

A Comparative Analysis of the Michigan Constitution

Volumes II

Articles XI



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XI EDUCATION

A. GENERAL

1. Encouragement of Education

Article XI: Section 1. Religion, morality and knowledge being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.

Constitutions of 1835 and 1850

The language of this provision is found in the Ordinance of 1787 (Article III, Articles of Compact). However, the provision does not appear in the constitutions of 1835 and 1850.

Constitution of 1908

Section 1 has not been amended since the present constitution was adopted.

Judicial Interpretation

In regard to the relationship of education and local government, the Michigan courts have held that education is a subject for the legislature and is not a part of the local self-government inherent in the township or municipality, except as the legislature may provide otherwise.¹

Other State Constitutions

Ten other states have provisions of the type set forth in Section 1. The provisions of the Massachusetts and Maine constitutions are somewhat more specific in that they mention certain types of schools and institutions that are to be encouraged. Maine makes it a duty of the legislature to encourage and endow academies, colleges and seminaries, but the legislature must make this endowment conditional on the reservation of the power to alter, limit or restrain the powers of the institutions.²

¹ Attorney General v. Board of Education of Detroit, 154 Mich. 584.

² Index Digest, pp. 369-370.

The Model State Constitution provides that the legislature shall provide for a system of free public schools and such other public educational institutions, including public institutions of higher learning, as may be desirable.

The U.S. constitution contains no provision of this type.

Comment

There has been a long line of legislative enactments indicating a settled purpose on the part of the state to encourage education. Such a provision neither grants nor limits the power of the state in this area but rather indicates intent.

B. ELEMENTARY-SECONDARY SCHOOLS

1. Superintendent of Public Instruction

Article XI: Section 2. A superintendent of public instruction shall be elected at the regular election to be held on the first Monday in April, nineteen hundred nine, and every second year thereafter. He shall hold office for a period of two years from the first day of July following his election and until his successor is elected and qualified. He shall have general supervision of public instruction in the state. He shall be a member and secretary of the state board of education. He shall be ex officio a member of all other boards having control of public instruction in any state institution, with the right to speak but not to vote. His duties and compensation shall be prescribed by law.

Constitutions of 1835 and 1850

The 1835 constitution (Article X, Section 1) and the 1850 constitution (Article XIII, Section 1) both provided for the office of the superintendent of public instruction.

The constitution of 1835 provided for the appointment of the superintendent by the governor with the consent of the legislature, in joint vote. The constitution of 1850 (Article VIII, Section 1) provided for the election of the superintendent at each general biennial election and Article IX, Section 1 provided for compensation of \$1,000 annually.

Constitution of 1908

The constitution of 1908 continued the 1850 provision for election of the superintendent, but provided that he be elected at the April election. Those parts of the present section which provide that the superintendent will be a member and secretary of the state board of education and an ex officio member of all other boards having control of public instruction were added in the constitution of 1908. The provision that the compensation of the superintendent was to be prescribed by law was also added in the constitution of 1908. Section 2 has not been amended since the present constitution was adopted, nor has it presented any serious problem of interpretation.

Statutory Implementation

The statutes provide the superintendent with little real control over primary and secondary education. Such control for the most part has been delegated by the legislature to the local school districts under authority granted by the constitution to the legislature to establish a common or primary school system (Article XI, Section 9).³

The superintendent is required to report to the legislature on the general educational conditions of the state including a statement of the operation of the several state institutions and recommendations for the improvement of the general educational system.⁴

The superintendent has executive authority to require school officers to observe the laws relating to schools and to maintain school or educational facilities for the minimum prescribed statutory period. The superintendent may examine and audit the official records and accounts of any school district, require school officers to account for illegally expended funds, appoint a time and place and proper instructors for a state teachers' institute and county institutes,⁵ approve the establishment of community colleges,⁶ adopt rules and regulations for keeping school census records⁷ and institute proceedings on the dissolution of an educational corporation which fails to comply with the law.⁸

³ M.S.A. 15.3023, sec. 23; *Belles v. Burr*, 76 Mich. 1.

⁴ M.S.A. 15.5252, sec. 252.

⁵ M.S.A. 15.3252, sec. 252.

⁶ M.S.A. 15.3792, sec. 792.

⁷ M.S.A. 15.3948, sec. 948.

⁸ M.S.A. 21.178, sec. 177.

In the way of fiscal duties, the superintendent is required to apportion according to law the primary school interest fund among the townships and cities,⁹ submit to the county clerks and treasurers a statement of the townships, school districts, and cities that are entitled to receive library moneys,¹⁰ and act as the sole state agency to apply for and receive federal aid grants to the state for the use of public schools.¹¹

In addition the superintendent is assigned a wide range of non-educational legal responsibilities. He is by law or by appointment a member of several boards and commissions. These include: the state administrative board,¹² the board of auditors,¹³ the state board of canvassers,¹⁴ the board of escheats,¹⁵ and the municipal finance commission.¹⁶

Other State Constitutions

All 50 states provide by constitution or statute for a chief school officer called variously, "Superintendent of Public Instruction," "Commissioner of Education," etc. The position of chief school officer is provided for in the constitutions of 36 states and by statute in the remaining 14 states.

Method of Selection Among the 50 states there are three distinct methods of selection of the constitutional and statutory chief school officers. In 23 of the 50 states the position is filled by popular election. In the remaining 27 states, the chief school officer is appointed. The appointment is by the state board of education in 22 states and by the governor in five states.

In the 36 states which provide constitutionally for a chief school officer, 23 provide that he shall be elected, 12 provide that he be appointed (10 by the board of education and 2 by the governor) and one state, Nevada, provides the method of selection be determined by the legislature (which has provided for appointment by the state board of education).

⁹ M.S.A. 15.3258, sec. 250.

¹⁰ M.S.A. 3915., sec. 951.

¹¹ Except vocational education funds made available under the Smith-Hughes Act and vocational rehabilitation funds. The legislature created a special board of control for vocational education. Under the law the superintendent is an ex officio member of this board and is its executive officer (Act 149, 1919).

¹² M.S.A. 3.261.

¹³ M.S.A. 13.451, sec. 1.

¹⁴ M.S.A. 6.470.

¹⁵ M.S.A. 13.451, sec. 1.

¹⁶ M.S.A. 5.3188 (3), sec. 1.

Since 1947 there has been a distinct trend among the 50 states towards appointment rather than election of the chief school officer. Eight states have changed from popular election to appointment and none has changed from appointment to election. Not only are an increasing number of chief school officers being appointed, but there is also a trend toward appointment by a state board of education rather than by the governor.¹⁷

Term of Office Of the 23 state whose constitutions provide for an elected chief school officer, seven (including Michigan) provide for a two-year term while 15 provide for a four-year term. Oregon does not constitutionally fix the term of office.

Of the 12 states whose constitutions provide for an appointed chief school officer, one provides for a two-year term, three provide for a four-year term, and the remaining eight provide that the chief school officer serve at the pleasure of the appointing authority. In Nevada, where the office is constitutional, the method of selection and term of office are provided by law.

Powers and Duties In the 36 state constitutions which provide for a chief school officer, ten (including Michigan) give the chief school officer supervision or general supervision over public education. Twelve state constitutions provide that the chief school officer's powers shall be as prescribed by law, which allows legislative discretion in providing for the organization of the education authority.

In the remaining fourteen states with a constitutional chief school officer, the state board of education is given supervisory powers over public education and the chief school officer serves as the chief executive or administrative officer of the board of education. In most of these 36 states it is provided that the duties of the chief school officer shall be prescribed by law.

As previously indicated, the constitutions of fourteen states make no mention of the office, nor do they assign responsibility for public education beyond requiring the legislature to establish and maintain a system of public schools. This leaves the responsibility for providing for the organization of the education authority with the legislatures.

Comment

A number of studies have recommended substantial changes in Michigan's constitutional provisions relating to the organization for state supervision of el-

¹⁷ See The Book of the States, 1960-61, p. 294 and the Index Digest.

ementary-secondary education.¹⁸ The recommendations of these studies have focused on two items: 1) the method of selection of the superintendent of public instruction and 2) the respective roles of the state board of education and the superintendent of public instruction.

The results of these studies suggest that consideration might be given to appointment rather than election of the superintendent of public instruction and strengthening the state board of education by assigning to it the powers and duties now vested in the superintendent, with the superintendent serving as the chief executive-administrative officer of the board. (See also Comment on Section 6, below, relating to the state board of education.)

If the superintendent is to continue to be elected, consideration might be given to extending the term of office to four years. (See Chapter VI, Executive Department.)

And, even though election of the superintendent is continued, consideration might be given to providing that all the powers and duties be prescribed by law, thus giving the legislature discretion in assigning powers and duties.

2. Primary School System

Article XI: Section 9. The legislature shall continue a system of primary schools, whereby every school district in the state shall provide for the education of its pupils without charge for tuition; and all instruction in such schools shall be conducted in the English language. If any school district shall neglect to maintain a school within its borders as prescribed by law for at least 5 months in each year, or, to provide for the education of its pupils in another district or districts for an equal period, it shall be deprived for the ensuing year of its proportion of the primary school interest fund. If any school district shall, on the second Monday in July of any year, have on hand a sufficient amount of money in the primary school interest fund to pay its teachers for

¹⁸ The Improvement of Public Education in Michigan, July, 1944, Lansing, Michigan, Michigan Public Education Study Commission, p. 159. Ninety-third Report of the Superintendent of Public Instruction, 1933-35. Lansing, Michigan, Department of Public Instruction, p. 14. Ninety-seventh Report of the Superintendent of Public Instruction, 1944, Lansing, Michigan, Department of Public Instruction, p. 14. The state reorganization (Little Hoover) study of 1951, Michigan's Educational Agencies, Report 17, pp. 13-27.

the next ensuing 2 years as determined from the pay roll of said district for the last school year, and in case of a primary district, all tuition for the next ensuing 2 years, based upon the then enrollment in the seventh and eighth grades in said school district, the children in said district shall not be counted in making the next apportionment of primary school money by the superintendent of public instruction; nor shall such children be counted in making such apportionment until the amount of money in the primary school interest fund in said district shall be insufficient to pay teachers' wages or tuition as herein set forth for the next ensuing 2 years.

Constitutions of 1835 and 1850

Both of the earlier constitutions contained provisions on this subject. The comparable section of the 1835 constitution was relatively brief. It enjoined the legislature to provide for a system of common schools by which a school was to be kept up and supported in each school district at least three months in every year. The 1835 constitution also provided that any district neglecting to keep up such a school might be deprived of its share of the interest of the public fund.¹⁹

Comparable provisions in the 1850 constitution were in two sections under the education article (Article XIII, Sections 3 and 4). The legislature was enjoined to provide for and establish a system of primary schools within five years after the adoption of the constitution. A school was to be kept without charge for tuition at least three months in each year in every district of the state and instruction in such schools was to be conducted in the English language. The sanction for neglecting to maintain a school as provided was changed from might be deprived to shall be deprived for the ensuing year of its proportion of the income of the primary school fund and funds from taxes for the support of schools.²⁰

Constitution of 1908

The provisions of the 1850 constitution were carried over into the present constitution with some changes. A school district was required to maintain a school

¹⁹ A perpetual fund established with the proceeds from the sale of lands granted by Congress for school purposes.

²⁰ The 1850 constitution (Article XIV, Section 1) earmarked all revenues from specific taxes, except those received from mining companies, to paying the interest upon the primary school, university and other educational funds.

for five months instead of three and neglect to do so would forfeit its proportion of the “primary school interest fund” instead of the income from that fund and other funds arising from the specific taxes. That is, the forfeiture was limited to the primary school interest fund.

1911 Amendment An amendment passed in 1911 provided that if school districts had sufficient primary school money to pay teachers and tuition for the following two years, they were to be omitted from the succeeding annual distribution of primary school money. This represented the first constitutional mention of a method of distributing primary school fund money.

Statutory Implementation

By statute, the legislature has provided for a system of public instruction and primary schools. The school code of 1955 provides for the classification, organization, regulation and maintenance of schools and school districts.²¹ Their rights, powers, and duties are also prescribed by statute. The superintendent of public instruction has been given certain powers and duties relative to the operation and fiscal affairs of local school districts.²² The state board of education is responsible for the official certification of all elementary and secondary teachers and for schools for the blind and deaf.²³ The state board of control for vocational education has supervisory control over joint federal-state programs of vocational education in secondary schools.²⁴

Judicial Interpretation

The provision has given rise to very little litigation. The 1911 amendment, however, did raise some question as to whether it required an annual school census and whether the census was to be the only basis for apportioning primary school interest funds. The supreme court held that the amendment fixed, at

²¹ Act No. 269, Public Acts of 1955, as amended.

²² See Section 2 of this chapter, The Superintendent of Public Instruction, above.

²³ M.S.A., 15.3001-15.3984.

²⁴ M.S.A., 15.821-15.830. In 1942, the Governor’s Public Education Study Commission recommended the abolition of the board of control and a transfer of its authority to the state board of education. See the Commission’s report, “The Improvement of Public Education in Michigan,” 1942, Lansing, Michigan Public Education Study Commission, p. 267. The state reorganization (Little Hoover) study of 1951 repeated the recommendation. See Michigan’s Educational Agencies, Report 17, p. 29. The abolition of the board of control and transfer of its powers could be accomplished by a statutory amendment.

least impliedly, the census of school-age children as the basis, for distributing such funds. It held unconstitutional a public act which made the assessed valuation the basis for distribution, although only a part of the fund was to be so distributed. The court also held that the provisions of this section clearly anticipate an annual census and it is to be provided for by the legislature.²⁵

Opinions of the Attorney General

Should a district not maintain a school within its district and pay no tuition but pay transportation costs for sending its pupils to schools in another district, the attorney general has held that the fact that it has insufficient funds to meet such costs for an ensuing two years does not entitle the district to a proportion of the primary school interest funds. This is on the basis that a district which pays no tuition but shows a balance in the primary school interest fund is not entitled to the distribution in the following year.²⁶

Other State Constitutions

The constitutions of 38 states in addition to Michigan contain a provision requiring the legislature to establish and maintain a system of public schools.²⁷ Thirty of these states provide that they shall be free schools.

Maine makes it a duty of the legislature to require towns to make provision for schools supported and maintained at their own expense. By way of contrast, Alabama provides that nothing in the constitution is to be construed as creating or recognizing any right to education at public expense. The legislature in that state may provide for or authorize the establishment of schools as it may prescribe.

A section of the Mississippi constitution requiring the legislature to establish a system of free common schools was amended by virtue of another section inserted in 1944 authorizing the legislature to abolish the public schools by a majority vote in each house.

Montana, Mississippi, Kansas, and Colorado join Michigan in depriving school

²⁵ Board of Education of Detroit v. Auditor General, 242 Mich. 186

²⁶ Opinion of the Attorney General No. 0-5094, October 11, 1946.

²⁷ Those states without a similar provision are: Alabama, Colorado, Connecticut, Iowa, Massachusetts, New Hampshire, North Carolina, South Carolina, Tennessee, Vermont, and Wisconsin. Index Digest, pp. 373-374.

districts of school funds for neglecting to maintain a school for a specified number of months in each year. The number varies from three to six months.

Missouri deprives a district of school moneys should it permit teacher wage differentials on race or color basis. Nevada deprives a district of school fund interest moneys should it allow sectarian instruction.

Michigan's provision for a sliding scale arrangement for the distribution of primary school interest fund moneys²⁸ based on the amount of money on hand compared to teacher payroll and tuition appears to be unique.

Ten states provide that school funds be distributed on the basis of the number of resident school-age children or children between specified ages, usually between five and twenty.²⁹ Eight states require the legislature to determine the method of allocation.³⁰ Nebraska and Delaware require simply that school funds be distributed equitably among school districts. New Mexico requires school funds to be apportioned among school districts in the proportion that the number of school-age children in the district bears to the total number of children in the state. A reserve is set up before distribution sufficient to provide for five months' schooling in every district by special help to districts where a full local school tax plus current funds³¹ is not sufficient.

Only Missouri among the states with newer and more recently revised constitutions includes a similar provision for the apportionment of school funds.

The Model State Constitution provides:

The legislature shall provide for the maintenance and support of a system of free public schools, open to all children in the state.

²⁸ Contained in 1911 amendment.

²⁹ Montana, Kansas, Iowa, Louisiana, Minnesota, North Dakota, Oregon: Virginia, Wisconsin and Wyoming. Index Digest, pp. 384-385.

³⁰ Utah, California, Colorado, Idaho, Kentucky, Missouri, Nevada and South Carolina. Index Digest, pp. 384-385.

³¹ Comparable to combined primary school interest fund and school aid fund moneys in Michigan.

Comment

The provision of this section dealing with the maintenance of a system of free primary schools would not likely be a subject of much controversy. However, the portion of this section dealing with the distribution of primary school fund moneys may be subject to considerable discussion. There are five sections of the constitution which deal with aid to local school districts 1) Article XI, Section 9 (this section) insofar as it affects the distribution of primary school interest fund money; 2) Article X, Section 1, which establishes the primary school interest fund, and dedicates certain specific taxes to it; 3) Article XI, Section 11, which establishes the primary school fund; 4) Article XI, Section 12, which dedicates escheats to the primary school fund; and 5) Article X, Section 23, which establishes the school aid fund and dedicates two cents of the state sales tax to the fund. All of these sections are inter-related and Section 9 must be considered in relation to these other provisions.

The inter-relationship of these provisions is discussed in the next section of this chapter, "proceeds of School Land" (see the Comment section).

In respect to the provisions of this article relating to the distribution of primary school interest funds, consideration might be given to allowing the legislature to determine the method of distribution. If the present provision is to be continued, the language might be changed to clarify the method that is to be used in apportioning primary school interest funds.

In view of the several provisions of the constitution relating to state aid for local schools, consideration might be given to consolidating these provisions into one section, or to eliminating them entirely and placing the responsibility in the hands of the legislature (see Comment under next section).

3. Proceeds of School Land

Article XI: Section 11. The proceeds from the sales of all lands that have been or hereafter may be granted by the United States to the state for educational purposes and the proceeds of all lands or other property given by individuals or appropriated by the state for like purposes shall be and remain a perpetual fund, the interest and income of which, together with the rents of all such lands as may remain unsold, shall be inviolably appropriated and annually applied to the specific objects of the original gift, grant or appropriation.

Constitutions of 1835 and 1850

Both of the earlier Michigan constitutions contained similar provisions. Congress in 1785 approved the land grant ordinance for the Northwest Territory which dedicated the sixteenth section of land in each township to public school purposes.³² Article X, Section 2 of the 1835 constitution provided:

... The proceeds of all lands that have been or hereafter may be granted by the United States to this state, for the support of schools, which shall hereafter be sold or disposed of, shall be and remain a perpetual fund; the interest of which, together, with the rents of all such unsold lands, shall be inviolably appropriated to the support of schools throughout the state.

Thus the constitution of 1835 established a permanent fund with the proceeds of the lands granted by Congress and provided for the continuous payment of interest on the fund. This permanent fund is known as the primary school fund.³³

The language of the present provision was originally inserted in the constitution of 1850 and was carried over unchanged into the 1908 constitution.

Constitution of 1908

This section has not been amended since the present constitution was adopted.

Statutory Implementation

The legislature has provided that the proceeds from the sale of educational lands received into the state treasury and placed to the credit of the several school

³² States admitted to the union after 1802 also received two or more sections for the support of higher education. See Edgar W. Knight, Education in the United States, Ginn and Company, New York, 1941, pp. 241-306.

³³ This fund should not be confused with the primary school interest fund (see Article X, Section 1 of the 1908 constitution).

funds “shall be used in defraying the expenses of the state government.”³⁴ The auditor general is by law assigned responsibility for computing and paying the interest on the principal of the educational funds (including the primary school fund) out of the specific taxes.³⁵

By law the proceeds from escheated property also go into the primary school fund. For a discussion of escheated funds see Article XI, Section 12.

Judicial Interpretation

There have been no recent problems in the interpretation of this provision.³⁶

Other State Constitutions

Thirty-two states in addition to Michigan constitutionally provide for a permanent fund for the support of public schools or for educational purposes. Proceeds of lands granted by the United States for public schools represent a source of the permanent fund in 18 states, which are for the most part mid-west and western states with constitutions dating from 1850 and states which shared in the congressional land grants.³⁷

Most of the thirty-two states appear to earmark more than one source of revenue to the permanent fund. Five states, in addition to Michigan, provide that gifts and bequests for educational purposes constitute a source of revenue for the permanent fund. Twenty-three states mention escheated estates as a source of the fund, while others include unclaimed shares and dividends of corporations, fines and forfeitures, and appropriations by the state.

Twenty state constitutions place limitations on the use of the permanent fund. Eleven states specify the fund is to remain inviolate. Seven restrict the use of the funds to school purposes while four provide that the fund may be increased but not diminished.

³⁴ M.S.A. 3.721. Consistent with this act the money credited to the primary school fund is in reality commingled with the general fund and is used for general state purposes. The primary school fund is only a bookkeeping memorandum record showing accumulation of a principal within the general fund. (From information supplied by the Department of Public Instruction.)

³⁵ M.S.A. 3.731. For specific taxes see Article X, Section 1.

³⁶ Under the similar provision of the 1850 constitution the supreme court ruled that an 1859 act appropriating a portion of the proceeds of swamp lands to the primary school fund did not remove them from legislative control. (People ex rel. Superintendent of Public Instruction v. Auditor General, 12 Mich. 171.) The court also ruled that the 1850 provision did not deprive the legislature of the power of regulating the state policy regarding the primary school lands. (People ex rel. Jones v. Pritchard, 21 Mich. 236.)

³⁷ Index Digest, pp. 385-387.

Among the states with newer and more recently revised constitutions, Alaska and Hawaii are silent on the matter of a permanent fund, while New Jersey and Missouri provide that the public school fund shall be securely invested and remain a perpetual fund.³⁸

Comment

An understanding of this section necessarily requires an explanation of the inter-relationships among the several constitutionally established funds which contribute to the support of the primary school system.

History

The primary school fund was created by the first constitution of the state in 1835 and is the first of several funds established for the support of primary schools. It was established with the proceeds from the sale of lands granted by Congress to the state for educational purposes. It was established as a permanent or perpetual fund which was to remain inviolate and never to be distributed.

Although the fund could not be distributed, the legislature borrowed from the fund and then annually payed interest on the loans.

Apparently to insure that there would be no failure on the part of the state to pay interest on the primary school fund, provision was made in the 1850 constitution for the primary school interest fund and certain specific taxes were earmarked to the payment of interest on the primary school fund through the medium of the primary school interest fund.

Also in 1850 the proceeds from escheated property were dedicated to the support of primary schools.³⁹ These monies by legislative act have been dedicated specifically to the primary school fund.⁴⁰

These provisions for a primary school fund, a primary school interest fund, and the dedication of escheats were carried over in the 1908 constitution in Article XI, Sections 11 and 12, and Article X, Section 1. For the change see the discussion of each section. In addition to these funds, Article X, Section 23 establishes a school aid fund and provides that two cents of the state sales tax levy be depos-

³⁸ Missouri provides that the general assembly may liquidate certificates of indebtedness to the public school fund but all funds derived from the liquidation must be invested in bonds of the United States, the state, or other securities fully guaranteed by the United States of not less than par value. The legislature is also authorized to levy an annual tax to pay the interest accruing on the certificates of indebtedness. Missouri constitution of 1945 (Revised 1960). Article IX, Section 4.

³⁹ Article XI, Section 12.

⁴⁰ M.S.A. 26.1053 (52).

ited in the school aid fund and expended for the aid of school districts and for such school employee's retirement systems as shall be provided by law.⁴¹

Operation of the School Funds

There are, then, three basic funds created by the constitution: 1) the primary school fund; 2) the primary school interest fund; and 3) the school aid fund. The following is an explanation of the methods by which these funds are administered.⁴²

The primary school fund is actually only a bookkeeping memorandum record showing accumulation of a principal amount within the general fund. The amounts received from the sale of school lands and escheats are "credited" to the primary school fund, but the money is actually commingled with the general fund money and used for general state purposes.⁴³

The interest paid on the corpus of land sale funds is seven per cent per annum, except in the case of swamp lands where the rate of interest is set by statute at five per cent. This interest is paid from the specific tax revenues of the primary school interest fund. However, the total revenue from the specific taxes earmarked to the primary school interest fund far exceeds each year the amount that is owed in interest on the principal of the primary school fund.

The balance in the primary school fund as of June 30, 1960, (excluding amounts credited to the university and other college funds) amounted to some \$16.6 million, including \$998,590 in proceeds from the sale of swamp lands. With an accumulated principal of about \$16 million, the interest on the primary school fund would amount to less than \$1 million a year. In fiscal 1960, however, the specific taxes earmarked to the primary school interest fund yielded \$56.9 million, which far exceeds the less than \$1 million of interest due on the primary school fund. After deducting a comparatively small amount of the total for other educational purposes, the whole primary school interest fund is available for distribution to local school districts.

The primary school interest fund monies are distributed on the bases of the number of children between the ages of 5 and 19 as indicated by the school census. The amount each district receives per child is determined by dividing the total amount in the fund by the total number of school-age children in the state. The primary interest fund distributions currently account for some 20 per cent of total state aid for schools.

⁴¹ Added by amendment in 1946 and revised by amendment in,1954. The 1954 amendment provided for the creation of a school aid fund to be effective July 1, 1955. Prior to 1955 school aid monies were appropriated and expended from the general fund of the state. See Michigan State Operations and Local Benefits Budget, 1960, Section Q, p. 1.

⁴² Based on reports of the auditor general and information received from the department of public instruction.

⁴³ Consistent with the provisions of law (see M.S.A. 3.721).

As previously mentioned the constitution (Article X, Section 23) provides that two cents of the sales tax levy be credited to the school aid fund—\$216 million in fiscal 1960. The legislature has provided that in addition to this, two cents of the cigarette tax levy and a four per cent liquor excise tax be placed in this fund—\$26 million in fiscal 1960. The distribution of school aid fund monies is by a statutory formula which takes into account a number of deductible factors, one of which is the amount of primary school interest fund monies received by the school district. As a practical matter, therefore, the primary school fund monies are an offset against school aid fund monies.

In recent years the statutory formula for distributing these constitutionally and statutorily earmarked funds has required more money than the revenues of the funds produced and the legislature has made supplemental appropriations from the general fund. In 1959-60 the legislature appropriated \$21.4 million from the general fund as a supplement to the school aid fund. Thus, in fiscal 1960 there was available from these funds for distribution for primary school purposes the following:

Education

XI

<u>Source</u>	
Constitutional Dedications	
Specific taxes*	\$ 57 million
Sales tax	216
Statutory Dedications	
Cigarette tax	19
Liquor excise taxes	7
Supplemental Appropriation	
From General Fund	<u>21</u>
Total	\$320 million

In view of these various provisions dealing with state aid to school districts, consideration might be given to consolidating the provisions of Sections 11 and 12 of Article XI and Sections 1 and 23 of Article X into a single provision on state aid to schools, with the distribution of the funds to be provided by law. Or, consideration might be given to leaving the whole question of state aid to schools to legislative discretion.

* For convenience this term includes ad valorem taxes on railroad, telephone and telegraph, car loading, and express companies in addition to inheritance taxes, out-of-state insurance company taxes and corporation organization fees.

4. Escheats

Article XI: Section 12. All lands, the titles to which shall fail from a defect of heirs, shall escheat to the state, and the interest on the clear proceeds from the sales thereof shall be appropriated exclusively to the support of the primary schools.

Constitutions of 1835 and 1850

This provision originated in the constitution of 1850 and was carried over into the present constitution virtually unchanged. The word “title” was changed to “titles” and the word “the” was inserted before the words “primary schools” at the end of the section.

Constitution of 1908

This section has not been amended since the adoption of the present constitution.

Statutory Implementation

In the implementation of this provision the law provides that the proceeds from escheated property go into the primary school fund. The board of escheats has the responsibility by law to administer the funds credited and accruing. The investment of the funds is subject to the supervision and direction of the state administrative board.⁴⁴

Judicial Interpretation

There has been no recent litigation on this section.

Other State Constitutions

Twenty-three other state constitutions contain a provision of this type. In most of these states, the provision is incorporated in sections establishing a permanent school fund.

The constitutions of Alaska, New Jersey, and Hawaii have no provisions of this type, nor does the Model State Constitution.

Comment

See Comment under previous section.

⁴⁴ M.S.A. 26.1053 (52). Under the law escheated funds returned to the state are transferred by the board of escheats to the primary school fund, usually only once annually. The board of escheats determines when and how much is to be so transferred. During 1951-52 no transfers were made, while in the fiscal year 1958-59 \$450,000 was transferred to the primary school fund out of total receipts of \$862,359. (From information supplied by the department of public instruction.)

C. HIGHER EDUCATION

1. Educational Institutions

Article XI: Section 10. The legislature shall maintain the university, the college of mines, the state agricultural college, the state normal college and such state normal schools and other educational institutions as may be established by law.

Constitutions of 1835 and 1850

Although this section is new in the 1908 constitution, it apparently stems from earlier provisions of the 1835 and 1850 constitutions. The 1835 provision (Article X, Section 2) was as follows:

The legislature shall encourage, by all suitable means, the promotion of intellectual, scientific and agricultural improvement.

The 1850 constitution (Article XIII, Section 11) provided:

The legislature shall encourage the promotion of intellectual, scientific and agricultural improvements; and shall, as soon as practicable, provide for the establishment of an agricultural school.

Constitution of 1908

In the Address to the People the convention of 1907-08 stated that the intent of this section was to make it “mandatory upon the legislature to maintain the educational institutions therein specified.”

Other State Constitutions

A number of other state constitutions include similar provisions relative to the establishment of state institutions of higher education.

Twenty-one states provide for the establishment and maintenance of a state university; twelve include provisions for teachers colleges and normal schools; eleven provide for agricultural colleges, which in Arizona and California are part of the state university. Five states require the legislature to establish a school of mines while two others (Nevada and North Carolina) require the provision of a department of mines at the state university. The North Dakota constitution provides for a school of forestry, while New Mexico requires the legislature to support a military institute.

Several constitutions, including those of Vermont, Maine, New Hampshire, Connecticut, Massachusetts, Rhode Island, and New Jersey contain no provision of this type. The newer constitutions of Alaska and Hawaii simply require that the legislature provide for a state university and such other educational institutions as may be deemed desirable.

The Model State Constitution provides that the legislature shall establish organize and support such public institutions of higher learning as may be desirable.

Comment

This section, like Section 1, is not a grant of or restriction on the power of the legislature, but rather expresses the intent of the people that these institutions be supported. Consideration might be given to eliminating this section and combining it with the provision of Section 1 in a general statement of intent.

The table on the following page summarizes the constitutional provisions for Michigan's nine major state-supported colleges and universities. In the pages following the table individual sections of the constitution which relate to these institutions are discussed.

A Comparative Analysis of the Michigan Constitution

Constitutional Provisions For Michigan's Nine Major State-Supported Colleges and Universities

<u>Institution</u>	<u>Citation</u>	<u>Governing Board</u>		<u>Term of Office</u>	<u>Powers and Duties</u>
		<u>Name</u>	<u>No. Members</u>		
University of Michigan	Article XI, Sections 3, 4 and 5	Board of Regents	8	8	Regents "shall have the general supervision of the university and the direction and control of all expenditures from the university funds."
Michigan State University	Article XI, Sections 7 and 8	Board of Trustees	6	6	Trustees "shall have the general supervision of Michigan State University, and the direction and control of all Michigan State University funds; and shall perform such other duties as may be prescribed by law."
Wayne State University	Article XI, Section 16	Board of Governors	6	6	Governors "shall have general supervision of Wayne State University and the duties of said board shall be as prescribed by law. The legislature shall be given an annual detailed accounting of all income from whatever source derived and all expenditures by Wayne State University."
Ferris Institute	None				
Board of Education	Article XI, Section 6		4	6 ^a	State Board of Education shall have general supervision of the state normal schools, and the duties of said board shall be prescribed by law.
Central Michigan University		State Board of Education			
Eastern Michigan University		State Board of Education			
Northern Michigan College		State Board of Education			The legislature shall maintain the state normal college and such normal schools and other educational institutions as may be established by law.
Western Michigan University		State Board of Education			

Note: Act 120. Public Acts of 1960 established Grand Valley College as a state-supported institution of higher education.

^a Three members elected for six-year term, Superintendent of Public Instruction who serves as an ex officio member is elected for a two-year term.

2. The University of Michigan

a. Regents and Name

Article XI: Section 3. There shall be a board of regents of the university consisting of eight members, who shall hold the office for eight years. There shall be elected at each regular biennial spring election two members of such board. When a vacancy shall occur in the office of regent it shall be filled by appointment of the governor.

Section 4. The regents of the university and their successors in office shall continue to constitute the body corporate known as “The Regents of the University of Michigan.”

Constitutions of 1835 and 1850

The constitution of 1835 contained no provisions of this type.⁴⁵

The constitution of 1835 left the legislature with full power to manage the affairs of the university and to regulate the appointment of the regents.⁴⁶

Provision for a board of regents elected directly by the people originated in the 1850 constitution (Article XIII, Section 6). As originally adopted the 1850 constitution provided for the election of eight regents to serve the same six-year term. The regents were to be elected from separate judicial districts. An amendment in 1862 extended their term to eight years, required election at large and introduced staggered terms. The provision giving corporate status to the university also originated in the 1850 constitution (Article XIII, Section 7). These provisions were carried over in the 1908 constitution.

Constitution of 1908

Sections 3 and 4 have not been amended since the present constitution was adopted and there has been little litigation. (See Judicial Interpretation under Sections 5 and 6 of this chapter.)

Other State Constitutions

The organization of public higher education as provided by the several state constitutions varies considerably from state to state. Table A shows those states which constitutionally create boards responsible for higher education and the levels of education and types of institutions under the boards.

⁴⁵ The legislature authorized a board of regents by Public Act in 1837.

⁴⁶ The University of Michigan, an Encyclopedia Survey, Part I, History and Administration, Ann Arbor, University of Michigan, 1941, p. 121.

The table shows that a total of 25 states (including Michigan) constitutionally create a board or boards responsible for one or more institutions of higher learning in the state. Six of these states provide for a single board which is responsible for governing and coordinating all public higher education in the state. These states are: Georgia, Idaho, Montana, North Dakota, Nevada, and South Dakota.⁴⁷

Oklahoma provides for an over-all board to be responsible for the coordination of all public institutions of higher learning. This board is authorized to set standards, determine courses, recommend budget allocations for the several institutions and allocate legislative appropriations. This board is not responsible for the direct control and operation of any of the state's universities or four-year colleges.⁴⁸ The constitution creates three boards for this purpose: one to govern the University of Oklahoma; one to govern the agricultural and mechanical college, a land-grant college, a four-year college and five two-year colleges; and one to govern six four-year colleges. (Three statutory boards govern two state two-year colleges and a four-year college.)

New York, which designates no one institution as the state university, holds the Board of Regents, The University of the State of New York—an administrative board—responsible for all education in the state.⁴⁹

⁴⁷ Rhode Island and Hawaii have a statutory board responsible for all higher education. (In Hawaii the state university is the only institution of higher education in the state.) Seven other states, by provision of the constitution or state statutes, place all public higher education institutions except 2-year colleges under a single board. These states are: Arizona, Florida, Iowa, Kansas, Mississippi, Oregon and Wyoming. State Boards Responsible for Higher Education, U.S. Department of Health, Education and Welfare, Office of Education, Circular No. 619, Washington, U.S.G.P.O., 1960, pp. 17-25.

⁴⁸ While the over-all coordinating board (the State Board of Regents of Oklahoma Colleges) is responsible for the government of six junior colleges, the junior colleges are each directly controlled and operated by separate local boards.

⁴⁹ The Board of Regents, The University of the State of New York is constitutionally responsible for the administration, supervision and coordination of 28 institutions which comprise the state university. By statute the Board of Trustees, State University of New York, is responsible under the general supervision of the board of regents, for all public higher education institutions except four New York City colleges. Legally the actions of the board of trustees are subject to approval by the board of regents.

Table A
 Constitutionally Created Boards Responsible for
 Higher Education and Levels of Education
 Under Such Boards

Boards Responsible for Institutions	Institutions Under Each Board Higher Education							Total All Types	Other Educational Responsibilities of Board		
	State University	State Univ. & Land-grant Col. Combined	Land-grant Col. Only	Separate Prof. School	Four-year or More Col.	Two-year Col.	Col.		Elementary	Secondary	
<u>Alabama</u>											
Board of Trustees, U. of A.	1							1			
Board of Trustees, Auburn U.		1						1			
<u>Arizona</u>											
Board of Regents, Universities and State College of Ariz.	1	1			1			0			
State Board of Education								2		X	X
<u>Arkansas</u>											
Board of Trustees, U. of Ark.		1					1	2			
Board of Trustees, Agricultural, Mech., and Normal College					1			1			
Board of Trustees, Arkansas Agricultural and Mechanical College								1			
Board of Trustees, Ark. Poly. Col.								1			
Board or Trustees, Ark. St. Col.								1 ^c			
Board of Trustees, Ark. St. Teach. Col.								1			
Board of Trustees, Henderson St. Teach. Col.								1			
Board of Trustees, Southern St. Col.								1			

See footnotes at end of table.

	State University	State Univ. & Land-grant Col. Combined	Land-grant Col. Only	Separate Prof. School	Four-year or More Col.	Two-year Col.	Total All Types	Elementary	Secondary
<u>California</u>									
The Regents of the U. of Calif.	1	1	1	3	2		8		
State Board of Education					14 ^d	63 ^e	77	X	X
<u>Colorado</u>									
The Regents of the U. of Colorado	1			1			2		
State Board of Education						6 ^b	6	X	X
<u>Florida</u>									
State Board of Education of Florida						16 ^b	16	X	X
<u>Georgia</u>									
Regents of the U. System of Georgia		1	1	3 ^a	7	7	19		
<u>Idaho</u>									
State Bd. of Education & Bd. of Regents, Univ. of Idaho		1 ^c			1	2 ^b	0	X	X
<u>Louisiana</u>									
Bd. of Supervisors of Louisiana St. Univ. & Ag. & Mech. Col.		1		1	1		3		
Louisiana St. Bd. of Education	1		1		8 ^a		9	X	X

	State University	State Univ. & Land-grant Col. Combined	Land-grant Col. Only	Separate Prof. School	Four-year or More Col.	Two-year Col.	Total All Types	Elementary	Secondary
<u>Michigan</u>									
The Regents of the Univ. of Mich.	1						1		
Bd. of Trustees, M.S.U.		1					1		
Bd. of Governors of Wayne St. Univ.	1						1		
State Bd. of Education					4	14 ^b	18		
<u>Minnesota</u>									
Regents of the Univ. of Minn.		1			1		2		
<u>Mississippi</u>									
Bd. of Trustees of St. Institutions of Higher Learning	1		2	1	5		9	X	X
State Bd. of Education									
<u>Missouri</u>									
The Curators of the Univ. of Mo.		1					1		
State Bd. of Education					1	6 ^b	7	X	X
<u>Montana</u>									
State Bd. of Education	1		1		4	2 ^b	8	X	X
<u>Nebraska</u>									
The Bd. of Regents of the Univ. of Neb.		1					1		
Bd. of Education of State Normal Schools					4		4		
Bd. of Educational Lands and Funds									
State Board of Education						4 ^b	4	X	X
<u>Nevada</u>									
Board of Regents, Univ. of Nev.		1			1		2		

	State University	State Univ. & Land-grant Col. Combined	Land-grant Col. Only	Separate Prof. School	Four-year or More Col.	Two-year Col.	Total All Types	Elementary	Secondary
<u>New Mexico</u>									
Regents of the Univ. of N. M.	1						1		
The Regents of the N. M. St. Univ.		1					1		
Bd. of Regents, Eastern N. M. Univ.					1		1		
Bd. of Regents, N. M. Highlands Univ.					1		1		
Bd. of Regents, N. M. Inst. of Mining & Tech.				1		1			
Bd. of Regents, N. M. Western Col.					1		1		
Bd. of Regents, N. M. Military Inst.						1	1		
<u>New York</u>									
Bd. of Regents, The Univ. of the St. of N.Y.					4 ^f		4	X	X
<u>North Carolina</u>									
Bd. of Trustees, Univ. of N. Carolina	1		1		1		3		
<u>North Dakota</u>									
State Bd. of Higher Education	1	1			5	4 ^g	11		
<u>Oklahoma</u>									
Oklahoma St. Regents for Higher Education					6	6 ^b			
Regents of the U. of Oklahoma	1						1		
Bd. of Regents, Ag. & Mech. Col.		1	1		1	5	8		
State Bd. of Regents of Oklahoma Colleges				6		6			
<u>South Dakota</u>									
Bd. of Regents of All Higher Education	1	1			5		7		

	State University	State Univ. & Land-grant Col. Combined	Land-grant Col. Only	Separate Prof. School	Four-year or More Col.	Two-year Col.	Total All Types	Elementary	Secondary
<u>Utah</u>									
Board of Regents, Univ. of Utah	1					1	2		
Bd. of Trustees, Utah St. Univ. of Ag. & Applied Science		1			1	1	3		
State Bd. of Education						2	2	X	X
<u>Virginia</u>									
Bd. of Visitors, Virginia Poly. Inst.			1		1		2		
Bd. of Visitors, Col. of Wm. & Mary in Virginia				1	2		3		
State Bd. of Education			1		2	1	4	X	X
<u>Wyoming</u>									
The Trustees of the Univ. of Wyoming		1					1		

^a One institution operates a branch.

^b All institutions controlled by other boards.

^c Operates a branch.

^d One institution controlled by another board.

^e One institution has two campuses.

^f All four units controlled by another board.

^g Two controlled by other boards.

A Comparative Analysis of the Michigan Constitution
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New Mexico creates seven institutional boards, each of which is responsible for governing one of five state colleges and two universities. These boards have authority to approve budgets, establish personnel policies, finance current operations, plan and finance physical facilities. New Mexico provides by statute for an overall coordinating board appointed by the governor which is primarily responsible for the coordination of the financial affairs of the state's seven institutions of higher education. The prime concern of this board is to insure that the institutions are adequately financed under an equitable distribution of available funds. The board reviews and may adjust the budgets of the several institutions as they are submitted to the state's budget officer.⁵⁰

The constitutions of Alabama, Michigan, New Mexico, Oklahoma, and Utah create individual boards for more than one major state university. Two institutional boards are provided for in Virginia's constitution to govern institutions other than the state university which is governed by a statutory board. The Arkansas constitution creates eight institutional boards, one of which governs the state university. The remaining seven each govern one of seven state colleges.

Method of Selection In those states where it is constitutionally provided, the prevalent method of selection is appointment by the governor subject to confirmation by the senate. Seven states, including Alaska,⁵¹ Missouri,⁵² and Hawaii,⁵³ provide that the entire board be so selected, while six others⁵⁴ require the appointment of a majority of the board membership and ex officio membership for a varying number of other board members.⁵⁵

The U.S. office of education reports that of some 209 state boards responsible for higher education, created by either the state constitution or the state statutes, seventy percent of the board members are appointed, eighteen percent are

⁵⁰ State Boards Responsible for Higher Education, p. 124.

⁵¹ The governor's appointments in Alaska are subject to confirmation by a majority of the members of the legislature' in joint session. (Article VII, Section 3).

⁵² Article IX, Section 9(a).

⁵³ Article IX, Section 5.

⁵⁴ Arizona, California, Louisiana, Montana, New Mexico, Wyoming. Index Digest, pp. 405-408.

⁵⁵ Index Digest, pp. 405-408.

elected, and some twelve percent serve as ex officio members. Sixty-eight percent of those appointed are appointed by the governor subject to senate confirmation, and another twenty-five percent by the governor alone. By far the most prevalent practice within the elective process is that of election by the legislature. Forty-five percent of those elected are reportedly covered by this practice.⁵⁶

Size of Board The size of constitutionally created boards responsible for the major public university in 16 states ranges from six in Nebraska to 24 in California.⁵⁷ The average membership provided for is 10.6. Appointed boards are for the most part larger than elected boards.

The size of board membership for some 209 state boards varies in the extreme. Two boards have a membership of three, while the board of trustees of the University of North Carolina has a membership of 102. With this latter board excluded, however, the high membership is 32. The average membership of all such boards is 10.6.⁵⁸

Length of Term Eight of the states which constitutionally provide for board to govern the major public university also prescribe the board members' term of office and, except Alabama, require overlapping terms. These states are: Alabama (12 years), California (16 years), Colorado (6 years), Georgia (7 years), Louisiana (14 years), Michigan (8 years), Nebraska (6 years), and New Mexico (6 years).

The U.S. office of education reports that the average term constitutionally or statutorily provided for 209 state boards is six years.⁵⁹

Corporate Status The constitutional boards responsible for the major public university in eight states (including Michigan) derive authority for corporate status from the state constitution.⁶⁰ Such boards in eight other states have no constitutional corporate status,⁶¹ while in thirty-three states they derive corporate authority from the statutes.

⁵⁶ State Boards Responsible for Higher Education, p. 26.

⁵⁷ The remaining fourteen states are: Alabama, Alaska, Arizona, Colorado, Georgia, Hawaii, Louisiana, Missouri, Montana, New Mexico, North Dakota, Oklahoma, South Dakota and Wyoming. Index Digest, pp. 405-408.

⁵⁸ State Boards Responsible for Higher Education, p. 28.

⁵⁹ State Boards Responsible for Higher Education, pp. 29,227-233.

⁶⁰ California, Colorado, Georgia, Idaho, Louisiana, Minnesota, and Utah. State Boards, pp. 216,220.

⁶¹ Board of Trustees, University of Connecticut; Iowa State Board of Regents; Kansas State Board of Regents; Montana State Board of Education; Board of Regents, University of Nevada; North Dakota State Board of Higher Education; Oregon State Board of Higher Education; and Board of Regents, University of Texas.

In regard to higher education, the Model State Constitution provides simply (Article X) that “The legislature shall provide in addition to a system of common schools such other educational institutions, including institutions of higher learning, as may be deemed desirable.”

Comment

The voters of Michigan elect a total of 24 board members to govern institutions of higher education (eight regents of the university, six trustees of Michigan state university, six governors of Wayne state university and four members of the state board of education).⁶²

In a recent study of state boards responsible for higher education conducted by the office of education, U.S. department of health, education, and welfare the authors conclude:

State-supported colleges and universities are increasingly being viewed as parts of a total State enterprise in higher education rather than as individual, separate, institutions with purposes or programs unrelated to others in the State.⁶³

If Michigan desires to move in this direction, some consideration might be given to removing Sections 3 and 4 as well as other provisions establishing individual boards and, in their place, creating a single board responsible for all higher education in the state. As mentioned earlier, six states constitutionally provide for a single state-wide board.

Or, consideration might be given to omitting any constitutional reference to a governing board for the major university, leaving the matter to legislative enactment. The legislature now statutorily provides for the governing boards of the college of mining and technology and Ferris institute.

On the other hand, consideration might be given to leaving Sections 3 and 4 unchanged and providing elsewhere in the constitution for a master coordinating board or leaving the matter to legislative discretion. As mentioned earlier, New Mexico has seven constitutional boards coordinated by a board created by statute.

⁶² Three members are elected directly to the board of education. The fourth member, the superintendent of public instruction, is elected to the office of superintendent and serves as an ex officio member of the board of education.

⁶³ State Boards Responsible for Higher Education, p. 47. See also Lyman A. Glenny, Autonomy of Public Colleges: The Challenge of Coordination, New York, McGraw-Hill Book Co., Inc., 1959.

b. President and Supervision

Article XI: Section 5. The regents of the university shall, as often as necessary, elect a president of the university. The president of the university and the superintendent of public instruction shall be ex-officio members of the board of regents, with the privilege of speaking but not of voting. The president shall preside at the meetings of the board and be the principal executive officer of the university. The board of regents shall have the general supervision of the university and the direction and control of all expenditures from the university funds.

Constitutions of 1835 and 1850

There was no comparable provision in the constitution of 1835. Previous to 1850 members of the faculty served one year each as president. The governor served as the presiding officer of the board of regents while the internal administration of the university was fully subject to legislative control.⁶⁴ This provision originated in the 1850 constitution.

The 1850 provision (Article XIII, Section 8), was as follows:

The regents of the university shall, at their first annual meeting, or as soon thereafter as may be, elect a president of the university, who shall be ex officio a member of their board, with the privilege of speaking but not voting. He shall preside at the meetings of the regents and be the principal executive officer of the university. The board of regents shall have the general supervision of the university, and the direction and control of all expenditures from the university interest fund.

Constitution of 1908

The 1850 provision was carried over in the constitution of 1908 with the addition of the superintendent of public instruction to the board as an ex officio member. The constitution in 1908 omitted the word “interest” which in the 1850 provision had followed the word “university” and the word “fund” was changed to “funds.”

This section has not been amended since the present constitution was adopted.

⁶⁴ The University of Michigan. An Encyclopedic Survey, Part I, History and Administration, Ann Arbor, University of Michigan, 1941, p. 227.

Statutory Implementation

A series of legislative acts passed since 1851 vested the government of the university in the board of regents; required university branches to be established; required an annual report to the superintendent of public instruction; and authorized the board to perform a number of functions.⁶⁵

In 1867 the legislature passed the first of a series of “mill-tax” laws which provided financial assistance to the university of Michigan and to the agricultural college (now Michigan state university). The laws were permanent in that they regulated the amount of support that was received by the institutions until changed by affirmative action of the legislature.

Under the first of these laws the legislature appropriated to the university of Michigan a sum equal to five cents on each thousand dollars of taxable property in the state. This method of support provided the institutions with an increasing amount of income during a period when the valuation of taxable property in the state was increasing. During the depression years, however, the legislature limited the amount paid to the university and in some cases reduced an original appropriation. At the same time the state tax on real property was abolished and the state began to rely on the sales tax and other sources of income. Thus, in 1935 the earlier form of the mill-tax laws was changed.

New acts passed in 1935⁶⁶ provided for the support of the university of Michigan and Michigan State college out of the general funds of the state, but they also provided for an appropriation proportionate to the tax valuation of the state. In 1936 and each fiscal year thereafter, a sum was to be appropriated to the university of Michigan equal to 73 cents on each thousand dollars of taxable property in the state while a sum equal to 24.3 cents on each thousand dollars of taxable property was to be appropriated to Michigan state college. With some changes these laws remained in effect until repealed in 1947.⁶⁷ Since then the legislature’s support of the university of Michigan and Michigan state university has been on an annual appropriation basis.

Judicial Interpretation

The supreme court has held that under the constitution of 1908 the state board of agriculture (board of trustees of Michigan state university) was put on the same plane with the regents of the university of Michigan.

⁶⁵ M.S.A. 15.901-15.993.

⁶⁶ Acts 112 and 113 of 1935.

⁶⁷ Act 304 of 1941.

Consequently, this section includes cases relating both to the board of regents of the university of Michigan and to the board of trustees of Michigan state university.

Institutional Nature The courts have held that by the constitution the board is made “the highest form of juristic person known to the law,” with authority within the scope of its functions equal to and coordinate with that of the legislature. The courts have held that the board is a separate entity, independent of the state in the management and control of the university and the fact that it is state property does not necessarily bring the board within the purview of the statutes.⁶⁸

On the other hand the courts have held that the board of regents is a department of the state government created to perform state functions. The lands, buildings and equipment under the control of the regents are state property.⁶⁹

Property and Funds Funds appropriated for the use of the university have been held by the supreme court to be under the exclusive direction of its governing board. The court has also held that the board’s judgment as to the legality and expediency of expenditures for the use and maintenance of the university is not subordinate to that of the auditor general.⁷⁰

In regard to conditional appropriations the court has held that the legislature may attach any conditions it may deem expedient and wise to appropriations for

⁶⁸ People ex rel. Board of Regents v. Brooks, 224 Mich. 45; Weinberg v. The Regents of the University of Michigan; Attorney General ex rel. Cook v. Burhano, 304 Mich. 108 (1942) ; Board of Regents, University of Michigan v. Auditor General, 167 Mich. 444. In a relatively recent case, the supreme court divided over the question of whether the legislature constitutionally could subject the state board of agriculture to the workmen’s compensation act. (Peters v. Michigan State College, 320 Mich. 243) The attorney general from time to time has held invalid statutes which purported to regulate aspects of university activity and on occasion has ruled statutes couched in general form to be inapplicable to the university. For example, Statutes purporting to fix fees (Op. Attorney General 1701, p. 87) and entrance requirements (Op. Attorney General, 1911, p. 215) were held invalid. Acts requiring state agencies to submit reports to the state board of auditors, requiring performance bonds from contractors and requiring annual inventories of state-owned property were said to have no application to the university. (Op. Attorney General, 1920, p. 106; Op. Attorney General, 1921-22, p. 289).

⁶⁹ People ex rel. Board of Regents v. Brooks, 224 Mich. 45.

⁷⁰ State Board of Agriculture v. The Auditor General, 226 Mich. 417; Bauer v. State Board of Agriculture, 164 Mich. 415; Board of Regents of University of Michigan v. Auditor General, 167 Mich. 444.

the university. Where such conditions have been attached the regents may accept or reject the appropriations as they see fit. Should the regents accept the appropriation, the conditions are binding upon the regents.⁷¹

The legislature does not have unlimited freedom in the use of this device, however, for the court has said that the legislature can attach only such conditions as it has the power to make. In *State Board of Agriculture v. The Auditor General* (226 Mich. 417) the court said that the language used in previous decisions “did not mean that a condition could be imposed that would be an invasion of the constitutional rights and powers of the governing board of the college.” In this case a condition attached to an appropriation for the support of the agricultural college requiring the funds to be used subject to the general supervision of the state administrative board was held unconstitutional.

Other State Constitutions

Alaska and Hawaii in addition to Michigan provide that the university president shall be appointed by the governing board to serve as its executive officer. Alabama provides that the governor serve as ex officio president. Oklahoma provides for the office of president of the board of regents of Oklahoma colleges,⁷² but the office is not provided for in provisions which create the university of Oklahoma governing board. California provides that an acting university president shall serve as an ex officio member of the university board of regents.⁷³

Alabama, California, Hawaii, Montana, and Wyoming, in addition to Michigan, make the superintendent of public instruction an ex officio member of the university board. Michigan’s provision granting the superintendent and the president the privilege of speaking but not of voting appears to be unique among the states.⁷⁴

The constitutions of Colorado and Idaho contain provisions similar to that of Michigan’s that the board of regents shall have “the general supervision of the university and the direction and control of all expenditures from the university funds.” In addition, it has been said that the state constitutions of Minnesota and California give the principal state university governing board full control over the internal affairs of the university.⁷⁵

⁷¹ *People ex rel. Regents of the University v. Auditor General*, 17 Mich. 161; *Weinberg v. The Regents of the University of Michigan*, 97 Mich. 246.

⁷² Responsible for the government of 6 four-year colleges.

⁷³ Alaska constitution of 1956, Article VII, Section 3. Hawaii constitution of 1950, Article IX, Section 5. California constitution of 1849, Article IX, Section 9. Oklahoma constitution of 1907, Article XIII, Section 8, a(1,2), b(1,3).

⁷⁴ Index Digest, pp. 405-408.

⁷⁵ M. M. Chambers, The Campus and the People, The Interstate Printers and Publishers, Danville, Illinois, 1960, p. 45.

Minnesota provides (Article VIII, Section 4):

The location of the University of Minnesota, as established by existing laws, is hereby confirmed, and said institution is hereby declared to be the University of the State of Minnesota. All the rights, immunities, franchises and endowments heretofore granted or conferred are hereby perpetuated unto the said university; and all lands which may be granted hereafter by Congress, or other donations for said university purposes, shall vest in the institution referred to in this section.

California provides (Article IX, Section 9):

The University of California shall constitute a public trust, to be administered by the existing corporation known as "the Regents of the University of California," with full powers of organization and government, subject only to such legislative control as may be necessary to insure compliance with the terms of the endowments of the University and the security of its funds...said corporation shall also have all powers necessary or convenient for the effective administration of its trust, including the power to sue and to be sued.

Louisiana provides that the Louisiana state university and agricultural and mechanical college are to be directed, controlled, supervised and managed by a board of supervisors. Missouri provides that the government of the university shall be vested in a board of curators. Nevada, Nebraska, North Carolina, and Wyoming grant the legislature power to provide for the control and management of the state university.

Comment

Under the terms of the present constitutional provisions the board of regents of the university of Michigan and the board of trustees of Michigan state university are charged with the responsibility for general supervision of the respective universities and the direction and control of their funds.⁷⁶ These provisions have

⁷⁶ There has been no authoritative interpretation of the language of Article XI, Section 16 which provides for Wayne state university. In the absence of a definitive interpretation of the section, there would appear to be some question as to whether the provisions of the section put Wayne state university on the same constitutional footing with the university of Michigan and Michigan state university. For further comment on the point see the Comment under Wayne state university (Article XI, Section 16) below.

been interpreted to give the boards the responsibility and authority to determine the amount and quality of higher education services that are to be provided by these institutions. But the boards do not have taxing authority to finance such educational services.⁷⁷ The constitution gives this authority to the legislature.

Thus, while the boards have the authority and responsibility for determining the amount of higher education services that are to be provided, they lack the authority to levy taxes to pay the cost of such services.

The legislature has the authority to levy taxes to pay the cost of higher education services, but does not have the authority to determine the factors that make up the educational program (and thus the cost) of the universities.⁷⁸

Thus, the constitution creates a division of responsibility and authority between the boards and the legislature for providing higher education services at these two institutions.

If the convention believes that the responsibility and authority for providing higher education services at the universities should, be vested in one body and not split between two bodies, there are two basic alternatives:

1. Give the governing boards (or board) of the universities the authority to levy the taxes necessary to fulfill their responsibility for providing higher educational services. This could be done in several ways—by authorizing the boards to levy certain enumerated taxes or by earmarking certain taxes for their use. Under this alternative the boards (or possibly a single board) would be given by the people complete responsibility and authority for providing higher educational services. But, the legislature would be relieved of its responsibility and authority in this area.

⁷⁷ The board of regents and the board of trustees have the institutional responsibility for making those policy decisions which determine the total cost of operating the university (enrollment, curriculum, faculty, salaries, etc.) and are similarly responsible for determining how much of that total cost is to be financed from “university funds” (fees and charges, gifts, endowment, etc.). The difference is the net tax cost, which is requested annually of the legislature.

⁷⁸ Dr. John Dale Russell in his Survey of Higher Education in Michigan makes the following observation: “It is very clear that the Legislature and its committees have no very good way of estimating either the total needs of the State for higher education or the needs of the individual institutions for support. This is not a criticism of the legislature or its committees for they have done remarkably well, considering the limited data and analyses available upon which to make determinations of appropriations and other matters affecting the institutions.”

2. A second alternative, if both responsibility and authority for providing higher education are to be vested in one body, would be to give the legislature the constitutional responsibility for determining the higher educational program (which the legislature could vest by law in a university board or president).

On the other hand, the convention may feel that it is undesirable to give either agency complete authority and responsibility. In that event, consideration might be given to keeping the present provisions, or to modifying them by granting the legislature authority and responsibility over all finances of the universities, but leaving with the university boards the authority and responsibility for providing the best possible services within the limits set by the funds made available by the legislature. Consideration might be given to keeping the present provisions, while providing that all funds (state appropriations and university generated funds) be audited by a legislative auditor. This would provide one centralized accounting to the public.

Should consideration be given to providing an overall coordinating board, some modification of the powers of the separate boards might be considered necessary to permit such inter-institutional coordination.

Section 2 of Article XI specifies that the superintendent of public instruction shall be ex officio a member without vote of all boards having control of public instruction in any state institution. Thus, the specified ex officio membership of the superintendent on the board of regents in Section 5 would seem unnecessary.

3. Michigan State University

a. Board of Trustees

Article XI: Section 7. There shall be elected on the first Monday in April, 1909, a board of trustees to consist of 6 members, 2 of whom shall hold the office for 1 years, 2 for 4 years and 2 for 6 years. At every regular biennial spring election thereafter, there shall be elected 2 members whose term of office shall be 6 years. The members thus elected and their successors in office shall be a body corporate to be known as "The board of trustees of Michigan state university of agriculture and applied science." The board of trustees shall be the successor in interest to all the rights, powers, assets and liabilities of the state board of agriculture.

Constitutions of 1835 and 1850

The constitutions of 1835 and 1850 contained no provision of this type. The 1850 constitution directed the legislature to provide for the establishment of an agricultural school (the first of its kind in America) as soon as practicable and authorized the legislature to make the school a branch of the university. Twenty-two sections of salt spring lands were appropriated for the support and maintenance of the school. The legislature established a state agricultural school in 1855 which until 1861 was under the control of the state board of education.⁷⁹ From 1861 to 1909 the state board of agriculture, created by the legislature in 1861 (and predecessor of the present board of trustees), was appointed by the governor.⁸⁰

Constitution of 1908

Original Provision In the convention of 1907-08, spirited debate followed a proposal to insert into the constitution provisions for the regulation of the agricultural college which were then in force by statute. The proposal failed of passage on two early votes in the convention. The debate revolved around the question of whether the board should be elected as proposed or appointed by the governor, as was then provided for by statute. Some objected to treating the agricultural college in a manner different from the college of mines, which was also controlled by an appointed board. Others argued that better qualified members would be appointed to the board than could be obtained under the elective process. It was pointed out, however, that the college of mines was a purely technical institution requiring specialists in its management and that under no circumstances should the government of the college of mines be interfered with. The college of agriculture, on the other hand, was not held to be such a technical institution with the same requirements in its management. The elected board, it was argued, would serve to raise the character and dignity of the board. The purpose of the elective proposal, as pointed out by Mr. Barbour, a member of the education committee, was to put the board on a footing with the board of regents of the university of Michigan. The proposal, providing for an elective board, passed on the third reading.⁸¹

1959 Amendment In 1959, an amendment to this sections provided for the board of trustees of Michigan state university as the successors to the state board of agriculture.

⁷⁹ Act 130 of 1855.

⁸⁰ Act 188 of 1861.

⁸¹ Proceedings and Debates, pp. 1143-1148.

Judicial Interpretation

As previously indicated, the supreme court has held that under the constitution of 1908 the state board of agriculture was put on the same plane with the regents of the university of Michigan.⁸²

Other State Constitutions

The constitutions of eighteen states contain provisions relative to an agricultural college or an agricultural and mechanical college. In ten states the agricultural college and the state university are combined—Arizona, California, Georgia, Idaho, Louisiana, Minnesota, Missouri, Nebraska, Nevada and Wyoming.⁸³

In Colorado the control and management of the agricultural college are regulated by the legislature.

South Dakota provides that the agricultural college be under the control of five members appointed by the governor and confirmed by the senate.

New Mexico requires the legislature to provide for the control and management of state universities (including the college of agriculture and mechanical arts) by a five-member board of regents appointed by the governor with the consent of the senate.

Oklahoma provides for a board of regents for its agricultural and mechanical college and all other such colleges (it has one other land-grant college). Eight board members are appointed by the governor with the advice and consent of the senate. The president of the state board of agriculture is a ninth member.⁸⁴

Of those states with newer and more recently revised constitutions, Hawaii, Alaska and New Jersey have a combined state university and land-grant college. The first two constitutionally provide for the single institution.⁸⁵ New Jersey is silent on the matter. The board of governors of its combined institution, Rutgers,

⁸² Alger v. Michigan Agricultural College, 181 Mich. 559. For references to other decisions bearing on the constitutional status of the board, see previous section on the university of Michigan.

⁸³ Index Digest, pp. 403-405. Also, see State Boards Responsible for Higher Education, pp. 203-220.

⁸⁴ The state board of agriculture consists of five farmers selected according to law to have jurisdiction over matters affecting animal industry and animal quarantine regulation.

⁸⁵ See previous section on university of Michigan.

was created by authority of the state statutes. Missouri requires the legislature to maintain a state university which has been classified as a combined state university and land-grant college. The board of control for a second state-designated land-grant institution, Lincoln university, was created by statute.⁸⁶

Comment

Michigan state university and the university of Michigan are treated similarly under the constitution. See Comment under the sections on the university of Michigan for a discussion of these provisions.

b. President; Board Duties

Article XI: Section 8. The board of trustees shall, as often as necessary, elect a president of Michigan state university, who shall be ex-officio a member of the board with the privilege of speaking but not of voting. He shall preside at the meetings of the board and be the principal executive officer of Michigan state university. The board shall have the general supervision of Michigan state university, and the direction and control of all Michigan state university funds; and shall perform such other duties as may be prescribed by law.

Constitutions of 1835 and 1850

There was no provision of this type in the earlier Michigan constitutions.

Constitution of 1908

Original Provision Prior to 1908 the regulation of this institution had been provided for by legislative enactment. Members of the 1907-1908 convention inserted provisions of the statutes then in force into this section and Section 7, putting the institution at or on a par with the university of Michigan with regard to constitutional treatment.⁸⁷

The superintendent of public instruction is an ex officio member of the board of trustees (Article XI, Section 2).

⁸⁶ State Boards Responsible for Higher Education, p. 205.

⁸⁷ Proceedings and Debates, p. 1143.

1959 Amendment In 1959 this section was amended to effect a change in the name of the institution from the agricultural college as previously referred to in this section to Michigan state university of agriculture and applied science. The name of the board of control was changed from the state board of agriculture to the board of trustees. Except for these changes the section otherwise remained unchanged.

Statutory Implementation

The legislature has by statute vested the government of the university in the board and set forth the powers and duties of the board as assigned by the constitution.⁸⁸

Judicial Interpretation

The supreme court has held that under the constitution of 1908 the state board of agriculture (board of trustees) was put on the same plane with the regents of the university of Michigan. Neither the legislature nor any state officer or board may interfere with the control and management of these institutions.⁸⁹

Opinions of the Attorney General

In regard to the board's powers, the attorney general has held that powers given to the state board of agriculture and to the legislature are not mutually exclusive except in matters dealing solely with the operations of the university. In matters where general laws and welfare are affected, the attorney general has held that the legislature has the same powers of legislation as over any other portion of the state.⁹⁰

Other State Constitutions

Alabama, Michigan, New Mexico, Oklahoma and Utah constitutionally create a separate board for more than one major state university. See Other State Constitutions under section on university of Michigan (Article XI, Section 5) for discussion of similar provision.

⁸⁸ M.S.A. 15.1121-15.1303 (4).

⁸⁹ Alger v. Michigan Agricultural College, 181 Mich. 559. For other cases bearing upon the construction of this section see previous section on the university of Michigan (Article XI, Sections 3 and 4).

⁹⁰ Attorney General, Opinion No. 227, Dec. 9, 1955. Legislation purporting to designate the college faculty, its president and his powers were held unconstitutional by the attorney general as an invasion by the legislature of the board's authority. Likewise an attempt by the legislature to exempt certain students from military courses was held unconstitutional by the attorney general as depriving the board of supervision and control conferred by the constitution. (Atty. Gen. Opn. No. 1099, December 8, 1948) See Volume 11, Michigan Statutes Annotated, Powers of Board, p. 182.

Comment

This section is virtually the same as an earlier one treating the university of Michigan. For comment on the provision, see the earlier discussion under the university of Michigan (Article XI, Section 5).

c. Salt Spring Lands

Article XI: Section 13. The legislature shall appropriate all salt spring lands now unappropriated, or the money arising from the sale of the same, where such lands have already been sold, and any funds or lands which may hereafter be granted or appropriated for such purpose, for the support and maintenance of the agricultural college.

Constitutions of 1835 and 1850

Salt spring lands were granted by Congress to the state of Michigan in an act of 1836, which authorized up to 12 salt springs and six sections of land contiguous to each to be used as the legislature prescribed.⁹¹ This meant an original dedication of a maximum of 72 sections or slightly over 46,000 acres of land as salt spring lands.

In actual fact, slightly over 45,300 acres were finally selected by the state and approved by the federal government. Unlike some other grants of lands by the Congress, salt spring lands were not specifically given to the state for the support of education. Their partial dedication for this purpose was permitted by constitutional provision in 1850 and required in 1908.

In the infancy of the state, salt springs were invested with a substantial public interest. Plentiful pulp wood supplies were available for fuel to evaporate the brine to produce crystalline salt for human consumption. Otherwise salt had to be imported from distant areas, such as New York state, at fairly significant prices for those days. Reports of the state geologist and the commissioner of the state land office and legislative resolutions and acts clearly indicate the economic importance attached to salt springs in the early years of statehood.⁹² The development of techniques for mining salt directly has obviated the original need for and use of salt springs. In addition, much of the contiguous land granted was not needed for improvement of the springs and was more valuable for agricultural or other purposes.

⁹¹ See 5 U.S. Statutes-at-Large 59. A section of land is one square mile, or 640 acres.

⁹² See especially Geological Reports of Douglas Houghton, 1837-1845, Michigan Historical Commission, 1928, and Land Office Reports, 1843-1861, Michigan.

The constitution of 1835 did not mention salt spring lands specifically. The 1850 constitution said (Article XIII, Section 11)—“The legislature may (emphasis supplied) appropriate the twenty-two sections of salt spring lands now unappropriated, or the money arising from the sale of the same. . . for the support and maintenance of (an agricultural school)” This section also enjoined the legislature to establish an agricultural school “as soon as practicable.” The 22 sections of land were so appropriated by Act 130, 1855, which established what is now Michigan state university.

Constitution of 1908

The 1908 constitution virtually repeated the provisions of 1850 except that the word the legislature “may” was changed to “shall.”

Statutory Implementation

As with many other lands granted by the federal government or the state for educational purposes, the lands themselves have been sold and the money used by the state. As provided by statute or the constitution, an amount equivalent to the proceeds of such sales form the corpus of various funds of which a memorandum record is made as a basis for determining the amount of interest to be paid annually to the designated educational function. All salt spring lands have been sold.⁹³

The original disposition of the 72 sections is shown below.⁹⁴

<u>Authority</u>	<u>Sections</u>	<u>Disposition</u>
Act 187, 1848 Act 133, 1849 Act 282, 1850	25	Asylums for Deaf, Dumb and Blind, and the Insane.
Act 138, 1849	25	State Normal School (Eastern Michigan University)
Act 130, 1855	22	Agricultural College (Michigan State University)

Eastern Michigan university, the original state normal school, still receives an annual income which was \$6,070 in 1960-61 and which is said by officials of that institution to be solely from a fund resulting from the sale of salt spring lands.

⁹³ An original federal prohibition against sale or lease of these lands for longer than 10 years was rescinded in 1847.

⁹⁴ Twelve of the originally selected sections were found to have been sold by the federal government in error to private individuals. In 1852 Congress granted 12 additional sections to replace the sold lands.

The matter of salt spring lands is now so obscure that it is currently impossible without a tedious and possibly unprofitable review of records to know exactly how much money is annually received by Michigan state university specifically from the sale of this sort of land. From funds resulting from the sale of all types of land that university now receives slightly more than \$74,000 annually. These monies are paid out of the primary school interest fund from receipts of the specific taxes in accordance with the provisions of Article X, Section 1 of the constitution.

The act giving lands for asylum uses did not require a perpetual fund to be established and the lands were sold, with the proceeds being used in full for institutional support.

Interest paid on the corpus of land sale funds (including salt spring lands) is seven per cent per annum, except in the case of swamp lands where the rate is set by statute at five per cent. The statute governing interest on funds from the sale of agricultural lands is the only one that can be found setting a seven per cent rate in so many words (Act No. 140, 1863). Apparently the seven per cent rate on other funds stems from a supreme court decision in 1896, *Regents v. Auditor General*, 109 Mich. 134. A law of 1859 (Act 143) relating to the income from lands reserved to the use of the university of Michigan (not salt spring lands, however) was passed at a time when the usury laws allowed a seven per cent interest rate, which rate had been paid on these funds by the auditor general since 1845.⁹⁵ The court ruled that the auditor general must continue the seven per cent rate, since the act of the legislature granting the lands and income therefrom, when passed, implicitly set seven per cent, the rate of interest at that time. With this legal precedent, no further challenge to the seven per cent interest rate, on all except swamp lands, has yet occurred.⁹⁶

Other State Constitutions

A number of state constitutions contain provisions appropriating lands to school purposes or to perpetual funds for school purposes.⁹⁷ In most cases such provisions appropriate to school purposes the proceeds of all lands granted by the

⁹⁵ So states the court decision (see 109 Mich.136). However, figures in the annual report of the auditor general for the fiscal year 1900-01 (p. 350, Table No. 247) indicate that less than seven per cent (presumably six per cent) was paid on the university and other educational funds in the one year, 1881, the year in which by Act No. 138 the legal interest rate was reduced from seven to six per cent.

⁹⁶ The law providing for the normal school interest fund paid to Eastern Michigan university (see Section 390.412 of the Compiled Laws of 1948) does specifically provide for the payment of interest "at the rate or six per cent per annum." (Act No. 194, 1889) Payment at the rate of seven per cent on this fund appears to be sanctioned only by the custom of more than seventy years' standing.

⁹⁷ Nebraska, New Mexico, Wisconsin, Wyoming, North Carolina, Texas, California, Iowa, Kansas, Nevada, North Dakota, Oklahoma, Oregon, South Dakota, Utah, Washington. (Index Digest, pp. 386-387).

United States. Exceptions to this are university lands granted by Congress to the state for the support of a university. Wisconsin, for example, appropriates the proceeds of such land to a perpetual fund the interest of which is to be used for the support of the university.⁹⁸

North Dakota constitutionally provides for the establishment of specified educational and charitable institutions with federal lands granted for the purpose.⁹⁹

Michigan's provision appropriating salt spring lands, however, appears to be unique.

Comment

The mention of salt spring lands in the state constitution is obsolete and does not need to be continued in any new version. As distinct from this, the question of the corpus of the funds established from the sale of these and other lands and of the disposition of the interest thereon poses a problem.

The constitutional convention appears to have three basic alternatives respecting these funds. It can abolish them and provide for state support of education through regular or other forms of appropriation.¹⁰⁰ It can retain the funds as a nostalgic nod to the past. It can consolidate the funds into a single "fund for educational purposes" with interest to be paid out as the legislature or the constitution may direct.

4. Wayne State University

Article XI: Section 16. There shall be a board of governors of Wayne state university, consisting of 6 members, who shall hold office for 6 years. There shall be elected at each regular biennial spring election 2 members of such board. When a vacancy occurs in the board of governors, it shall be filled by appointment of the governor. The board of governors of Wayne state university and their successors in office shall continue to constitute the body corporate known as "the board of governors of Wayne state university". The board of governors shall, as often as necessary, elect a president of Wayne state university. The president and the superintendent of public instruction shall be ex

⁹⁸ Article X, Section 6.

⁹⁹ By Act of Congress in 1889; see constitution of North Dakota, Article XIX, Section 215, p. 62.

¹⁰⁰ Specific taxes (see Article X, Section 1) now amount annually to many times the money due from the established interest rate on the primary school, university, and other educational funds.

officio members of the board of governors, with the privilege of speaking but not of voting. The president shall preside at the meetings of the board and be the principal executive officer of Wayne state university. The board of governors of Wayne state university shall have general supervision of Wayne state university and the duties of said board shall be prescribed by law. The legislature shall be given an annual detailed accounting of all income from whatever source derived and all expenditures by Wayne state university.

Constitutions of 1835 and 1850

The earlier constitutions contained no provision of this type.

Constitution of 1908

The original constitution of 1908 did not contain this provision. In 1933, the Detroit board of education united several institutions of higher learning to form Wayne university. The present board of governors of Wayne State university was created by a constitutional amendment in 1959. A prior board had been created by statute¹⁰¹ in 1956 as a temporary board during the transition from a municipally supported to a state-supported institution.

The section apparently has presented no serious problem of interpretation to date. The section has given rise to no litigation.

The original act of 1956 which provided for the establishment and regulation of the university has continued in force following the 1959 amendment.

Other State Constitutions

For the practice followed in other states providing for state-supported universities see Other State Constitutions under the preceding sections on the university of Michigan and Michigan state university.

Comment

This section gives the board of governors similar powers of general supervision to those granted to the boards controlling the university of Michigan and Michigan State university. The section does not provide, however, for the “direction and control of all expenditures” by the board of governors, similar to the provision of authority for the board of regents of the university of Michigan and the board of trustees of Michigan state university. From the interpretation given this clause

¹⁰¹ Public Act 183 of 1956.

by the courts, in the case of the university of Michigan and Michigan state university, it would appear that omission of this provision makes an important difference in the extent to which Wayne state university is free from statutory controls as compared to the university of Michigan and Michigan state university.

It is also provided in this section that the duties of the board of governors of Wayne state university “shall be prescribed by law” while the constitution provides that the board of trustees of Michigan state university “shall perform such other duties as may be prescribed by law.” The constitution makes no provision for the legislature to assign duties to the board of regents of the university of Michigan. The provisions of Section 16 relating to the powers and duties of the Wayne state university board of governors are actually the same as those made for the state board of education. The constitution provides that the state board of education “shall have general supervision of the state normal college and the state normal schools, and the duties of said board shall be prescribed by law.”

While lacking an authoritative interpretation of the language of this section, there would appear to be some question as to whether the provisions of this section put Wayne state university on the same constitutional footing with the university of Michigan and Michigan state university. However, the statutes applicable to Wayne state university have not attempted to limit the powers of its board of governors and its present status is, in fact, if not by express constitutional provision, on an equal footing with the boards of regents and trustees.

The last clause of this section providing for an “annual detailed accounting of all income” is not contained in sections providing for the university of Michigan and Michigan state university, although another section (Article X, Section 18) requires the legislature to provide for “the keeping of accounts by all state officials, boards and institutions” which accounts and the audit thereof “shall be public records and open to inspection.”

Consideration might be given to clarifying the constitutional wording of Section 16 to indicate more clearly the status of Wayne state university in these respects.

Article X, Section 18 provides for the keeping of accounts by state institutions. In view of this provision the requirement for an annual accounting of income in Article XI, Section 16 might be unnecessary.

For additional comment see Comment under the university of Michigan (Article XI, Sections 3, 4 and 5).

5. State Board of Education

Article XI: Section 6. The state board of education shall consist of four members.

On the first Monday in April, nineteen hundred nine, and at each succeeding biennial spring election, there shall be elected one member of such board who shall hold his office for six years from the first day of July following his election. The state board of education shall have general supervision of the state normal college and the state normal schools, and the duties of said board shall be prescribed by law.

Constitutions of 1835 and 1850

This provision originated in the constitution of 1850 and was carried over into the constitution of 1908.

Constitution of 1908

Section 6 has not been amended since the present constitution was adopted. This section has given rise to very little litigation.

Statutory Implementation

Legislative enactments implementing the provisions of this section provide for the establishment, location and control of the four normal schools, which in 1959 were designated as Eastern Michigan, Western Michigan and Central Michigan Universities and Northern Michigan College.

In addition to responsibilities for the operation of the four schools, the board is responsible for issuing certificates for public school teachers in the state and the supervision of the schools for the blind and deaf. The board is empowered to hear appeals from county boards of education decisions on the transfer of territory between school districts. The board is also required to examine textbooks used in certain specified courses and to set standards for the transportation of pupils by local school districts.¹⁰²

Other State Constitutions

Nineteen states in addition to Michigan constitutionally provide for a state board of education.¹⁰³ Colorado, Louisiana, Nebraska, and Utah select board members by popular election. Board members in Georgia, Missouri, and Vir-

¹⁰² M.S.A. 15.001 through 15.1117.

¹⁰³ State boards of education responsible for various levels of education are provided for in 29 additional states—by state statute. Illinois, without a general board, has a specialized board responsible for limited phases of the school program. (The Book of the States, p. 294) (Index Digest, pp. 364-365).

ginia are appointed by the governor with the consent of the senate in the first two states and with the consent of the legislature in Virginia. Florida, Mississippi and Oklahoma have ex officio boards, while five other states provide for both ex officio and appointed membership. Texas, California, and Idaho leave the matter to be provided by law.¹⁰⁴

Tenure Nine states fix the term of office for board members. Terms range from four years (in South Carolina, Virginia, Michigan) to eight years (in Georgia, Louisiana, Missouri, and North Carolina). The average term provided for in the nine states is 6.3 years.

The size of board membership fixed by thirteen states ranges from three in Mississippi to 15 in Georgia. The average membership of the thirteen boards is eight members.

Powers and Duties Nebraska and Michigan vest the general government of the state normal schools in a state board of education. The Louisiana board is responsible for nine state colleges and for elementary-secondary education. North Carolina grants the board powers of supervision over free public schools.¹⁰⁵ Eleven states provide, as does Michigan, that the duties of the board shall be as provided by law.

Comment

The principal question involved in a consideration of this section is whether the state board of education should continue to have responsibilities for both higher education and elementary-secondary education.

The state board of education is now responsible under the constitution for four institutions of higher education. By statute it is assigned certain general educational responsibilities for elementary-secondary education. In a revision of the constitution, the general educational responsibilities now exercised by the board, plus all of the constitutional authority now vested in the superintendent (see Article XI, Section 2) could be lodged in the state board of education.

¹⁰⁴ Eight states (including Idaho) make the superintendent of public instruction an ex officio member, five make the governor a member. Other state officers occasionally made ex officio members of the state board include the lieutenant governor, secretary of state, state treasurer, auditor general, and attorney general. Index Digest, pp. 364-365.

¹⁰⁵ As provided by statute or by state constitutions, three states (Idaho Montana, and New York) assign responsibility for all levels of education to a single state-wide board. Eighteen states assign their state boards responsibility for four-year colleges and higher levels of educational institutions in addition to elementary and secondary education. Eleven states place only their two-year colleges under the state board responsible for elementary and secondary education. State Boards Responsible for Higher Education, pp. 203-208.

Should this responsibility for elementary-secondary education be lodged in the state board of education, the constitution might continue to hold the state board responsible for the government of the four institutions of higher education. Or, the four institutions might be placed under separate boards of control or under one centralized board responsible for the government of all four institutions or one board for all institutions of higher education in the state. The matter of providing for the government of these institutions could, of course, be left to the discretion of the legislature. The college of mining and technology and Ferris institute are now governed by separate statutory boards.

Another possible issue in connection with this section is whether the members of the board should continue to be elected or whether they should be appointed by the governor.

As previously indicated, a number of states now provide for appointment by the governor subject to the advice and consent of the senate. Determination of this issue would depend in part on what the future role of the state board of education is to be.

In the interest of making the board broadly representative in providing educational policy, consideration might be given to increasing the size of the board. The average membership on thirteen constitutionally created state boards of education is about eight.

D. OTHER PROVISIONS

1. Township and City Libraries

Article XI Section 14. The legislature shall provide by law for the establishment of at least 1 library in each township and city; and all fines assessed and collected in the several counties, cities and townships for any breach of the penal laws shall be exclusively applied to the support of such libraries.

Constitutions of 1835 and 1850

The constitutions of 1835 and 1850 contained similar provisions. The 1835 provision (Article XI, Section 4) required the legislature to provide for the establishment of one library in each township, while the 1850 provision (Article XIII, Section 12) required the legislature to support city as well as township libraries. It differed from the 1835 provision, also, in that the earlier provision required only that the clear proceeds of penal fines¹⁰⁶ be appropriated, implying that the cost of collecting the fines should be deducted before the moneys were distributed.

¹⁰⁶ Fines collected for violations of motor vehicle laws, hunting, fishing and game laws.

Following the adoption of the 1850 provision the supreme court ruled that collection expenses could not be deducted from penal fine moneys.¹⁰⁷ Subsequently, however, an amendment was passed in 1881 which allowed for some diversion of the funds by township or school district boards.

Constitution of 1908

The draft provision presented to the convention of 1907-1908 by the committee on education was phrased in the same manner as the provision originally passed in 1850, omitting the clauses added by amendment and again requiring penal fine moneys to be used exclusively for the support of township and city libraries.

Several members of the committee pointed to measures employed by the counties, cities, and townships to divert penal fine moneys from the library fund,¹⁰⁸ and indicated that the clauses had been omitted as a measure aimed at stopping such practices.

On the other hand, others pointed out that to omit the clauses and restrict the use of penal fines would tie the hands of local authorities who were, it was argued, in a better position than the framers of the constitution to discern the needs of their locality.¹⁰⁹ The fear was expressed in the debate that the matter of providing for libraries would go unheeded, which argument seems to have been influential in the convention's decision to restrict penal fines for library purposes.

A proposal to insert in this section a requirement that both penal fines and fines for violations of city ordinances be credited to the library fund was not accepted by the convention, apparently because the proposal did not include an acceptable method for distributing fines from city ordinances.¹¹⁰

¹⁰⁷ People ex rel. Board of Education of Detroit v. Wayne County Treasurer, 8 Mich. 392.

¹⁰⁸ Court costs were being assessed in amounts exceeding the fine imposed for a breach of the penal laws. Revenue from fines had to be credited to the library fund, while revenue derived from court costs could be credited to other funds.

Ordinances were enacted duplicating the penal laws in which case the cities could credit fines collected for violations of the ordinance to the city's general fund. From the Proceedings and Debates, pp. 172-176.

¹⁰⁹ Some city libraries were established with Carnegie Foundation funds and, under the terms of the gift, were supported by tax funds. It was argued that these cities should be allowed some discretion in the use of penal fines. From the Proceedings and Debates, p. 175.

¹¹⁰ The proposal would have required fines from city ordinances to be distributed throughout the county on a per capita basis while the expense of collecting such fines would be borne by the city in which they were collected. From the Proceedings and Debates, p. 176.

The section has not been amended since the adoption of the present constitution.

Judicial Interpretation

Section 14 has been interpreted to permit the distribution of penal fine moneys to county law libraries¹¹¹ while it would not permit the county treasurer to assign all penal fine moneys to the county library board at any time school districts in the county report \$20,000 or more in unexpended penal fine moneys.

The supreme court ruled in 1943 that “penal fines” as referred to in this section are those recovered for violation of state laws while fines recovered under parallel city ordinances can be retained by the city.¹¹²

Statutory Implementation

Enabling legislation authorizes city, county, township, village and school district governing boards to contract for library services, to establish libraries and to cooperate in the establishment of district libraries. Under varying conditions they may also levy an annual tax to provide library services.¹¹³

Regional libraries are also provided for by law. This extension toward a larger library unit continues to rely on the county as a base for organization. The state librarian is held responsible for planning the establishment of such libraries, while member counties must approve such plans and appropriate sums for the support of the inter-county unit.¹¹⁴

A state board for libraries was created in 1937¹¹⁵ to have powers and duties formerly vested in a state librarian¹¹⁶ and a board of library commissioners.¹¹⁷

¹¹¹ County of Gratiot v. Federspiel, 1945.

¹¹² Delta County v. City of Gladstone, 1943.

¹¹³ Act 92, 1952; Act 138, 1917; Act 164, 1955; Act 164, 1877; Act 5, 1917; Act 26, 1921; Act 213, 1925; Act 261, 1913; Act 269, 1955.

¹¹⁴ Act 250, 1931.

¹¹⁵ Act 106, 1937.

¹¹⁶ Act 28, 1895. Previous to 1937 this officer was appointed by the governor and had general control and supervision over the state library. In addition, the powers and duties of the board of library commissioners were performed by the state librarian after the board was abolished in 1921.

¹¹⁷ Created by Act 115, 1899 and abolished in 1921. The board served primarily as an agency to promote better library service in the state.

The act provided for the appointment of a state librarian by the state board which was given general control and supervision over the state library, the exchange medium for documents of the state, serving branches of the state government and other states. The state board is responsible for setting standards for the certification of libraries and librarians, distributing grants to public libraries, controlling the establishment of regional libraries, and developing state-wide school library service.

In 1937 the legislature also provided for a state aid fund supplementing penal fines. The fund is designed to provide an incentive for improving library service in that eligibility for aid is dependent on whether a library conforms to requirements set by the state board to libraries.¹¹⁸ Thirty percent of the fund is used to provide establishment grants for county and regional libraries and to reimburse the salaries of county or regional librarians up to \$4,800 per year. The remaining 70 percent is distributed on a per capita basis to public libraries which have met the standards set by the state board.

Legislation implementing the provision earmarking penal fines was first passed in 1837-1838, authorizing the distribution of penal fines to school districts. County law libraries were authorized penal fines distributions in 1921. Legislation passed in 1947 provided for penal fine distributions to the county library and other independent libraries in counties having a county library.

Specific procedures now used for distributing penal fine money were developed in accordance with rulings of the department of public instruction as approved by the attorney general. The present order of distribution¹¹⁹ calls for the first distribution to be made to the county law library in an amount varying from \$750 to \$4,000 depending upon the population of the county. The balance of the penal fine moneys is distributed by the county treasurer to county, city and school district libraries on the basis of the number of children in each jurisdiction as certified by the superintendent of public instruction.¹²⁰

Other State Constitutions

Few state constitutions contain provisions similar to those found in this section.¹²¹ The Missouri constitution provides that it shall be a policy of the state to promote the establishment of free public libraries and to accept the obligation of

¹¹⁸ Attorney General Opinion, No. 555, August 1, 1947.

¹¹⁹ Ibid.

¹²⁰ Act 269, 1955. See also memorandum, "Michigan State Library Penal Fines," The State Board for Libraries, Lansing, Michigan, July, 1960.

¹²¹ Index Digest, pp. 683-684.

their support by the state, its subdivisions and municipalities as provided by law. The legislature is required to grant aid to libraries in a manner and in amount as provided by law.

Iowa earmarks moneys paid for exemption from military duty and the clear proceeds of penal fines to the support of common schools or the establishment of libraries as the board of education may provide.

New York provides that revenues from certain funds shall be applied to the support of both common schools and libraries.

Comment

There are now some 300 established libraries throughout the state. If consideration is given to removing this section, the matter of providing for the support of these libraries could be left to the discretion of the legislature which, as previously mentioned, now provides state aid to libraries.

Consideration might also be given to replacing this constitutional protection given penal fines with a provision similar to that found in the Missouri constitution which does not earmark specific revenues for library purposes but does recognize in principle the state's obligation to participate in the support of the establishment and maintenance of libraries.

2. Charitable Institutions

Article XI: Section 15. Institutions for the benefit of those inhabitants who are deaf, dumb, blind, feeble minded or insane shall always be fostered and supported.

Constitution of 1835 and 1850

There was no provision of this type in the 1835 constitution. This provision for charitable institutions originated in the 1850 constitution (Article XIII, Section 10) and was carried over in the 1908 constitution.

Constitution of 1908

The present provision differs from that in the 1850 constitution only in that the word "feeble-minded" was added. The provision was considered and accepted by the 1907-08 convention without debate.

This section has not been amended, nor has it given rise to much litigation.

Statutory Implementation

There is a Michigan school for the deaf at Flint and a school for the blind at Lansing, both under the jurisdiction of the state board of education.

The department of mental health is charged with the responsibility for all phases of the state's mental health program performed at the state level.

Other State Constitutions

A number of other state constitutions, most of which were drafted before 1900, authorize their legislatures to provide for various charitable institutions. Institutions are authorized for the mentally handicapped in twenty states; for the blind in twenty-seven; and for the deaf in seventeen.¹²²

Newer and more recently revised constitutions authorize the legislature to support a variety of programs which come under the heading of "general welfare."

Comment

As is the case with "encouraging education," this section does not grant power to the state, but rather expresses the intent of the people to support the types of institutions specified. If the provision were eliminated, the state would still be able to support these institutions and programs. The recent trend has been away from specific provisions of this type and to the "promote the general health and welfare" type of provision.

¹²² Index Digest, pp. 526-530.