



# CONstitutional CONcepts

Number 2

*A series of condensations of the scholars' research papers prepared by the Illinois Constitutional Research Committee which was appointed by Governor Richard B. Ogilvie to furnish background material for delegates to the Constitutional Convention.*

## EDUCATION AND THE CONSTITUTION

Orville Alexander

Is it necessary to provide for public schools through a constitutional provision?

Should the schools be headed by a board or by an elected state officer?

Should financial aid to private and parochial schools be forbidden by the constitution?

Dr. Orville Alexander, Professor of Government, Southern Illinois University discusses these and other questions in his paper on Education.

This summary is abbreviated, and does not purport to contain all the detail of the original. (See the back page for further information.)

Most state constitutions (38 out of 50) have a separate article dealing with education. The other 12 deal with educational matters in articles with other labels. The Illinois provision is one of the shortest, yet concurs with those of most states by setting forth state responsibility.

It is unusual for higher education to be covered in a state constitution, and Illinois is no exception. The problems of higher education are sufficiently different from those of elementary and secondary to make it necessary for the typical state to set up separate agencies for their administration and control. The paper here summarized deals only with elementary and secondary education.

The Illinois Education Article has five sections. Section 1 is a statement of state responsibility:

“The General Assembly shall provide a thorough and efficient system of free schools whereby all children of this State may receive a good common school education.”

The record of the debates of the 1870 Constitutional Convention indicates the words “all children of this State” were designed to deny state responsibility for educating adults. “Good common school education” was a phrase utilized to avoid state responsibility for furnishing free “collegiate” education.

What “thorough and efficient” means, the definition of “all children,” and what “free” constitutes, has been left to the determination of the General Assembly; over the passage of time it is safe to say that the concepts held

by the framers of the 1870 Constitution have been enlarged and broadened. For example, in 1879 the original concept of "elementary" as "common school" was broadened to include high schools by the legislature and courts.

Section 2 states that all lands, money or other property given for public educational purposes must be used exclusively for the purpose designated. The Illinois courts have held that this section applies only to property acquired before 1870. It is doubtful that this section should be retained as a constitutional provision.

Section 3 deals with the question of using public funds for sectarian purposes and it is almost certain that the question of the relationship between state government and non-public education will be a topic of considerable concern.

Section 4, like Section 2, is also a part that raises the question of retention. This section forbids school officers to be interested in school contracts, a subject of more specific legislation by the General Assembly.

Section 5 deals with the office of county superintendent of schools. This is a part of the question of proper educational organization at the local level, and will very likely be considered by the delegates.

The Revenue Article of the constitution plays an important role in education matters. Thus, school districts are restricted to an indebtedness of no more than 5% of the value of the taxable property. This provision has been a stumbling block to the organization of unit districts which are considered to be desirable in promoting an integrated program between elementary and secondary education. Where separate elementary and secondary school districts exist, each has a 5% bonding power, double that of the unit district.

Article V—the Executive Article—provides for an elected superintendent of public instruction. This concept has been under challenge for some time by some educators. Related to this is whether the state should have a State Board of Education, the relationship that would exist between such a board and the superintendent of public instruction, and how should the board and superintendent be selected.

### State Educational Organization

In part, the question of the superintendent of public instruction is involved with the controversy of the Illinois system of elected plural executives. No state elects more executive officers than does Illinois. Illinois and 17 other states elect seven. In four states the Governor is the only elected executive officer. The Illinois system has been under attack virtually from the time of adoption.

Alexander says that, ". . . of all the executive officers elected in Illinois, the Superintendent of Public Instruction is probably the least defensible." At least, few other states follow our example in this instance.

To remove the position from excessive influence of partisan politics, the superintendent and treasurer are elected two years later than the others. In part this has been successful, only six men serving as superintendent since 1900, while 14 men were Governor. One objection to election is that an election is no way to select a professional executive head of the state educational system.

A long series of groups has proposed a state board of education with authority to select the superintendent of public instruction. Since 1947, a School Problems Commission has been in existence through authority of the legislature, and has been considered by some to be a substitute for a state board of education. The School Problems Commission, however, has never considered itself to be more than an agency investigating the need for legislative actions.

In any event, the practices of other states may be of interest. In half the states, the chief state school officer is appointed by the state board of education, with this officer serving as the executive officer of the board and the board invested with legal authority for the operation of the schools. In five states the chief school officer is appointed by the governor, and policy follows the assumption that education is one of the regular functions of government and should be handled as are other state responsibilities.

In eleven states the board of education is elected, indicating the assumption that education is of such importance that it should be handled differently than other state responsibilities. In 31 states the state board is appointed by the governor, and in many of these states, the term of office of board members is longer than that of the governor, thus mitigating against any one man determining the complexion of the board.

### Local Educational Organization

Since 1945, Illinois has reduced the number of school districts from 11,955 to today's 1,255. Of these, 664 operated only elementary schools, 190 operated only high schools, and 401 were unit districts operating both elementary and high schools. The Illinois School Problems Commission has long had a goal of organizing Illinois into nothing but unit districts. The two obstacles are local pride—beyond the capacity of a constitutional convention to deal with—and the debt limit above discussed.

The spectacular reduction in number of school districts has caused a profound change in the function of the county superintendent of schools. Supervision of the many one-teacher rural schools is no longer a needed function of the office. Today there are five counties which only have a single school district. Eight others have two, and in 45 others the number is less than 10. Consequently, the desirability of having county superintendents of schools has been raised. The 1870 Constitution does not require such an office, it only provides that there may be one. In 1969 the General Assembly provided elimination of county superintendents and creation of superintendent of an education service region. Immediately, the region is each county, but over a period of years there must be consolidation until each region has a 33,000 population.

### Church State Relations

The 1870 Constitution states:

"Neither the General Assembly nor any county, city, town, township, school district, or other public corporation, shall ever make any appropriation or pay from any public fund whatever, anything in the aid of any church or sectarian purpose, or to help support or sustain any school, academy, seminary, college, university or other literary or scientific in-

stitution, controlled by any church or sectarian denomination whatever; nor shall any grant or donation of land, money or other personal property ever be made by the State, or any such public corporation, to any church, or for any sectarian purpose."

Today, non-public school pupils constitute approximately 20% of the total school population of the State. If, for any reason, the non-public schools should cease functioning, public schools would constitutionally be required to assume this burden and it is obvious that the system would be inadequate to receive this burden. The fact that such a large proportion of the school population

is supported by private sources is the main reason why Illinois ranked 12th among 50 states in total revenue per pupil, and but 48th in public school revenue as a percent of income.

Some aid to parochial schools has been forthcoming through transportation of pupils and in state aid to the public schools which have enrolled private school students part-time. Further, some federal aid through ADC has supported some 55,000 children in private schools in Illinois. A serious attempt was made in the last General Assembly to provide state payments to private schools through several devices.

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## WHY these DIGESTS?

Preparing for a constitutional convention requires advance background and research. Accordingly, Governor Richard B. Ogilvie called upon a group of scholars to prepare research papers for the use of delegates and appointed Dr. Samuel K. Gove, director of the Institute of Government and Public Affairs of the University of Illinois as project director. Sixteen papers on various aspects of state government are being assembled. These will be issued in condensed form in continuing issues of Constitutional Concepts. A sincere attempt has been made to retain the concepts and ideas of the writers whose papers run from up to 80 pages or more. Any errors which result from the condensations clearly

are not those of the scholars originating the research.

As no public funds were available to the Constitution Research Group, the Union League Club of Chicago made an initial grant of \$10,000 to the group so the work might proceed. The Club took no part in the selection of the scholars nor the topics to be researched; made no effort to influence either research or conclusion; and did not, in any manner, direct the group. Nor does the Club necessarily endorse any suggestions, proposals or ideas expressed by the scholars.

This is one of a series of condensed research papers, prepared and published as a public service by the Public Affairs Committee of the Union League Club of Chicago.

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