article VIII included protection for the poor regarding education that is supported by government funds. Section 25 of Article VIII stated: “That no law shall be passed to prevent the poor in the several counties and townships, within the State, from an equal participation in the schools, academies, colleges, and universities within the State, which are endowed in whole or in part, from the revenues arising from donations made by the United States, for support of school academies and universities, shall be open for reception of scholars and students and teachers, of every grade, without distinction or preference whatever, contrary to the intent for which said donations were made.” This provision, in context of the Northwest Ordinance which set aside the 16<sup>th</sup> section of each township, confirms that public education was intended, not private education.

During the first few years of statehood, the General Assembly granted charters to private groups to operate education venues. That changed after about 20 years. In 1819 Ephraim Cutler introduced legislation that would regulate and support common schools. The bill, however, was defeated in the Senate.

In 1821, the legislature appointed a schools and school lands commission. Among the statements included in the 1822 Report of the Commission is “as to the school lands of this state, the undersigned have taken considerable pains to ascertain their present value, and what rents they actually produce, with a view, to form if practical, some system of management, which shall render them productive of revenue, for the support of common schools.” These commissioners understood that the 16<sup>th</sup> section of each township was set aside for the support of common schools.

The first General Common School Act was passed in 1821. It provided for school districts within townships, and made private property subject to taxation for school purposes at the option of school communities.

The School Act of 1825 provided for the division of townships into school districts, school directors to be elected to manage the required schools, and required school communities to levy property taxes for the support of the schools. The common school system in Ohio was born!

The education provisions of the Land Ordinance of 1785, the Northwest Ordinance of 1787, and the 1802 Ohio Constitution provided the framework upon which state officials began to build a system of common schools available to all at public expense.

The Ohio legislature established the position of Superintendent of Common Schools in 1837 and employed Samuel Lewis to the position. The very name of the position—Superintendent of Common Schools—signals the focus of the type of system to be provided at public expense—a system of the

people, by the people, for the people; a system designed to form a cohesive body-politic, not a tribal co-existence. It is noteworthy that Horace Mann, often referred to as the father of the American common school, was elected secretary of the Massachusetts Board of Education the same year Lewis was named as Ohio's superintendent of common schools.

Although Lewis resigned after three years, the legislature continued to slowly and somewhat reluctantly advance the common school system. Education associations and advocacy groups put pressure on the legislature to expand support for the common school system. Local communities often moved ahead of the legislature in advancing the common school. For example, the Akron Law of 1847 codified the plan the town of Akron had already proposed. The plan provided that all the schools within the town would be governed and supported by one board of education. Other towns and cities adopted the plan, thus advancing the concept that publicly-supported schools would be held in common by communities and would be governed by elected boards of education.

Many delegates to the Constitutional Convention of 1850 and 1851 complained about the legislature's neglect of the common schools. Delegate J. McCormick declared: "It has been said, that we ought to trust the management of this interest [schooling] to the General Assembly. But now, for forty-eight years the General Assembly has been entrusted with this matter. Under the old constitution it is provided that public schools and the cause of education shall be forever encouraged; and, under this constitutional provision, we have trusted the General Assembly for forty-eight years; and we may trust them for forty-eight years longer, without any good result....Our system of common schools, instead of improving in legislative hands, has been degenerating; and I think it is time that we establish and carry out an efficient system of common school education or abandon the whole thing entirely to the virtue and intelligence of the people." McCormick's remarks indicated that the "common school system" was in place in some form prior to the Constitutional Convention of 1850 and 1851. His view was that the state must be forced via a constitutional provision to secure and fund it.

After intense and protracted debate, the convention delegates crafted article VI, section 2 which states: "The general Assembly shall make such provisions by taxation, or otherwise, as with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the State; but no religious or other sect, or sects shall ever have any exclusive right to, or control of, any part of the school funds of this State." This provision requires one system of education for which the state is responsible to secure and fund by taxation.

Confidence in the efficacy and force of the new constitutional provision for a thorough and efficient system of common schools was expressed by Delegate Samuel Quigley: "[The new education clause] directs the Legislature to make full and ample provision for securing a thorough and efficient system of common school education, free to all the children in the State. The language of this section is expressive of the liberality worthy of a great State, and a great people. There is no stopping place here short of a common school education to all children in the State." The delegates emphasized the system must be available to all children.

The common school system's constitutional design is that it be statewide, but divided into geographic areas known as school districts. It is a unitary system whose subdivisions are operated by boards of education. While one might argue that no constitutional provision forbids the legislature from funding other education programs such as vouchers and charters, the state's priority must be the common school system. Any statutory arrangement that removes funding from school districts or from the state's funding pool for the common school system is to the detriment of the system and contrary to the Ohio

Constitution. If the state is determined to fund alternatives to the common school system, the state must demonstrate that it does no harm to the common system.

In context of the DeRolph school funding decisions, the burden is on the state to demonstrate that a thorough and efficient system of common schools is in place and operating effectively before funding other education entities not specified in the Constitution.

Neither charters nor vouchers fit the mold of a common school; thus, they must not be considered in the same class as the constitutionally-required common school system.

Subsequent to the approval of the 1851 Constitution, the legislature established the office of State Commissioner of Common Schools. Again, the emphasis was on common schools. Commissioners were elected on a three year term. Each commissioner issued a report to the legislature each year. In none of the reports is found any reference to the concept of issuing public funds for education to any education entity other than to the common school system.

Ohio's third Constitutional Convention (1874) was marked with intense debate regarding the issue of funneling tax money to religious schools.

The Ohio voters rejected changes to the Constitution proposed by the 1874 Constitutional Convention; however, the debates regarding the use of school tax money for private religious schools is of interest.

A convention delegate made a motion to strike the words, "but, no religious or other sect, or sects, shall ever have any exclusive right to, or control of, any part of the school funds of this state" from Article VI, section 2. This motion sparked a protracted and lively debate regarding the issue of tax money being available to private religious schools. The debate focused on whether any part of school funds should be diverted to private religious schools. The response was a resounding, "No."

Delegate Asher Cook, in opposition to the motion, expressed the opinion of the opponents: "Here the children of a district, and often those of an entire village, are united in one school, where all cause of strife and contention is removed, and their minds, true to the instincts with which they are endued, rich and poor, mingle together, for a loving group of little friends, who, hand in hand, march bravely up the rugged hill of science, making the ascent easy by each other's aid and smoothing its rugged surface by glad peals of laughter, which ring out merrily and clear over hill top, across valley and up the mountain side, until their echoes wake up a joyous community to thank God for the common schools."

The common school and democracy have a symbiosis that is critical to the republic. Horace Mann, the father of the common school, put it this way: "Public education is the cornerstone of our community and our democracy."

The delegates to the Constitutional Convention of 1912 proposed and the citizens of Ohio, on September 3, 1912, adopted Article VI, section 3 of the Ohio Constitution which states: "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." There is not one sentence, phrase, or word in this provision or any other constitutional provision to direct any funds to private entities.

During the 1912 Constitutional Convention, some of the delegates attempted to exempt city school districts from the state common school system. The proposal was to give cities a school charter to operate separately from the state system. That proposal was rejected.

Sections 2 and 3 of Article VI of the Ohio Constitution supplement one another and make it clear that the state is responsible for funding, regulating, and giving the highest priority to the public common school system. The state system is operated within subdivisions known as districts with school boards in charge. The state of Ohio has created competing systems (vouchers and charters) that diminish funding, students, and community support from the common school system. This is an affront to the Constitution.

In recent years, state officials in Ohio have given a higher priority to school choice programs than the constitutionally-required public common school system. The current state budget bill (HB110) is the most recent manifestation of that practice. State funding and policy trajectory is destined to privatize the entire public common school system within the current decade unless stopped by the judicial branch of government. The reason a coalition of school districts in Ohio is challenging the constitutionality of the EdChoice voucher system is to protect and preserve the public common school system.