

# Citizens Research Council of Michigan

625 SHELBY STREET, SUITE 1B, DETROIT, MI 48226,3220 • (313) 961-5377 • FAX (313) 9614)648  
1502 MICHIGAN NATIONAL TOWER, LANSING, MI 48933-1738 • (517) 485-9444 • FAX (547) 485-0423

## Michigan Constitutional Issues

CITIZENS RESEARCH COUNCIL OF MICHIGAN IS A 501(C) 3 TAX EXEMPT ORGANIZATION

Report No. 313-7      Seventh in a series on revising the Michigan Constitution      September 1994

### EDUCATION

#### THE ISSUE IN BRIEF

At the November 8, 1994 general election, the voters of Michigan will decide whether to call a constitutional convention to revise the Michigan Constitution of 1963. The question appears on the statewide ballot automatically every 16 years as required by the Constitution.

The role and responsibility of the state for elementary-secondary education and higher education is found in Article 8 of the Michigan Constitution. There are a number of major issues concerning education. Despite the approval of Proposal A in 1994, the funding of K-12 education continues to be an issue. There has been discussion of amending the Michigan Constitution by adding language that would make K-12 education a fundamental right so that the courts could intervene to address school funding disparities. The current constitutional prohibition against aid to nonpublic schools has been an issue and the new charter school legislation has highlighted that issue.

There are also constitutional issues regarding the governance of K-12 and higher education. The state board of education and the governing boards of the three largest universities are composed of eight members each, elected at large for eight-year terms. The election of 32 state education officials adds to the long ballot. Also, the relationships among the state board of education, the state superintendent and the governor have been an issue.

#### Elementary and Secondary Education

**State School Aid** The Michigan Constitution requires the state to “maintain and support a system of free public elementary and secondary schools as defined by law.” Based on the wording in their constitutions, a number of states have experienced judicial challenges to their school funding systems because of per pupil expenditure disparities among school districts.

The two most significant Michigan court decisions concerning whether disparities in per pupil expenditures violate the state Constitution are **Governor v State Treasurer** (389 Mich 1; 1972) and **East Jackson Schools v State of Michigan** (133 Mich App 132; 1984). In 1972, the Michigan Supreme Court in **Governor v State Treasurer** declared the then existing deductible-millage school aid formula in violation of the state Constitution. In 1973, after the U.S. Supreme Court ruled in **San Antonio Independent School District** (411 US 1; 1973) that per pupil disparities did not violate the Equal Protection Clause of the U.S. Constitution and the Legislature enacted a new school aid formula, the state Supreme Court vacated its earlier decision.

---

#### BOARD OF DIRECTORS

LOUIS BETANZOS, President  
ALFRED R. GLANCY, Vice President  
GEORGE N. BASHARA, JR.  
BEVERLY A. BELTAIRE  
J. EDWARD BERRY  
JOHN W. CLARK  
STEPHEN T. ECONOMY

MICHAEL M. GLUSAC  
DANIEL J. KELLY  
SUSAN L. KELLY  
DAVID B. KENNEDY  
PATRICK J. LEDWIDGE  
ROBERT F. MAGILL  
ROGER L. MARTIN

PAUL H. MARTZOWKA  
MICHAEL E. MASLYN  
DONALD R. PARFET  
JEROLD E. RING  
IRVING ROSE  
HOWARD F. SIMS  
A. ROBERT STEVENSON

S. MARTIN TAYLOR  
JOHN E. UTLEY, JR.  
AMANDA VAN DUSEN  
RICHARD WEBB  
MARTIN ZIMMERMAN

ROBERT L. QUELLER, Vice President-Executive Director

In **East Jackson Public Schools**, plaintiffs sought a declaratory judgment that the state school-finance system violated state constitutional provisions providing for the equal protection of the laws and requiring the Legislature to maintain and support a system of free public elementary and secondary schools. The Court of Appeals ruled that the Constitution did not require equal financial support of public schools, and also rejected the argument that education is a fundamental right under the state Constitution. Plaintiffs appealed the decision in **East Jackson Public Schools** to the state Supreme Court, but that Court denied leave (419 Mich at 943).

In 1970, the voters added language to Section 2 prohibiting state aid to nonpublic schools. This occurred after an acrimonious public debate that had existed for about two years, and after a \$22 million 1970-71 appropriation for state aid to nonpublic schools was enacted.

**State Board of Education** Section 3 of Article 8 of the state Constitution established an eight-member state board of education, whose members are nominated at political party conventions and elected at large. Section 3 also provides that the state board of education appoint the superintendent of public instruction. The 1908 Constitution had provided for an elected four-member board, including the elected superintendent of public instruction, with limited authority and responsibility.

The 1963 Constitution expanded the responsibilities of the state board of education. The board is given leadership and general supervision over all public education, except institutions granting baccalaureate degrees. The board serves as, “the general planning body for all public education including higher education, and shall advise the legislature as to the financial requirements in connection therewith.” For a variety of reasons, the state board of education has not exercised this broad grant of authority.

At the 1961 Constitutional Convention, most of the debate focused on whether the governor should be a voting member of the state board of education. The principal arguments in opposition to including the governor as a voting member were a concern that the governor would dominate the board, and a belief that the board would become politicized and educational issues would be of secondary concern. Ultimately, the governor was added as an ex-officio member without the right to vote. Another significant issue was whether to continue to elect the superintendent of public instruction.

### **Higher Education**

The 1963 Constitution established a more uniform system of higher education governance than existed under the 1908 Constitution. The members of the governing boards of the University of Michigan, Michigan State University, and Wayne State University are elected at large, while the governing boards of the other ten four-year institutions are appointed by the governor with the advice and consent of the Senate. The 13 boards consist of eight members each.

An effort was made in the 1963 Constitution to provide for planning and coordination of higher education through the state board of education. This authorization is found in Section 3 of Article 8. The state board’s authority as it relates to higher education was emasculated by language at the end of Section 3 which indicates that the authority of boards of higher education institutions to supervise their respective institutions is not limited by Section 3. The Michigan Supreme Court in **Regents of the University of Michigan v the State**, (395 Mich 52; 1975)

found that the state board of education's authority is advisory and the autonomy of the universities remained unchanged.

A new provision in the 1963 Constitution requires the Legislature to provide by law for the establishment and financial support of public community colleges governed by locally elected community college boards, and to provide for a state board for public community and junior colleges. The Constitution provides that the board consist of eight members appointed by the state board of education. The financial support provision is so general that it has had little or no effect on the financing of community colleges.

### **Constitutional Convention Issues**

If the people approve the calling of a convention, there are several issues concerning Article 8 that likely would generate substantive discussion.

**State Responsibility for Financing K-12 Education** Michigan has adopted a new school-finance system that has reduced reliance on the property tax as a source for financing elementary-secondary education. Per pupil revenue disparities will be reduced under the new funding allocation system, but significant disparities will continue to exist. A number of successful court challenges in other states to state school finance systems have been made using the education article of the state constitution as the basis for the challenge. All state constitutions contain an education clause requiring the state legislature to provide a system of free public education. The language ranges from language similar to Michigan requiring the Legislature to, “maintain and support a system of free public elementary and secondary schools... 11 to stronger statements such as public education should be “thorough and efficient,” “uniform,” or should provide “equal educational opportunity” to all. Kentucky and Texas are recent examples of states that have had their school finance systems declared unconstitutional using the education article in the state constitution as the basis for the decision.

As noted above, the existing language in Article 8 has not provided a basis for successfully challenging Michigan's school finance system in the courts. There are citizens who are impatient with the political process in seeking to reduce per pupil disparities and would seek judicial intervention. This viewpoint may be represented in a constitutional convention and proponents might seek to include stronger language than exists in the 1963 Constitution as it relates to the state's responsibility to provide and support a system of free public education.

Another school finance issue is the existing prohibition to support private schools with public funds. New charter school legislation, which permits state aid to nonprofit “public school academies,” has focused attention on this issue. The legislation skirts the issue by defining the academies as “public schools.” Concern about the quality of public schools and the support for a competitive educational environment may result in a review of the existing prohibition against state aid to private schools.

**Elementary-Secondary Education Governance** The framers of the 1963 Constitution had high expectations for the state board of education and its oversight role. One delegate saw the board as, “a deliberative body of outstanding citizens.” The board was given, what appeared to be, a broad grant of constitutional authority over all public education. There has been general

[4]

dissatisfaction with the existing governance system at the state level as it relates to K-12 education, and it probably would receive a thorough review in a constitutional convention.

There is no clear pattern among the states regarding the manner of selecting the state board of education or the chief state school officer. Michigan is one of nine states that elects a state board of education, which in turn appoints the chief state school officer. The Constitutions of 1850 and 1908 provided for the election of the superintendent of public instruction. A constitutional convention might consider returning to an elected superintendent of public instruction. Consideration also might be given to the governor appointing some or all of the members of the state board of education.

**Higher Education Governance** One issue relates to the method of selecting board members for the 13 four-year institutions. Consideration may be given to having the governor appoint members to all 13 governing boards rather than just the ten currently appointed by the governor. Gubernatorial appointment of members to the boards of ten of the higher education institutions has appeared to work well. This perception combined with the difficulty in judging the qualifications of candidates for the elected higher education governing boards of the three largest universities and concern with the long ballot may focus attention on this issue.

Statewide planning and coordination of higher education may be a subject for review in a constitutional convention just as it was at the 1961 Constitutional Convention. As indicated above, efforts to give the state board of education a planning and coordination role has not been successful. One alternative is a separate state board for post-secondary education that would be responsible for planning and coordination.