

Transfer of State Board of Education functions to the Governor's office must be reversed.

The 1953 constitutional amendment which established the State Board of Education and Superintendent of Public Instruction was trampled underfoot by the legislature and Governor when HB33 (State Budget Bill) was signed into law in July. State officials, in one more odious act of disrespect for Ohio citizens, have gobbled up control citizens were granted by the 1953 amendment. The legislature has no authority to legislate away any provision of the Ohio Constitution. Citizens must resist the erosion of constitutional protections.

Attached is a copy of a guest column I submitted to the Columbus Dispatch which was published November 17, 2023.

DeWine, lawmakers need an education on education

Some state legislators, the Governor, and possibly the Attorney General need remedial instruction regarding the constitutional provision for the State Board of Education. The current chaotic legal quagmire regarding the constitutional role of the State Board of Education could have been avoided if state officials had learned and respected some rudimentary facts about state level governance of elementary and secondary education.

In 1837, the Ohio legislature created the Office of Superintendent of Common Schools and employed Samuel Lewis as Superintendent. After three years, Lewis resigned, and his duties were transferred to the Secretary of State until 1853 when a State Commissioner of Common School was elected pursuant to law. The delegates to the 1850/1851 Constitutional Convention discussed, but did not include, the requirement of a chief state school officer in the Constitution. Hence, the creation of a state official for education was left to the discretion of the legislature. The legislature created the position of State Commissioner of Common Schools commencing in 1853. This was an elected position on a three-year cycle.

The office of State Commissioner of Common Schools was replaced by the Superintendent of Public Instruction in 1913 via a 1912 constitutional amendment. The amendment did not include a State Board of Education; hence, the legislature assigned the Superintendent of Public Instruction to the governor's office, where it remained until the 1953 constitutional amendment was adopted by the citizens of Ohio.

In 1939, Ohioans rejected a proposal for a constitutional amendment to establish a State Board of Education; therefore, the state agency for education remained under the jurisdiction of the governor.

The 1953 amendment had the effect of transferring the state functions for education from the governor's office to the State Board of Education that officially began operations in January 1956. The State Board of Education, via the 1953 amendment, had the opportunity to function in a non-partisan manner as a fourth branch of government. That changed to some extent in the 1990's when Governor Voinovich achieved a measure of control over the State Board of Education by pressuring the legislature to enact legislation that gave governors the right to appoint 8 members of the Board.

In 1840, the legislature had the authority to eliminate the position of Superintendent of Common Schools because it was established by legislation. The delegates to the 1850/1851 Constitutional Convention did not constitutionalize a state agency for education; therefore, any such office would have to be created by the legislature.

In 1912, the citizens of Ohio adopted a constitutional amendment that created the office of Superintendent of Public Instruction; therefore, the legislated-Commissioner's office was eliminated. In 1939, citizens turned down a proposal for establishing a State Board of Education; therefore, the Superintendent of Public Instruction and the Education Agency continued under the jurisdiction of the governor's office.

In 1953, citizens moved the state education functions from the governor's office to the State Board of Education via the constitutional amendment (Article VI, Section 4). The legislature's action, via HB33, to move state education functions from the State Board of Education to the governor's office is unconstitutional. The legislature has no authority to pass a law to overturn the 1953 amendment. Ultimately, Article 1, Section 2 of the Ohio Constitution—"all political power is inherent in the people"—is still binding. The legislature has no authority to legislate away the Constitution. All the vitriolic rhetoric spewed out against the State Board of Education by politicians is hogwash. The State Board of Education remains in the Constitution!