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An "expert" for the State Defendants in the EdChoice voucher case wrote a report which suggests that the Article VI, section 2 constitutional provision allows—even requires—the State to fund private schools. The gist of his argument is that prior to the 1850-1851 Constitutional Convention, the state provided some funds to private schools; therefore, funding of private schools "by taxation or otherwise" is authorized. The State Defendants paid this "expert" $440 per hour to write this report. Unfortunately for the State Defendants, the report actually benefits the Plaintiffs in the Vouchers Hurt Ohio case.

Mike Curtin, former Columbus Dispatch associate publisher, former State Representative, and a member of the Ohio Constitutional Modernization Commission reviewed the report and provided the response below.

Comments on the "Expert Report of Lee J. Strang on the Original Meaning of The Ohio Constitution's Article VI, Section 2 (1851)." Strang report dated Feb. 22, 2024.

On Pages 6&7 of his report, Strang states that delegates to Ohio's 1850-1851 state constitutional convention did not debate the meaning of "common schools" or "system of common schools."

Strang wrote:

"There was *no* debate in the 1851 constitutional convention on what this phrase meant. The parties did not discuss with one another what they meant when they debated . . . Instead, the delegates and committees used the phrases 'common schools' and 'system of common schools' unreflectively."

This claim is not true.

It is true that the convention's 108 delegates, as Strang writes, "clearly knew about the existing system, and their primary purpose was to ensure its continued growth toward flourishing." However, contrary to Strang's statement that there was "no debate" over the meaning of "common schools," the delegates engaged in spirited debate and discussion over what they intended for the future of the system, including the future meaning of "common schools."

A few examples of delegate discussion and debate on the meaning of common schools, from Volumes I and II, *Report of the Debates and Proceedings of the Convention for the Revision of the Constitution of the State of Ohio, 1850-51* (J.V. Smith, ed., S. Medary, Printer, Columbus, Ohio, 1851:

On **Thursday, Dec. 5, 1850**, delegates discussed the wording and meaning of Article VI, Section 2's requirement for "a thorough and efficient system of common schools throughout the state; but, no religious or other sect, or sects, shall ever have any exclusive right to, or control of, any part of the school funds of this State."

Delegate Samson Mason, a Clark County lawyer, explained the common-school language was intended to ensure "the whole religious community in fact shall forever be excluded from any participation in the school fund of the state; and that because they are religious."

Following Mason's remarks, delegate Simeon Nash, a Gallia County lawyer, stated: "Every citizen has, and will have a right to participate in the means of education; but the intention of the provision merely is, that no organized body of Christians, as such, shall be entitled to lay its hand upon the school funds of the state, and appropriate it to the furtherance of their own particular views . . . It means merely that neither Presbyterian, the Episcopalian, or the Catholic church shall have the power to seize upon the public funds and appropriate them to suit itself."

On **Monday, Feb. 24, 1851**, delegates again debated and discussed the meaning of both “a thorough and efficient system of common schools” and Article VI, Section 2’s requirement that school funds be restricted to common schools.

Delegate H. Thompson, a Shelby County lawyer, “said he thought the sentiment expressed in the amendment (Section 2) would be conceded to be correct by every member on the floor. The object of the provision was to secure that no religious sect shall, in any manner, control the dispensation of the school funds of the state.”

Further discussion on the meaning of “common schools” followed. Delegate Eward Archbold, a Monroe County lawyer, moved to strike the word “common” and substitute “useful” in Section 2. According to the official record, “Archbold was afraid the word ‘common’ would in future years prove too great a limit on the discretion of the General Assembly.”

In response, delegate Samuel Humphreville, a Medina County lawyer, countered that the word ‘common’ was well understood. “Common schools in the future will be common schools . . . they will be schools that will hold the same relation to the then state of things that the present common schools do to the present state of things.”

On Page 79 of his report, Strang writes: “The original meaning of Article 6, Section 2 (the education clause) did not prohibit the General Assembly from funding educational opportunities, religious or non-religious, outside of the system of common schools.”

To the contrary, convention delegates and members of the Ohio General Assembly well understood that Article 6, Section 2 clearly intended to restrict school funding to common schools.

The evidence of this intent was made abundantly clear by the General Assembly, on March 14, 1853, when it approved legislation to put into effect the dictates of Article 6, Section 2. In approving “An Act to Provide for the Reorganization, Supervision and Maintenance of Common Schools,” the General Assembly imposed a 2-mill property tax and **mandated that school funds “be applied exclusively to the support of public or common schools.”**

For the next 112 years, the State of Ohio honored its constitutional requirement to restrict the allocation of the state’s public tax dollars for primary and secondary education to common (public) schools.

On Page 76 of his report, Strang writes: “Ohio continued its support for private education well after the 1851 Constitution.” The sole example he cites in support of this claim is an 1868 law, supplementing an enactment from 1858, authorizing local boards of education to contract with trustees of private schools for poor children, using school funds under the control of the local boards.

Although further research is needed to provide complete context for the enactment of this law, it appears this was one of the limited cases in which the General Assembly attempted to provide educational opportunities in areas that lacked sufficient public schools by enabling local officials to contract with private charity schools to fill the gap.

The historical record in Ohio is very clear. From voter approval of the 1851 Constitution on June 17, 1851, and the subsequent 1853 enactment of enabling legislation on common schools, until passage of the “Fair Bus Bill” in July 1965, Ohio’s elected leaders insisted on reserving public funds for public schools.

In the first four decades of the 20th century, Catholic leaders tried and failed at least four times to persuade the General Assembly to provide public funds in parochial schools. The most urgent plea occurred in 1933, in the depths of the Great Depression.

However, Ohio Attorney General John W. Bricker, a staunch conservative and constitutionalist, on Aug. 17, 1933 issued an opinion stating: “No authority exists in law for the diversion or use of the school funds of the state for the promotion or maintenance of private schools or for any other purpose other than the establishment and maintenance of common or public schools.”

The original meaning of Article VI, Section 2 throughout Ohio history has been clear since 1851. The delegates to the 1850-1851 Ohio Constitutional Convention intended public funds to be reserved for public schools.